# [Chap1101]CHAPTER 11:01

## BANKRUPTCY

# ARRANGEMENT OF SECTIONS

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An Act relating to Bankruptcy

[14TH APRIL 1928]

PART I

PRELIMINARY

[Ch1101s1]1. Short title

This Act may be cited as the Bankruptcy Act.

[Ch1101s2]2. Interpretation

In this Act, unless the context otherwise requires-

"available act of bankruptcy" means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made;

"the Court" means the High Court of Malawi;

"debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy; "goods" includes all chattels personal;

"local bank" means any bank in Malawi;

"ordinary resolution" means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

"property" includes money, goods, things in action, land, and every description of property whether movable or immovable and whether situate in Malawi or elsewhere; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined;

"reciprocating court" means a court having jurisdiction in bankruptcy or insolvency in a reciprocating territory;

"reciprocating territory" means any territory declared a reciprocating territory under section 148;

"resolution" means ordinary resolution;

"rules" includes forms;

"secured creditor" means a person holding a mortgage charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor;

"sheriff" includes any person charged with the execution of any process;

"special resolution" means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

"trustee" means the trustee in bankruptcy of a debtor's estate.

PART II

PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE

Acts of Bankruptcy

[Ch1101s3]3. Acts of bankruptcy

(1) A debtor commits an act of bankruptcy in each of the following cases—

(a) if in Malawi or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally;

(b) if in Malawi or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof;

(c) if in Malawi or elsewhere he makes any conveyance or transfer of his property, or any part thereof, or creates any charge thereon, which would under this or any other law be void as a fraudulent preference if he were adjudged bankrupt;

(d) if with intent to defeat or delay his creditors he does any of the following things, namely, departs out of Malawi, or being out of Malawi remains out of Malawi, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house;

(e) if execution against him has been levied by seizure of his goods in any civil proceeding in any court, and the goods have been either sold or held by the sheriff for twenty-one days:

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the proceedings on such summons are finally disposed of, settled, or abandoned, shall not be taken into account in calculating such period of twenty-one days;

(f) if he files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself;

(g) if a creditor has obtained a final judgment or final order against him for any amount, and, execution thereon not having been stayed, has served on him in Malawi, or, by leave of the Court, elsewhere, a bankruptcy notice under this Act, and he does not within seven days after service of the notice, in case the service is effected in Malawi, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he has a counter-claim, set-off or cross-demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained;

For the purposes of this paragraph and of section 4, any person who is, for the time being, entitled to enforce a final judgment or final order, shall be deemed to be a creditor who has obtained a final judgment or final order;

(h) if he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.

(2) In this Act, the expression "a debtor," unless the context otherwise implies, includes any person, whether a citizen of Malawi or not, who at the time when any act of bankruptcy was done or suffered by him—

- (a) was personally present in Malawi; or
- (b) ordinarily resided or had a place of residence in Malawi;
- or

- (c) was carrying on business in Malawi, personally, or by means of an agent or manager; or
- (d) was a member of a firm or partnership which carried on business in Malawi;

and for the purposes of Part IX includes a person against whom bankruptcy proceedings have been instituted in a reciprocating territory and who has property in Malawi.

## [Ch1101s4]4. Bankruptcy notices

A bankruptcy notice under this Act shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the Court, and shall state the consequences of non-compliance with the notice, and shall be served in the prescribed manner:

Provided that a bankruptcy notice-

(a) may specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to, or done to the satisfaction of, the creditor;

(b) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such misstatement; but, if the debtor does not give such notice, he shall be deemed to have complied with the bankruptcy notice if within the time allowed he takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein.

## **Receiving Order**

## [Ch1101s5]5. Jurisdiction to make receiving order

Subject to the conditions hereinafter specified if a debtor commits an act of bankruptcy the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a receiving order, for the protection of the estate.

[Ch1101s6]6. Conditions on which creditor may petition

(1) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless-

(a) the debt owing by the debtor to the petitioning creditor, or if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to £50, and

(b) the debt is a liquidated sum, payable either immediately or at some certain future time, and

(c) the act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition, and

(d) the debtor is domiciled in Malawi, or within a year before the date of the presentation of the petition has ordinarily resided, or had a dwelling-house or place of business, or has carried on business in Malawi, personally or by means of an agent or manager, or is or within the said period has been a member of a firm or partnership of persons which has carried on business in Malawi by means of a partner or partners, or an agent or manager,

nor, where a deed of arrangement has been executed, shall a creditor be entitled to present a bankruptcy petition founded on the execution of the deed, or on any other act committed by the debtor in the course or for the purpose of the proceedings preliminary to the execution of the deed, in cases where he is prohibited from so doing by any law for the time being in force relating to deeds of arrangement.

(2) If the petitioning creditor is a secured creditor, he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated in the same manner as if he were an unsecured creditor.

[Ch1101s7]7. Proceedings and order on creditor's petition

(1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and served in the prescribed manner.

(2) At the hearing the Court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy and, if satisfied with the proof, may make a receiving order in pursuance of the petition.

(3) If the Court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the Court may dismiss the petition.

(4) When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure, or compound for a judgment debt, or sum ordered to be paid, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment or order.

(5) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(6) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other

creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.

(7) A creditor's petition shall not, after presentment, be withdrawn without the leave of the Court.

## [Ch1101s8]8. Debtor's petition and order thereon

(1) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the court shall thereupon make a receiving order.

(2) A debtor's petition shall not, after presentment, be withdrawn without the leave of the Court.

## [Ch1101s9]9. Effect of receiving order

(1) On the making of a receiving order the official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings unless with the leave of the Court and on such terms as the Court may impose.

(2) But this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

#### [Ch1101s10]10. Power to appoint interim receiver

The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition, and before a receiving order is made, appoint the official receiver to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

## [Ch1101s11]11. Power to stay pending proceedings

(1) The Court may, at any time after the presentation of a bankruptcy petition, stay any action, execution or other legal process against the property or person of the debtor, and any court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

(2) Where the Court makes an order staying any action or proceeding, or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the Court, by post to the address for service of the plaintiff or other party prosecuting such proceeding.

## [Ch1101s12]12. Power to appoint special manager

(1) The official receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver.

(2) The special manager shall give security and account in such manner as the official receiver may direct.

(3) The special manager shall receive such remuneration as the creditors may, by resolution at an ordinary meeting, determine, or, in default of any such resolution, as may be prescribed.

## [Ch1101s13]13. Advertisement of receiving order

Notice of every receiving order, stating the name, address, and description of the debtor, the date of the order, and the date of the petition, shall be gazetted and advertised in a local paper in the prescribed manner.

## [Ch1101s14]14. Power to rescind receiving order in certain cases

If in any case where a receiving order has been made on a bankruptcy petition it appears to the Court, upon an application by the official receiver, or any creditor or other person interested, that a majority of the creditors in number and value are resident in some place elsewhere than in Malawi, and that from the situation of the property of the debtor, or other causes, his estate and effects ought to be distributed among the creditors under the law relating to bankruptcy in such place, the court, after such inquiry as it may think fit, may rescind the receiving order and stay all proceedings on, or dismiss the petition upon such terms, if any, as the Court may think fit.

#### Proceedings consequent on Order

## [Ch1101s15]15. First and other meetings of creditors

(1) As soon as may be after the making of a receiving order against a debtor, a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be accepted, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

(2) With respect to the summoning of and proceedings at the first and the other meetings of creditors, the rules in the First Schedule shall be observed.

#### [Ch1101s16]16. Debtor's statement of affairs

(1) Where a receiving order is made against a debtor, he shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts and liabilities, the names, residences and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be so submitted within the following times-

(a) if the order is made on the petition of the debtor, within ten days from the date of the order; and

(b) if the order is made on the petition of a creditor, within twenty-one days from the date of the order;

but the Court may, in either case for special reasons, extend the time.

(3) If the debtor fails without reasonable excuse to comply with the requirements of this section, the Court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt.

(4) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the trustee or official receiver.

Public Examination of the Debtor

[Ch1101s17]17. Public examination of debtor

(1) Where the Court makes a receiving order, it shall, save as in this Act provided, hold a public sitting, on a day to be appointed by the Court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings, and property.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtors' statement of affairs.

(3) The Court may adjourn the examination from time to time.

(4) Any creditor who has tendered a proof, or his representative authorized in writing, may question the debtor concerning his affairs and the causes of his failure.

(5) The official receiver shall take part in the examination of the debtor, and for the purpose thereof may employ a legal practitioner if he so desires.

(6) If a trustee is appointed before the conclusion of the examination, he may take part therein.

(7) The Court may put such questions to the debtor as it may think expedient.

(8) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over either to or by the debtor and signed by him, and may thereafter, save as in this Act provided, be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times.

(9) When the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors.

(10) Where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, the Court may make an order dispensing with such examination or directing that the debtor be examined on such terms, in such manner and at such place as to the Court seems expedient.

## Composition or Scheme of Arrangement

## [Ch1101s18]18. Compositions and schemes of arrangement

(1) Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs, or within such time thereafter as the official receiver may fix, lodge with the official receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed.

(2) In such case the official receiver shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal, with a report thereon; and if at that meeting a majority in number and three-fourths in value of all the creditors who have proved, resolve to accept the proposal, it shall be deemed to be duly accepted by the creditors, and when approved by the Court shall be binding on all the creditors.

(3) The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the official receiver, calculated to benefit the general body of creditors.

(4) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official receiver, so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

(5) The debtor or the official receiver may, after the proposal is accepted by the creditors, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(6) The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the court in opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

(7) For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the official receiver that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence from Malawi.

(8) The Court shall, before approving the proposal, hear a report of the official receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

(9) If the Court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, the Court shall refuse to approve the proposal.

(10) If any facts are proved on proof of which the Court would be required either to refuse, suspend or attach conditions to the debtor's discharge, were he adjudged bankrupt, the Court shall refuse to approve the proposal, unless it provides reasonable security for the payment of not less than five shillings in the pound on all the unsecured debts provable against the debtor's estate.

(11) In any other case the Court may either approve or refuse to approve the proposal.

(12) If the Court approves the proposal, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the Court.

(13) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor or provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction or affiliation, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability.

(14) A certificate of the official receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

(15) The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested, and any disobedience of an order of the Court made on the application shall be deemed a contempt of court.

(16) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court

may, if it thinks fit, on application by the official receiver or the trustee or by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done, under or in pursuance of the composition or scheme.

Where a debtor is adjudged bankrupt under this subsection, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.

(17) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section 27 and Part V shall apply as if the trustee were a trustee in a bankruptcy, and as if the terms "bankruptcy", "bankrupt", and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and an order approving the composition or scheme.

(18) Part III shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee", "bankruptcy", "bankrupt", and "order of adjudication" as in the last preceding subsection.

(19) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

(20) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by an order of discharge if the debtor had been adjudged bankrupt.

## [Ch1101s19]19. Effect of composition or scheme

Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under this Act, the debtor would not be released by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

#### Adjudication of Bankruptcy

#### [Ch1101s20]20. Adjudication of bankruptcy where composition not accepted or approved

(1) Where a receiving order is made against a debtor, then if the creditors at the first meeting, or any adjournment thereof, by ordinary resolution, resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not approved in pursuance of this Act within fourteen days after the conclusion of the examination of the debtor, or such further time as the Court may allow, the Court shall adjudge the debtor bankrupt, and thereupon the property of the bankrupt shall become divisible among his creditors, and shall vest in a trustee.

(2) Notice of every order adjudging a debtor bankrupt, stating the name, address and description of the bankrupt, and the date of the adjudication, shall be gazetted and advertised in a local paper in the prescribed manner, and the date of the order shall, for the purposes of this Act, be the date of the adjudication.

## [Ch1101s21]21. Appointment of trustee

(1) Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may by ordinary resolution appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned.

A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty.

(2) The person so appointed shall give security in manner prescribed to the satisfaction of the Court, and the Court, if satisfied with the security, shall certify that his appointment has been duly made, unless the Court objects to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connexion with or relation to the bankrupt, or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally.

(3) The appointment of a trustee shall take effect as from the date of the certificate.

(4) The official receiver shall not, save as by this Act provided, be the trustee of the bankrupt's property.

(5) If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or, in the event of there being negotiations for a composition or scheme pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the Court to approve, the composition or scheme, the official receiver shall report the matter to the Court, and thereupon the Court shall appoint some fit person, who may be the official receiver, to be trustee of the bankrupt's property, and shall certify the appointment.

(6) Provided that the creditors or the committee of inspection (if so authorized by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and, on the appointment being made and certified, the person appointed shall become trustee in the place of the person appointed by the Court.

(7) When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the official receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee.

#### [Ch1101s22]22. Committee of inspection

(1) The creditors qualified to vote may, at their first or any subsequent meeting, by resolution appoint a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee.

(2) The committee of inspection shall consist of not more than five nor less than three persons, possessing one or other of the following qualifications—

(a) that of being a creditor or the holder of a general proxy or general power of attorney from a creditor, provided that no creditor and no holder of a general proxy or general power of attorney from a creditor shall be qualified to act as a member of the committee of inspection until the creditor has proved his debt and the proof has been admitted; or

(b) that of being a person to whom a creditor intends to give a general proxy or general power of attorney:

Provided that no such person shall be qualified to act as a member of the committee of inspection until he holds such a proxy or power of attorney, and until the creditor has proved his debt and the proof has been admitted.

(3) The committee of inspection shall meet at such times as they shall from time to time appoint, and, failing such appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(4) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are at the meeting.

(5) Any member of the committee may resign his office by notice in writing signed by him and delivered to the trustee.

(6) If a member of the committee becomes bankrupt or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant.

(7) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given stating the object of the meeting.

(8) On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may by resolution appoint another creditor, or other person eligible as above, to fill the vacancy.

(9) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and, where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it does not exceed five.

(10) If there be no committee of inspection, any act or thing or any direction or permission by this Act authorized or required to be done or given by the committee may be done or given by the Court on the application of the trustee.

[Ch1101s23]23. Power to accept composition or scheme after bankruptcy adjudication

(1) Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by a majority in number and three-fourths in value of all the creditors who have proved, resolve to accept a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication.

(2) If the Court approves the composition or scheme, it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the Court may appoint, on such terms, and subject to such conditions, if any, as the Court may declare.

(3) If default is made in payment of any instalment due in pursuance of the composition or scheme or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection all debts, provable in other respects, which have been contracted before the date of such adjudication, shall be provable in the bankrupty.

## Control over Person and Property of Debtor

[Ch1101s24]24. Duties of debtor as to discovery and realization of property

(1) Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

(2) He shall give such inventory of his property, such list of his creditors and debtors, and any of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meeting of his creditors, wait at such times on the official receiver, special manager, or trustee, execute such powers of attorney, conveyance, deeds, and instruments and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official receiver, special manager or trustee, or may be prescribed by general Rules, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official receiver, special manager, trustee or any creditor or person interested.

(3) He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds among his creditors.

(4) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, to the official receiver or to the trustee, or to any person authorized by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court, and may be punished accordingly.

[Ch1101s25]25. Arrest of debtor under certain circumstances

(1) The Court may, by warrant addressed to any police officer or prescribed officer of the Court, cause a debtor to be arrested, and any books, papers, money and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Court may order, under the following circumstances—

(a) if, after a bankruptcy notice has been issued under this Act, or after presentation of a bankruptcy petition by or against him it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond, with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him; or

(b) if, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy; or

(c) if, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of £5, without the leave of the official receiver or trustee; or

(d) if, without good cause shown, he fails to attend any examination ordered by the Court:

Provided that no arrest upon a bankruptcy notice shall be valid and protected, unless the debtor before or at the time of his arrest is served with such bankruptcy notice.

(2) No payment of composition made or security given after arrest made under this section shall be exempt from this Act relating to fraudulent preferences.

[Ch1101s26]26. Re-direction of debtor's letters

Where a receiving order is made against a debtor, the Court, on the application of the official receiver or trustee, may from time to time order that for such time, not exceeding three months, as the Court thinks fit, post letters, telegrams, and other postal packets, addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed, sent or delivered by the Postmaster-General, or the officers acting under him, to the official receiver, or the trustee, or otherwise as the Court directs, and the same shall be done accordingly.

## [Ch1101s27]27. Inquiry as to debtor's conduct, dealings and property

(1) The Court may on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, his dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such documents, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination.

(3) The Court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings, or property.

(4) If any person on examination before the Court admits that he is indebted to the debtor, the Court may, on the application of the official receiver or trustee, order him to pay to the official receiver or trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination.

(5) If any person on examination before the Court admits that he has in his possession any property belonging to the debtor, the Court may, on the application of the official receiver or trustee, order him to deliver to the official receiver or trustee such property or any part thereof, at such time, and in such manner, and on such terms, as to the Court may seem just.

(6) The Court may, if it thinks fit, order that any person who if in Malawi would be liable to be brought before it under this section shall be examined in any other place out of Malawi.

## [Ch1101s28]28. Discharge of bankrupt

(1) A bankrupt may, at any time after being adjudged bankrupt, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall, except when the Court in accordance with Rules under this Act otherwise directs, be heard in open court.

(2) On the hearing of the application the Court shall take into consideration a report of the official receiver of Malawi or any reciprocating territory as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his bankruptcy), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property:

Provided that where the bankrupt has committed any offence under this Act or any offence connected with his bankruptcy whether in Malawi or any reciprocating territory or where in any case any of the facts hereinafter mentioned are proved to have occurred either in Malawi or any reciprocating territory, the Court shall either—

- (i) refuse the discharge; or
- (ii) suspend the discharge for such period as the Court thinks proper; or

(iii) suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors; or

(iv) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official receiver or trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the Court may direct; but execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts:

Provided that, if at any time after the expiration of two years from the date of any order made under this section the bankrupt satisfies the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

(3) The facts hereinbefore referred to are—

(a) that the bankrupt's assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;

(b) that the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy;

(c) that the bankrupt has continued to trade after knowing himself to be insolvent;

(d) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it;

(e) that the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;

(f) that the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;

(g) that the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;

(h) that the bankrupt has brought on or contributed to his bankruptcy by incurring unjustifiable expense in bringing any frivolous or vexatious action;

(i) that the bankrupt has, within three months preceding the date of the receiving order, when unable to pay his debts as they became due, given an undue preference to any of his creditors;

(j) that the bankrupt has, within three months preceding the date of the receiving order, incurred liabilities with a view to making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities;

(k) that the bankrupt has, on any previous occasion, been adjudged bankrupt, or made a composition or arrangement with his creditors; or

(I) that the bankrupt has been guilty of any fraud or fraudulent breach of trust.

(4) With a view to removing any legal disqualification on account of bankruptcy which is removed if the bankrupt obtains from the Court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part, the Court may, if it thinks fit, grant such certificate, and a refusal to grant such a certificate shall be subject to appeal.

(5) For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to ten shillings in the pound on the amount of his unsecured liabilities when the Court is satisfied that the property of the bankrupt has realized, or is likely to realize, or with due care in realization might have realized, an amount equal to ten shillings in the pound on his unsecured liabilities, and a report by the official receiver or trustee shall be prima facie evidence of the amount of such liabilities.

(6) For the purposes of this section, the report of the official receiver shall be prima facie evidence of the statements therein contained.

(7) Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the Court may hear the official receiver and the trustee,

and may also hear any creditor. At the hearing the Court may put such questions to the debtor and receive such evidence as it may think fit.

(8) The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.

(9) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realization and distribution of such of his property as is vested in the trustee, and, if he fails to do so, he shall be guilty of a contempt of court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge but before its revocation.

[Ch1101s29]29. Fraudulent settlements

In either of the following cases—

(a) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(b) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

if the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

# [Ch1101s30]30. Effect of order of discharge

(1) An order of discharge shall not release the bankrupt—

(a) from any debt on a recognizance nor from any debt with which the bankrupt may be chargeable at the suit of the Government or of any person for any offence against any law relating to any branch of the general revenue of Malawi, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Minister certify in writing his consent to the bankrupt being discharged therefrom; or

(b) from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party; or

(c) from any liability under a judgment against him in an action for seduction or affiliation, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability.

(2) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(3) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge.

(4) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt, or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

[Ch1101s31]31. Power of Court to annul adjudication in certain cases

(1) Where in the opinion of the Court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may, on the application of any person interested, by order annul the adjudication.

(2) Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official receiver, trustee, or other person acting under their authority, or by the Court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or, in default of any such appointment, revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the Court may declare by order.

(3) Notice of the order annulling an adjudication shall be forthwith published in a local paper.

(4) For the purposes of this section, any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into court.

PART III

ADMINISTRATION OF PROPERTY

Proof of Debts

[Ch1101s32]32. Description of debts provable in bankruptcy

(1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust shall not be provable in bankruptcy.

(2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the receiving order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

(4) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

(5) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court.

(6) If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy.

(7) If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may assess the value, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

(8) "Liability" shall, for the purposes of this Act, include-

(a) any compensation for work or labour done;

(b) any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring, before the discharge of the debtor; and

(c) generally, any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of, money or money's worth; whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

## [Ch1101s33]33. Mutual credit and set-off

Where there have been mutual credits, mutual debts or other mutual dealings, between a debtor against whom a receiving order shall be made under this Act and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be

set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him.

# [Ch1101s34]34. Rules as to proof of debts

With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the Second Schedule, the Rules in that Schedule shall be observed.

# [Ch1101s35]35. Priority debts

(1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts—

(a) all wages of any labourer or workman not exceeding £50, whether payable for time or for piece work, in respect of services rendered to the bankrupt during twelve months before the date of the receiving order:

Provided that where any labourer or workman has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the period of hiring, the priority shall extend to the whole of such sum, or such part thereof as the Court may decide to be due under the contract proportionate to the time of service up to the date of the receiving order, as the case may be;

(b) all wages or salary whether or not earned wholly or in part by way of commission of any clerk or servant in respect of services rendered to the bankrupt during twelve months before the date of the receiving order, not exceeding £100;

(c) any tax, duty or rate payable by the bankrupt to the Government in respect of any period prior to the date of the receiving order, whether or not payment has become due after that date;

(d) all Government rents not more than five years in arrears;

(e) all rates due from the bankrupt to a local authority at the date of the receiving order, having become due and payable within a period of three years next before that date.

(2)(a) Debts having priority shall rank as follows—

(i) first, the debts referred to in subsection (1) (a) and (b) of this section and in section 26 (3) of the Workmen's Compensation Act; Cap. 55:03

(ii) secondly, the debts referred to in subsection (1) (c) and (d);

(iii) thirdly, debts referred to in subsection (1) (e).

(b) Debts having the same priority shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within three months next before the date of the receiving order the debts to which priority is given by this section shall, subject to their priorities inter se, be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made.

(5) This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

(6) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(7) Subject to this Act, all debts proved in the bankruptcy shall be paid pari passu.

(8) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of £6 per centum per annum on all debts proved in the bankruptcy.

(9) Nothing in this section shall prejudice the provisions of any enactment relating to deeds of arrangement respecting the payment of expenses incurred by the trustee under a deed of arrangement which has been avoided by the bankruptcy of the debtor.

# [Ch1101s36]36. Preferential claim in case of apprenticeship

(1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the deed of apprenticeship or articles of agreement; and, if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the

bankrupt under the deed or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

(2) Where it appears expedient to a trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the deed of apprenticeship or articles of agreement to some other person.

## [Ch1101s37]37. Landlord's power of distress

The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy it shall be available only for six months' rent accrued due prior to the date of the order of adjudication and shall not be available for rent payable in respect of any period subsequent to the date when the distress was levied, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

# [Ch1101s38]38. Postponement of husband's and wife's claims

(1) Where a married woman has been adjudged bankrupt her husband shall not be entitled to claim any dividend as a creditor in respect of any money or other estate lent or entrusted by him to his wife for the purposes of her trade or business, until all claims of the other creditors of his wife for valuable consideration in money or money's worth have been satisfied.

(2) Where the husband of a married woman has been adjudged bankrupt, any money or other estate of such woman lent or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise, shall be treated as assets of his estate, and the wife shall not be entitled to claim any dividend as a creditor in respect of any such money or other estate until all claims of the other creditors of her husband for valuable consideration in money or money's worth have been satisfied.

## Property Available for Payment of Debts

# [Ch1101s39]39. Relation back of trustee's title

(1) The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to and commence at the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order, or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor. (2) Where a receiving order is made against the judgment debtor in pursuance of section 100 the bankruptcy of the debtor shall be deemed to have relation back to, and to commence at, the time of the order, or if the bankrupt is proved to have committed any previous act of bankruptcy, then to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the debtor within three months next preceding the date of the order.

[Ch1101s40]40. Description of bankrupt's property divisible amongst creditors

The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars—

(a) property held by the bankrupt on trust for any other person; or

(b) the tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding £40 in the whole;

(c) any moneys or policy of life insurance or asset or, as the case may be, any moneys or proceeds on realization of any policy of life insurance or of any asset in respect of which protection is afforded by virtue of any provision of Part V of the Insurance Act, to the extent of that protection. Cap. 47:01

But it shall comprise the following particulars-

(i) all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and

(ii) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and

(iii) all goods, being at the commencement of the bankruptcy in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof:

Provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

# [Ch1101s41]41. Provision as to second bankruptcy

(1) Where a second or subsequent receiving order is made against a bankrupt, or where an order is made for the administration in bankruptcy of the estate of a deceased bankrupt, then for the purposes of any proceedings consequent upon any such order, the trustee in the last preceding bankruptcy shall be deemed to be a creditor in respect of any unsatisfied balance of the debts provable against the property of the bankrupt in that bankruptcy.

(2) In the event of a second or subsequent receiving order made against a bankrupt being followed by an order adjudging him bankrupt, or in the event of an order being made for the administration in bankruptcy of the estate of a deceased bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy, shall (subject to any disposition thereof made by the official receiver or trustee in that bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to section 49 of this Act) vest in the trustee in the subsequent bankruptcy or administration in bankruptcy as the case may be.

(3) Where the trustee in any bankruptcy receives notice of a subsequent petition in bankruptcy against the bankrupt or after his decease of a petition for the administration of his estate in bankruptcy, the trustee shall hold any property then in his possession which has been acquired by the bankrupt since he was adjudged bankrupt until the subsequent petition has been disposed of, and, if on the subsequent petition an order of adjudication or an order for the administration of the estate in bankruptcy is made, he shall transfer all such property or the proceeds thereof (after deducting his costs and expenses) to the trustee in the subsequent bankruptcy or administration in bankruptcy, as the case may be.

Effect of Bankruptcy on Antecedent and other Transactions

[Ch1101s42]42. Restriction of rights of creditor under execution or attachment

(1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor or of the commission of any available act of bankruptcy by the debtor.

(2) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.

(3) An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the sheriff shall, in all cases, acquire a good title to them against the trustee in bankruptcy.

[Ch1101s43]43. Duties of sheriff as to goods taken in execution

(1) Where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the official receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the official
receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

(2) Where, under an execution in respect of a judgment for a sum exceeding £20, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and, if within that time notice is served on him of a bankruptcy petition having been presented by or against the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official receiver, or, as the case may be, to the trustee, who shall be entitled to retain it as against the execution creditor.

(3) Where any goods in the possession of an execution debtor at the time of seizure by a sheriff are sold by such sheriff without any claim having been made to the same, the purchaser of the goods so sold shall acquire a good title to such goods, and no person shall be entitled to recover against such sheriff or any other person lawfully acting under his authority, for any sale of such goods or for paying over the proceeds thereof prior to the receipt of a claim to such goods, unless it is proved that the person from whom recovery is sought had notice, or might, by making reasonable inquiry, have ascertained that such goods were not the property of the execution debtor:

Provided that nothing in this subsection contained shall affect the right of any claimant, who may prove that at the time of sale he had a title to such goods, to any remedy to which he may be entitled against any person other than such sheriff.

### [Ch1101s44]44. Avoidance of certain settlements

(1) Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankrupt can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof.

(2) Any covenant or contract made by any person (hereinafter called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's wife or husband or children, or for the future settlement on or for the settlor's wife or husband or children, or for the future settlement on or for the settlor's wife or husband or children, of property wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's wife or husband, shall if the settlor is adjudged bankrupt and the covenant or contract has not been executed at the date of the commencement of his bankruptcy, be void against the trustee in the bankruptcy, except so far as it enables the persons entitled under the covenant or contract to claim

for dividend in the settlor's bankruptcy under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

(3) Any payment of money (not being payment of premiums on a policy of life assurance) or any transfer of property made by the settlor in pursuance of such a covenant or contract as afore-said shall be void against the trustee in the settlor's bankruptcy unless the persons to whom the payment or transfer was made prove either—

(a) that the payment or transfer was made more than two years before the date of the commencement of the bankruptcy; or

(b) that at the date of the payment or transfer the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred; or

(c) that the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract, and was made within three months after the money or property came into the possession or under the control of the settlor: but, in the event of any such payment or transfer being declared void, the persons to whom it was made shall be entitled to claim for dividend under or in respect of the covenant or contract in like manner as if it had not been executed at the commencement of the bankruptcy.

(4) "settlement" shall, for the purposes of this section, include any conveyance or transfer of property.

[Ch1101s45]45. Avoidance of general assignments of book debts unless registered

(1) Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts or any class thereof, and is subsequently adjudicated bankrupt, the assignment shall be void against the trustee as regards any book debts which have not been paid at the commencement of the bankruptcy, unless the assignment has been registered as if the assignment were a bill of sale given otherwise than by way of security for the payment of a sum of money, and the provisions of the Bills of Sale Act, with respect to the registration of bills of sale shall apply accordingly, subject to such necessary modifications as may be made by rules thereunder: Cap. 48:03

Provided that nothing in this section shall have effect so as to render void any assignment of book debts due at the date of the assignment from specified debtors, or of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made bona fide and for value, or in any assignment of assets for the benefit of creditors generally.

(2) For the purposes of this section "assignment" includes assignment by way of security and other charges on book debts.

[Ch1101s46]46. Avoidance of preference in certain cases

(1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or of any person in trust for any creditor, with a view to giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

(3) Where a receiving order is made against a judgment debtor in pursuance of section 100, this section shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order.

[Ch1101s47]47. Protection of bona fide transactions without notice

Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, assignments and preferences, nothing in this Act shall invalidate, in the case of a bankruptcy—

- (a) any payment by the bankrupt to any of his creditors;
- (b) any payment or delivery to the bankrupt;
- (c) any conveyance or assignment by the bankrupt for valuable consideration; or
- (d) any contract, dealing or transaction by or with the bankrupt for valuable consideration:

Provided that both the following conditions are complied with-

(i) that the payment, delivery, conveyance, assignment, contract, dealing or transaction, as the case may be, takes place before the date of the receiving order; and

(ii) that the person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

[Ch1101s48]48. Validity of certain payments to bankrupt and assignee

(1) A payment of money or delivery of property to a person subsequently adjudged bankrupt, or to a person claiming by assignment from him, shall, notwithstanding anything in this Act, be a good discharge to the person paying the money or delivering the property, if the payment or delivery is made before the actual date on which the receiving order is made and without notice of the presentation of a bankruptcy petition, and is either pursuant to the ordinary course of business or otherwise bona fide.

## Recovery of property transferred without knowledge of receiving order

(2) Where any money or property of a bankrupt has, on or after the date of the receiving order but before notice thereof has been advertised in the prescribed manner, been paid or transferred by a person having possession of it to some other person, and the payment or transfer is void under this Act as against the trustee in the bankruptcy, then, if the person by whom the payment or transfer was made proves that when it was made he had not had notice of the receiving order, any right of recovery which the trustee may have against him in respect of the money or property shall not be enforced by any legal proceedings except where and in so far as the Court is satisfied that it is not reasonably practicable for the trustee to recover in respect of the money or property or of some part thereof from the person to whom it was paid or transferred.

## [Ch1101s49]49. Dealings with undischarged bankrupt

(1) All transactions by a bankrupt with any person dealing with him bona fide and for value, in respect of property, whether movable or immovable, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the trustee, be valid against the trustee, and any estate or interest in such property which by virtue of this Act is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction.

For the purposes of this subsection, the receipt of any money, security, or negotiable instrument from, or by the order or direction of, a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to, or by the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with such banker dealing with him for value.

(2) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, it shall be his duty forthwith to inform the trustee in the bankruptcy or the official receiver of the existence of the account, and thereafter he shall not make any payments out of the account, except under an order of the Court, or in accordance with instructions from the trustee in the bankruptcy, unless by the expiration of one month from the date of giving the information no instructions have been received from the trustee or official receiver.

### **Realization of Property**

# [Ch1101s50]50. Possession of property by trustee

(1) The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.

(2) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the Court, and the Court may, on his application, enforce such acquisition or retention accordingly.

(3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee.

(5) Subject to the provisions of this Act with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of a contempt of court, and may be punished accordingly on the application of the trustee.

# [Ch1101s51]51. Seizure of property of bankrupt

Any person acting under warrant of the Court may seize any part of the property of a bankrupt, or of a debtor, against whom a receiving order has been made, in the custody or possession of the bankrupt or the debtor, or of any other person, and with a view to such seizure may break open any house, building or room of the bankrupt or the debtor, where the bankrupt or the debtor is supposed to be, or any building or receptacle of the bankrupt or the debtor where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that property of a bankrupt, or of a debtor against whom a receiving order has been made, is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any police officer or officer of the Court, who may execute it according to its tenor.

# [Ch1101s52]52. Appropriation of portion of pay or salary to creditors

(1) Where a bankrupt is an officer of the army or navy, or any officer or clerk or otherwise employed or engaged in the civil service of the Government, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the head of the department under which the pay or salary is enjoyed, may direct. Before making any order under this subsection, the Court shall communicate with the head of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the head of the department to the terms of such payment.

(2) Where a bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay, or pension, or to any compensation granted by the Government, the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of

the salary, income, half-pay, pension, or compensation, or of any part thereof, to the trustee, to be applied by him in such manner as the Court may direct.

(3) Nothing in this section shall take away or abridge any power of the Government or of any authority thereof to dismiss a bankrupt, or to declare the pension, half-pay, or compensation of any bankrupt forfeited.

### [Ch1101s53]53. Appropriation of income of property restrained from anticipation

Where a married woman who has been adjudged bankrupt has separate property the income of which is subject to a restraint on anticipation, the Court shall have power, on the application of the trustee, to order that, during such time as the Court may order, the whole or some part of such income be paid to the trustee for distribution amongst the creditors, and in the exercise of such power the Court shall have regard to the means of subsistence available for the woman and her children.

## [Ch1101s54]54. Vesting and transfer of property

(1) Until a trustee is appointed, the official receiver shall be the trustee for the purposes of this Act, and, immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee.

(2) On the appointment of a trustee, the property shall forthwith pass to and vest in the trustee appointed.

(3) The property of the bankrupt shall pass from trustee to trustee, including under that term the official receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office without any conveyance, assignment, or transfer whatever.

(4) The certificate of appointment of a trustee shall, for all purposes of any law in force in Malawi requiring registration or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered and recorded accordingly.

### [Ch1101s55]55. Disclaimer of onerous property

(1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to this section, may, by writing signed by him, at any time within twelve months after the first appointment of a trustee or such extended period as may be allowed by the Court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

(3) A trustee shall not be entitled to disclaim a lease without the leave of the Court, except in any cases which may be prescribed by general Rules, and the Court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy, as the Court thinks just.

(4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the trustee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankrupty.

(6) The Court may, on application by any person either claiming any interest in any disclaimed property or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise, except upon the terms of making that person(a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed; or

(b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order; and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the bankrupt who is willing to accept an order upon such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt, to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

(7) Where, on the release, removal, resignation or death of a trustee in bankruptcy, an official receiver is acting as trustee, he may disclaim any property which might be disclaimed by a trustee under the foregoing provisions, notwithstanding that the time prescribed by this section for such disclaimer has expired, but such power of disclaimer shall be exercisable only within twelve months after the official receiver has become trustee in the circumstances aforesaid, or has become aware of the existence of such property, whichever period may last expire.

(8) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

[Ch1101s56]56. Powers of trustee to deal with property

Subject to this Act, the trustee may do all or any of the following things-

(1) sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(2) give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;

(3) prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt;

(4) exercise any power, the capacity to exercise which is vested in the trustee under this Act, and execute any powers of attorney, deeds and other instruments, for the purpose of carrying this Act into effect;

(5) deal with any property to which the bankrupt is beneficially entitled in the same manner as the bankrupt might have dealt with it.

[Ch1101s57]57. Powers exercisable by trustee with permission of committee of inspection

The trustee may, with the permission of the committee of inspection, do all or any of the following things—

(1) carry on the business of the bankrupt, so far as may be necessary for the beneficial winding up of the same;

(2) bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt;

(3) employ a legal practitioner or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection;

(4) accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee think fit;

(5) mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts;

(6) refer any dispute to arbitration, compromise any debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on;

(7) make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy;

(8) make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person;

(9) divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

The permission given for the purposes of this section shall not be a general permission to do all or any of the above mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

### [Ch1101s58]58. Power to allow bankrupt to manage property

The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to

carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property, in such manner and on such terms as the trustee may direct.

### [Ch1101s59]59. Allowance to bankrupt for maintenance or service

The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the Court.

## [Ch1101s60]60. Right of trustee to inspect goods pawned, etc.

Where any goods of a debtor against whom a receiving order has been made are held by any person by way of pledge, pawn, or other security, it shall be lawful for the official receiver or trustee, after giving notice in writing of his intention to do so, to inspect the goods, and where such notice has been given, such person as aforesaid shall not be entitled to realize his security until he has given the trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so.

## [Ch1101s61]61. Limitation of trustee's powers in relation to copyright

Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee shall not be entitled to sell, or authorize the sale of, any copies of the work, or to perform or authorize the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he, without the consent of the author or of the Court, be entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of the profits at a rate not less than that which the bankrupt was liable to pay.

### [Ch1101s62]62. Protection of official receiver and trustee from personal liability in certain cases

Where the official receiver or trustee has seized or disposed of any goods, chattels, property, or other effects in the possession or on the premises of a debtor against whom a receiving order has been made, without notice of any claim by any person in respect of the same, and it is thereafter made to appear that the said goods, chattels, property or other effects were not, at the date of the receiving order, the property of the debtor, the official receiver or trustee shall not be personally liable for any loss or damage arising from such seizure or disposal sustained by any person claiming such property, nor for the cost of any proceedings taken to establish a claim thereto, unless the Court is of opinion that the official receiver or trustee has been guilty of negligence in respect of the same.

### **Distribution of Property**

[Ch1101s63]63. Declaration and distribution of dividends

(1) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(2) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.

(4) Before declaring a dividend, the trustee shall cause notice of his intention to do so to be advertised in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

(5) When the trustee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

# [Ch1101s64]64. Joint and separate dividends

(1) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners or any of the firm, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

(2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, unless otherwise directed by the Court on the application of any person interested, be declared together, and the expenses of and incidental to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

[Ch1101s65]65. Provisions for creditors residing at a distance, etc.

(1) In the calculation and distribution of a dividend the trustee shall make provisions for debts provable in bankruptcy appearing from the bankrupt's statements, 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 bankruptcy the subject of claims not yet determined.

(2) He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise.

(3) Subject to the foregoing provisions, he shall distribute as dividend all money in hand.

[Ch1101s66]66. Right of creditor who has not proved debt before declaration of a dividend

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 money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied 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.

# [Ch1101s67]67. Interest on debts

(1) Where a debt has been proved, and the debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding eight per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

(2) In dealing with the proof of the debt, the following rules shall be observed—

(a) any account settled between the debtor and the creditor within three years preceding the date of the receiving order may be examined, and if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalisation of interest or as certainment of loans or otherwise), the account may be reopened and the whole transaction treated as one;

(b) any payments made by the debtor to the creditor before the receiving order, whether by way of bonus or otherwise, and any sums received by the creditor before the receiving order from the realization of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated to principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate; and

(c) where the debt due is secured and the security is realized after the receiving order, or the value thereof is assessed in the proof, the amount realized or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.

# [Ch1101s68]68. Final dividend

(1) When the trustee has realized all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realized without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims.

(2) After the expiration of the time so limited, or, if the Court on application by any such claimant grants him further time for establishing his claim, then on the expiration of such further time,

the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

### [Ch1101s69]69. No action for dividend

No action for dividend shall lie against the trustee, but, if the trustee refuses to pay any dividend, the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

## [Ch1101s70]70. Right of bankrupt to surplus

The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Act provided, and of the costs, charges and expenses of the proceedings under the bankruptcy petition.

PART IV

## OFFICIAL RECEIVER AND STAFF

# [Ch1101s71]71. Official receiver of debtors' estates

There shall be an official receiver of debtors' estates, assisted by such staff as may be required from time to time. He shall also be an officer of the Court and shall be referred to as the "official receiver".

# [Ch1101s72]72. Status of official receiver

(1) The duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of his estate.

(2) The official receiver may, for the purposes of affidavits verifying proofs, petitions, or other proceedings under this Act, administer oaths.

(3) All provisions in this or any other Act, referring to the trustee in the bankruptcy shall, unless the context otherwise requires, or the Act otherwise provides, include the official receiver when acting as trustee.

(4) The trustee shall supply the official receiver with such information, and give him such access to and facilities for inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Act.

[Ch1101s73]73. Duties of official receiver as regards the debtor's conduct

As regards the debtor, it shall be the duty of the official receiver-

(a) to investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes an offence under this

Act, or any enactment repealed by this Act, or which would justify the Court in refusing, suspending or qualifying an order for his discharge;

(b) to make such other reports concerning the conduct of the debtor as the Court may direct;

(c) to take such part as he may deem fit in the public examination of the debtor; and

(d) to take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Director of Public Prosecutions may direct.

### [Ch1101s74]74. Duties of official receiver as to debtor's estate

(1) As regards the estate of a debtor, it shall be the duty of the official receiver-

(a) pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;

(b) to authorize the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do;

(c) to summon and preside at the first meeting of creditors;

(d) to issue forms of proxy for use at the meetings of creditors;

(e) to report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;

(f) to advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise; and

(g) to act as trustee during any vacancy in the office of trustee.

(2) For the purpose of his duties as interim receiver or manager, the official receiver shall have the same powers as if he were a receiver and manager appointed by the Court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the Court otherwise orders, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods:

Provided that, when the debtor cannot himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

(3) Every administrative officer shall at the request of the official receiver act as his agent to assist in the protection of the debtor's property.

PART V

## TRUSTEES IN BANKRUPTCY

**Official Name** 

### [Ch1101s75]75. Official name of trustee

The official name of a trustee in bankruptcy shall be "the trustee of the property of...... a bankrupt" (inserting the name of the bankrupt), and by that name the trustee may, in any part of Malawi or elsewhere, hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

#### Appointment

[Ch1101s76]76. Power to appoint joint or successive trustees

(1) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and when more persons than one are appointed they shall declare whether any act required or authorized to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee" and shall be joint tenants of the property of the bankrupt.

(2) The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or of the appointment of any such person not being certified by the Court.

## [Ch1101s77]77. Proceedings in case of vacancy in office of trustee

(1) If a vacancy occurs in the office of a trustee, the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.

(2) The official receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

(3) If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the official receiver shall report the matter to the Court, and the Court may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee in the place of the person so appointed by the Court as in the case of a first appointment.

(4) During any vacancy in the office of trustee the official receiver shall act as trustee.

Control over Trustee

### [Ch1101s78]78. Discretionary powers of trustee and control thereof

(1) Subject to this Act, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(2) The trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution either at the meeting appointing the trustee or otherwise, may direct, and it shall be lawful for any creditor, with the concurrence of one-sixth in value of the creditors (including himself), at any time to request the trustee or official receiver to call a meeting of the creditors, and the trustee or official receiver shall all such meeting accordingly within fourteen days:

Provided that the person at whose instance the meeting is summoned shall deposit with the trustee or the official receiver, as the case may be, a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate if the creditors or the Court so direct.

(3) The trustee may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

(4) Subject to this Act, the trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

### [Ch1101s79]79. Appeal to Court against trustee

If the bankrupt or any of the creditors, or any other person, is aggrieved by any act or decision of the trustee, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

### [Ch1101s80]80. Control of official receiver over trustees

(1) The official receiver shall take cognizance of the conduct of trustees, and, in the event of any trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by Act, Rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the official receiver by any creditor in regard thereto, the official receiver shall inquire into the matter and take such, action thereon as may be deemed expedient.

(2) The official receiver may at any time require any trustee to answer any inquiry made by him in relation to any bankruptcy in which the trustee is engaged, and, if the official receiver thinks fit, he may apply to the Court to examine on oath the trustee or any other person concerning the bankruptcy.

(3) The official receiver may also direct a local investigation to be made of the books and vouchers of the trustee.

#### **Remuneration and Costs**

#### [Ch1101s81]81. Remuneration of trustee

(1) Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or, if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realized by the trustee, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part of the amount distributed in dividend.

(2) If one-fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the Court that the remuneration is unnecessarily large, the Court shall fix the amount of the remuneration.

(3) The resolution shall express what expenses; the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover.

(4) Where a trustee acts without remuneration, he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the Court, approve.

(5) A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any legal practitioner, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee, to the bankrupt or any legal practitioner, or other person that may be employed about a bankruptcy.

### [Ch1101s82]82. Allowance and taxation of costs

(1) Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by this Act or Rules thereunder to be performed by himself.

(2) Where the trustee is a legal practitioner, he may contract that the remuneration for his services as trustee shall include all professional services.

(3) All bills and charges of legal practitioners, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The taxing officer shall satisfy himself before passing such bills and charges that the employment of such

legal practitioners and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned. The sanction must be obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

(4) Every such person shall, on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the proper officer for taxation, and, if he fails to do so within seven days after the receipt of the request, or such further time as the Court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.

### Receipts, Payments, Account, Audit

## [Ch1101s83]83. Trustee to furnish list of creditors

The trustee or official receiver shall, whenever required by any creditor so to do, furnish and transmit to him by post a list of the creditors showing the amount of the debt due to each creditor, and shall be entitled to charge for such list the sum of sixpence per folio of one hundred words, together with the cost of the postage thereof.

## [Ch1101s84]84. Trustee to furnish statement of accounts

It shall be lawful for any creditor, with the concurrence of one-sixth of the creditors (including himself), at any time to call upon the trustee or official receiver to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall, upon the receipt of such notice, furnish and transmit such statement of the accounts:

Provided that the person at whose instance the accounts are furnished shall deposit with the trustee or official receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, which sum shall be repaid to him out of the estate if the creditors or the Court so direct.

### [Ch1101s85]85. Books to be kept by trustee

The trustee shall keep, in manner prescribed, proper books, in which he shall from time to rime cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor of the bankrupt may, subject to the control of the Court, personally or by his agent, inspect any such books.

# [Ch1101s86]86. Annual statement of proceedings

(1) Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the official receiver a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form.

(2) The official receiver shall cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect, or omission, which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

# [Ch1101s87]87. Trustee not to pay into private account

No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account.

# [Ch1101s88]88. Payment of money into the prescribed bank or with the Accountant General

(1) A Bankruptcy Estates Account shall be kept by the official receiver with the prescribed bank, or with the Accountant General, and all moneys received by him in respect of proceedings under this Act shall be paid to that account.

(2) Every trustee in bankruptcy shall in such manner and at such times as the official receiver shall direct pay the money received by him to the Bankruptcy Estates Account at the prescribed bank or with the Accountant General, and the official receiver shall furnish him with a certificate of receipt of the money so paid:

# Provided that—

(a) if it appears to the committee of inspection that, for the purpose of carrying on the debtor's business or of obtaining advances, or because of the probable amount of the cash balance, or if the committee shall satisfy the Court that for any other reason it is for the advantage of the creditors that the trustee should have an account with a local bank, the Court shall, on the application of the committee of inspection, authorize the trustee to make his payments into and out of such local bank as the committee may select;

(b) in any bankruptcy, composition or scheme of arrangement in which the official receiver is acting as trustee, or in which a trustee is acting without a committee of inspection, the Court may, if for special reasons it thinks fit to do so, upon the application of the official receiver or other trustee, authorize the trustee to make his payments into and out of such local bank as the Court may direct.

(3) Where the trustee opens an account in a local bank, he shall open and keep it in the name of the debtor's estate, and any interest receivable in respect of the account shall be part of the assets of the estate, and the trustee shall make his payments into and out of the local bank in the prescribed manner.

(4) Subject to any general Rules relating to small bankruptcies under section 117, where the debtor at the date of the receiving order has an account at a bank, such account shall not be withdrawn until the expiration of seven days from the date appointed for the first meeting of creditors, unless the Court, for the safety of the account, or other sufficient cause, orders the withdrawal of the account.

(5) If a trustee at any time retains for more than ten days a sum exceeding £50, or such other amount as the Court in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum, and shall have no claim to remuneration, and may be removed from his office by the Court, and shall be liable to pay any expenses occasioned by reason of his default.

## [Ch1101s89]89. Investment of surplus funds

(1) Whenever the cash balance standing to the credit of the Bankruptcy Estates Account is in excess of the amount which in the opinion of the official receiver is required for the time being to answer demands in respect of bankrupts' estates, the official receiver may cause the same or any part thereof to be placed on fixed deposit with a bank or with the Accountant General.

(2) Whenever any money so placed on deposit is, in the opinion of the official receiver, required to answer any demands in respect of the bankrupts' estates, the official receiver shall thereupon withdraw such money from fixed deposit and repay the same to the credit of the cash balance of the Bankruptcy Estates Account.

(3) All interest accruing from any money so placed on deposit shall be paid by the official receiver to the credit of a separate account entitled the Bankruptcy Contingent Fund at the prescribed bank, or with the Accountant General. Where it appears that it is in the public interest to do so and that other funds are not available or properly chargeable the Court may on the application of the official receiver authorize him to employ money in the Bankruptcy Contingency Fund to defray the cost in whole or in part of any of the following—

(a) the prosecution of any debtor for any bankruptcy offences alleged to have been committed by him;

(b) the institution of proceedings and the payment of expenses of witnesses (if any) for the discovery or recovery of property belonging to any debtor;

(c) the institution of proceedings to set aside an alleged fraudulent preference;

(d) the employment of counsel in matters connected with an estate which by reason of their difficulty or other good cause cannot be dealt with by the official receiver himself;

(e) the employment of interpreters in cases where the Court is unable to provide an interpreter;

(f) the payment of expenses involved in arresting a debtor and bringing him before the Court;

(g) any other expenditure which the Court may deem fit.

The Court may in its discretion order that the fund be reimbursed in whole or in part in the event of any money being recovered as a result of the expenditure so authorized.

### [Ch1101s90]90. Audit of trustee's accounts

(1) Every trustee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the official receiver an account of his receipts and payments as such trustee.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The official receiver shall cause the accounts so sent to be audited, and, for the purposes of the audit, the trustee shall furnish the auditor with such vouchers and information as the auditor may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the trustee.

(4) When any such account has been audited, one copy thereof shall be filed and kept by the official receiver, and the other copy shall be filed with the Court, and each copy shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

Vacation of office by trustee

## [Ch1101s91]91. Release of trustee

(1) When the trustee has realized all the property of the bankrupt, or so much thereof as can, in his opinion, be realized without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the Court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Court, shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly.

(2) Where the release of a trustee is withheld, the Court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

(3) An order of the Court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) The foregoing provisions of this section shall apply to the official receiver when he is, or is acting as, trustee, and when the official receiver has been released under this section, he shall continue to act as trustee for any subsequent purposes of the administration of the debtor's estate, but no

liability shall attach to him personally by reason of his so continuing in respect of any act done, default made, or liability incurred before his release.

(5) Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office and thereupon the official receiver shall be the trustee.

(6) Where, on the release of a trustee, the official receiver is, or is acting as, trustee, no liability shall attach to him personally in respect of any act done, or default made, or liability incurred, by any prior trustee.

[Ch1101s92]92. Office of trustee vacated by insolvency

If a receiving order is made against a trustee, he shall thereby vacate his office of trustee.

[Ch1101s93]93. Removal of trustee

(1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee appointed by them, and may, at the same or any subsequent meeting, appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.

(2) If the Court is of opinion—

(a) that a trustee appointed by the creditors is guilty of misconduct or fails to perform his duties under this Act; or

(b) that his trusteeship is being needlessly protracted without any probable advantage to the creditors; or

(c) that he is by reason of lunacy, or continued sickness or absence, incapable of performing his duties; or

(d) that his connexion with or relation to the bankrupt or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interest of the creditors generally; or

(e) where in any other matter he has been removed from office on the ground of misconduct,

the Court may remove him from his office.

PART VI

PROCEDURE AND POWERS OF COURT

Jurisdiction

[Ch1101s94]94. Description of bankruptcy proceedings

Subject to general Rules, all bankruptcy matters shall be entitled "in bankruptcy."

[Ch1101s95]95. Judge may exercise his powers in chambers

Subject to this Act, and to general Rules, a judge of the Court may exercise in chambers the whole or any part of his powers.

[Ch1101s96]96. Jurisdiction in bankruptcy of Registrar of the High Court

(1) Subject to general Rules limiting the powers conferred by this section, the Registrar of the High Court shall have power—

- (a) to hold the public examination of debtors;
- (b) to grant orders of discharge where the application is not opposed;
- (c) to approve compositions or schemes of arrangement where they are not opposed;
- (d) to hear and determine any unopposed applications,

and any order made or act done by the Registrar of the High Court in the exercise of the powers conferred upon him by this section shall be deemed to be the order or act of the Court.

(2) The Registrar of the High Court shall not have power to commit for contempt of court.

(3) The Minister may, by notice published in the Gazette, appoint any person, being a person qualified to act as a legal practitioner in Malawi, to have and exercise all or any of the powers conferred upon the Registrar of the High Court by this section.

### [Ch1101s97]97. Official receiver to make payments in accordance with directions of Court

Where any moneys or funds have been received by the Official receiver under this Act and the Court makes an order declaring that any person is entitled to such moneys or funds, the official receiver shall make payment accordingly to that person.

### [Ch1101s98]98. General powers of the Court

(1) Subject to this Act, the Court shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within its cognizance, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) Where default is made by a trustee, debtor, or other person, in obeying any order or direction given by the official receiver, the Court may on the application of the official receiver order such defaulting trustee, debtor, or person to comply with the order or directions so given; and the Court

may also, if it thinks fit upon any such application, make an immediate order for the committal of such defaulting trustee, debtor or person:

Provided that the power given by this subsection shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

[Ch1101s99]99. Disqualifications of bankrupt

(1) Where a debtor is adjudged bankrupt, he shall be disqualified for-

(a) being nominated to, or sitting or voting in, the National Assembly, or on any committee thereof; or

(b) being elected to, or holding or exercising the office of mayor or a member of a local authority, school committee, water board or road board.

(2) If a member of the National Assembly is adjudged bankrupt, the Court shall immediately certify the same to the Speaker of the National Assembly.

(3) If a person is adjudged bankrupt whilst holding the office of mayor, or member of a local authority, his office shall thereupon become vacant.

(4) The disqualification to which a bankrupt is subject under this section shall be removed and cease if and when—

(a) the adjudication of bankruptcy against him is annulled; or

(b) a period of five years has elapsed from the date of his discharge; or

(c) he obtains from the Court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.

Judgment Debtors

[Ch1101s100]100. Power to make receiving order in lieu of committal order

Where application is made by a judgment creditor to the Court for the committal of a judgment debtor, the Court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made, and this Act, except Part VIII, shall apply as if for references to the presentation of a petition by or against a person there were substituted references to the making of such a receiving order.

#### Appeals

[Ch1101s101]101. Appeals in bankruptcy

(1) The Court may review, rescind or vary any order made by it.

(2) Orders of the High Court in bankruptcy matters shall, at the instance of the person aggrieved, be subject to appeal but no appeal shall be entertained except in conformity with such general Rules as may for the time being be in force in relation to the appeal.

(3) Where by this Act an appeal to the Court is given against any decision of the official receiver, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made.

# Procedure

[Ch1101s102]102. Discretionary power of Court

(1) Subject to this Act and to general Rules, the costs of and incidental to any proceeding in Court under this Act shall be in the discretion of the Court.

(2) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

(3) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it may think fit to impose.

(4) Where by this Act, or by general Rules, the time for doing any act is limited, the Court may extend the time either before or after the expiration thereof upon such terms, if any, as it may think fit to impose.

(5) Subject to general Rules, the Court may in any matter take the whole or any part of the evidence either viva voce, or by interrogatories, or upon affidavit, or, out of Malawi, by commission.

[Ch1101s103]103. Consolidation of petitions

Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as the Court thinks fit.

[Ch1101s104]104. Power to change carriage of proceedings

Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of the petitioning creditor.

[Ch1101s105]105. Continuance of proceedings on death of debtor

If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

## [Ch1101s106]106. Power to stay proceedings

The Court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court may think just.

# [Ch1101s107]107. Power to present petition against one partner

Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

## [Ch1101s108]108. Power to dismiss petition against some respondents only

Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

## [Ch1101s109]109. Property of partners to be vested in same trustee

Where a receiving order has been made on a bankruptcy petition by or against one member of a partnership, any other bankruptcy petition by or against a member of the same partnership shall be filed with the first-mentioned petition, and, unless the Court otherwise directs, the same trustee or receiver shall be appointed as may have been appointed in respect of the property of the first-mentioned member of the partnership, and the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

# [Ch1101s110]110. Actions by trustee and bankrupt's partners

Where a member of a partnership is adjudged bankrupt, the Court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the Court directs.

# [Ch1101s111]111. Actions on joint contracts

Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

### [Ch1101s112]112. Proceedings in partnership name

Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath or otherwise, as the Court may direct.

Orders and Warrants of Court

## [Ch1101s113]113. Court to be auxiliary to other British courts

The Court and all the officers thereof shall, in all matters of bankruptcy, act in aid and be auxiliary to every British court elsewhere having jurisdiction in bankruptcy or insolvency, and an order of the court seeking aid, with a request to this Court, shall be deemed sufficient to enable this Court to exercise in regard to the matters directed in the order such jurisdiction as either the court which made the request, or this Court could exercise in regard to similar matters within their respective jurisdiction, save that to enable the official receiver of Malawi to act as the agent of an officer of a reciprocating court or to enable an officer of this Court to seek the aid of an official receiver of a reciprocating court in the manner provided in Part IX it shall not be necessary for this Court or any reciprocating court to make any order or send any request under this section.

## [Ch1101s114]114. Commitment to prison

Where the Court commits any person to prison the commitment may be to such convenient prison as the Court thinks expedient, and, if the gaoler of any prison refuses to receive any prisoner so committed, he shall be liable for every such refusal to a fine of £100.

PART VII

SUPPLEMENTAL PROVISIONS

Application of Act

[Ch1101s115]115. Married women

(1) Every married woman who carries on a trade or business, whether separately from her husband or not, shall be subject to the bankruptcy laws as if she were feme sole.

(2) Where a married woman carries on a trade or business and a final judgment or order for any amount has been obtained against her, whether or not expressed to be payable out of her separate property, that judgment or order shall be available for bankruptcy proceedings against her by a bankruptcy notice as though she were personally bound to pay the judgment debt or sum ordered to be paid.

[Ch1101s116]116. Exclusion of Companies

A receiving order shall not be made against any corporation or against any association or company registered under the Companies Act, or the Acts by that Act applied to Malawi. Cap. 46:03

[Ch1101s117]117. Application of Act in case of small estates

Where a petition is presented by or against a debtor, if the Court is satisfied, by affidavit or otherwise, or the official receiver reports to the Court, that the property of the debtor is not likely to exceed in value £300, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon this Act shall be subject to the following modifications—

(a) if the debtor is adjudged bankrupt the official receiver shall be the trustee in the bankruptcy;

(b) there shall be no committee of inspection, but the official receiver may do, with the permission of the Court, all things which may be done by the trustee with the permission of the committee of inspection; and

(c) such other modifications may be made in the provisions of this Act as may be prescribed by general Rules with the view of saving expense and simplifying procedure, but nothing in this section shall permit the modification of this Act relating to the examination or discharge of the debtor:

Provided that the creditors may at any time, by special resolution, resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

[Ch1101s118]118. Administration in bankruptcy of estate of person dying insolvent

(1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the Court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy.

(2) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the Court may, in the prescribed manner, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may, upon cause shown, dismiss the petition with or without costs.

(3) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver, as trustee thereof, and he shall forthwith proceed to realize and distribute it in accordance with this Act:

Provided that the creditors shall have the same powers as to appointment of trustees and committees of inspection as they have in other cases where the estate of a debtor is being administered

or dealt with in bankruptcy, and this Act relating to trustees and committees of inspection shall apply to trustees and committees of inspection appointed under the power so conferred.

If no committee of inspection is appointed, any act or thing or any direction or permission which might have been done or given by a committee of inspection may be done or given by the Court.

(4) With the modifications hereinafter mentioned, all the provisions of Part III (relating to the administration of the property of a bankrupt) and, subject to any modification that may be made therein by general Rules under subsection (10), the following provisions, namely, section 27 (which relates to inquiries as to the debtor's conduct, dealings and property), section 82 (which relates to the costs of the trustees, managers, and other persons), section 117 (which relates to the summary administration of small estates), and section 91 (4) so far as it relates to the effect of the release of the official receiver, shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act and section 37 shall apply as if for the reference to an order of adjudication there were substituted a reference to an administration order under this section.

(5) In the administration of the property of the deceased debtor under an order of administration, the official receiver or trustee shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and shall, notwithstanding anything to the contrary in this Act relating to the priority of other debts, be payable in full, out of the debtor's estate, in priority to all other debts.

(6) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver or trustee, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

(7) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the official receiver or trustee; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.

(8) A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal personal representative of the debtor, and, where a petition is so presented by such representative, this section shall apply subject to such modifications as may be prescribed by general Rules made under subsection (10). (9) Unless the context otherwise requires, "creditor" means one or more creditors qualified to present a bankruptcy petition as in this Act provided.

(10) General Rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in bankruptcy.

**General Rules** 

[Ch1101s119]119. Power to make general Rules

The Minister may make general Rules for carrying into effect the objects of this Act.

Fees and Salaries

[Ch1101s120]120. Fees, etc.

The Chief Justice may prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Act.

[Ch1101s121]121. Salaries and remuneration

The Chief Justice shall direct whether any and what remuneration is to be allowed to any person (other than the official receiver or his staff) performing any duties under this Act, and may vary, increase, or diminish such remuneration, as he may think fit.

Evidence

[Ch1101s122]122. Gazette to be evidence

(1) A copy of the Gazette containing any notice inserted therein in pursuance of this Act shall be evidence of the facts stated in the notice.

(2) The production of a copy of a local paper containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

[Ch1101s123]123. Evidence of proceedings at meetings of creditors

(1) A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(2) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

[Ch1101s124]124. Evidence of proceedings in bankruptcy

Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by the Court, any instrument or copy of an instrument, affidavit or document made or used in the course of any bankruptcy proceedings or other proceedings had under this Act, shall, if it appears to be sealed with the seal of the Court, or purports to be signed by any judge thereof, or is certified as a true copy by any registrar thereof, be receivable in evidence in all legal proceedings whatever.

## [Ch1101s125]125. Swearing of affidavits

Subject to general Rules, any affidavit to be used in the Court may be sworn before any person authorized to administer oaths, or in the case of a person residing out of Malawi, before any person qualified to administer oaths in the country where he resides (he being certified to be qualified as aforesaid by an accredited member of the Malawi Foreign Service or by a British minister or British consul, or by a notary public).

## [Ch1101s126]126. Death of debtor or witness

In the case of the death of the debtor or his wife, or of a witness whose evidence has been received by the Court in any proceeding under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

### [Ch1101s127]127. Certificate of appointment of trustee

A certificate of the Court that a person has been appointed trustee under this Act shall be conclusive evidence of his appointment.

### Miscellaneous

# [Ch1101s128]128. Computation of time

(1) Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday or a public holiday or a day on which the Court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

(2) Where by this Act any act or proceeding is directed to be done or taken on a certain day, then, if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards which is not one of the days in this section specified.

### [Ch1101s129]129. Service of notices

All notices and other documents for the service of which no special mode is directed may be sent by post to the last known address of the person to be served therewith.

[Ch1101s130]130. Formal defect not to invalidate proceedings

(1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court.

(2) No defect or irregularity in the appointment or election of a receiver, trustee, or member of a committee of inspection shall vitiate any act done by him in good faith.

### [Ch1101s131]131. Exemption of deeds, etc., from stamp duty

Every deed, conveyance, assignment or other assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other incumbrance on, or any estate, right or interest in, any movable or immovable property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Act.

[Ch1101s132]132. Acting of corporations, partners, etc.

For all or any of the purposes of this Act, a corporation may act by any of its officers authorized in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by the appointed manager of his estate.

#### [Ch1101s133]133. Certain provisions to bind Government

Save as provided in this Act, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Government.

#### Unclaimed Funds or Dividends

[Ch1101s134]134. Unclaimed and undistributed dividends or funds under this Act

(1) Where the trustee under any bankruptcy composition or scheme, pursuant to this Act, has under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay it to the Bankruptcy Estates Account at the prescribed bank or with the Accountant General. The official receiver shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(2) Where any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee or other person empowered, in any manner whatsoever, to collect, receive, or distribute any funds or dividends, have remained or remain unclaimed or undistributed for six months after they become claimable or distributable, or in any other case for two years after the receipt thereof by such trustee or other person, it shall be the duty of such trustee or other person forthwith to pay them to the Bankruptcy Estates Account at the prescribed bank. The official receiver shall furnish such trustee or other person with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

The official receiver may at any time order any such trustee or other person to submit to him an account verified by affidavit of the sums received and paid by him as aforesaid, and may direct and enforce an audit of the account.

The official receiver may from time to time appoint a person to collect and get in all such unclaimed or undistributed funds or dividends, and for the purposes of this section the Court shall have and, at the instance of the official receiver, may exercise, all the powers conferred by this Act with respect to the discovery and realization of the property of a debtor, and the provisions of Part II with respect thereto shall, with any necessary modifications, apply to proceedings under this section.

(3) This section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or other person.

(4) Any person claiming to be entitled to any moneys paid into the Bankruptcy Estates Account, pursuant to this section, may apply to the official receiver for payment to him of the same, and the official receiver, if satisfied that the person claiming is so entitled, shall make an order for the payment to such person of the sum due.

Any person dissatisfied with the decision of the official receiver in respect of his claim may appeal to the Court.

PART VIII

### **BANKRUPTCY OFFENCES**

[Ch1101s135]135. Fraudulent debtors

(1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall in each of the cases following be guilty of an offence—

(a) if he does not to the best of his knowledge and belief fully and truly discover to the trustee all his property, movable and immovable, and how and to whom and for what consideration and

when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family, unless he proves that he had no intent to defraud;

(b) if he does not deliver up to the trustee, or as he directs, all such part of his movable and immovable property as is in his custody or under his control, and which he is required by law to deliver up, unless he proves that he had no intent to defraud;

(c) if he does not deliver up to the trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud;

(d) if, after the presentation of a bankruptcy petition by or against him or within twelve months next before such presentation, he conceals any part of his property to the value of £10 or upwards, or conceals any debt due to or from him, unless he proves that he had no intent to defraud;

(e) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently removes any part of his property to the value of £10 or upwards;

(f) if he makes any material omission in any statement relating to his affairs, unless he proves that he had no intent to defraud;

(g) if, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the trustee thereof;

(h) if, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

(i) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

(j) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

(k) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently parts with, alters, or makes any omission in, or is privy to the fraudulently parting with, altering, or making any omission in, any document affecting or relating to his property or affairs;

(I) if, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within twelve months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses;

(m) if, within twelve months next before the presentation of a bankruptcy petition by or against him, or in the case of a receiving order made under section 100, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same;

(n) if, within twelve months next before the presentation of a bankruptcy petition by or against him, or, in the case of a receiving order made under section 100, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he obtains under the false pretence of carrying on business, and, if a trader, of dealing in the ordinary way of his trade, any property on credit and has not paid for the same, unless he proves that he had no intent to defraud;

(o) if, within twelve months next before the presentation of a bankruptcy petition by or against him, or in the case of a receiving order made under section 100, before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he pawns, pledges, or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, such pawning, pledging, or disposing is in the ordinary way of his trade and unless in any case he proves that he had no intent to defraud;

(p) if he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or to his bankruptcy;

(q) if he makes default in payment for the benefit of creditors of any portion of a salary or other income in respect of the payment of which the Court is authorized to make an order.

(2) Any person guilty of an offence in the cases mentioned spectively in paragraphs (m), (n) and (o) of the last foregoing b section shall be liable to imprisonment for five years.

(3) Where any person pawns, pledges or disposes of any operty in circumstances which amount to an offence under subsection (1) (o), every person who takes in pawn or pledges or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be guilty of an offence, and liable to be punished in the same way as if he had received the property knowing it to have been obtained in circumstances amounting to an offence.

For the purpose of this section, the expression "trustee" means the official receiver of the debtor's estate or trustee administering his estate for the benefit of his creditors.

[Ch1101s136]136. Undischarged bankrupt obtaining credit

Where a person who has been adjudged bankrupt or insolvent in Malawi or any reciprocating territory and has not obtained his discharge—

(a) either alone or jointly with any other person obtains credit to the extent of £10 or upwards from any person without informing that person that he is an undischarged bankrupt; or

(b) engages in any trade or business under a name other than that under which he was adjudicated bankrupt without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudicated bankrupt,

he shall be guilty of an offence.

[Ch1101s137]137. Frauds by bankrupts, etc.

If any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made—

(a) in incurring any debt or liability has obtained credit under false pretences or by means of any other fraud; or

(b) with intent to defraud his creditors or any of them, has made or caused to be made any gift or transfer of, or charge on, his property or caused or connived at the levying thereon of any execution; or

(c) with intent to defraud his creditors, has concealed or removed any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him,

he shall be guilty of an offence.

[Ch1101s138]138. Bankrupt guilty of gambling, etc.

(1) Any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, shall be guilty of an offence, if, having been engaged in any trade or business, and having outstanding at the date of the receiving order any debts contracted in the course and for the purposes of such trade or business—

(a) he has, within two years prior to the presentation of the bankruptcy petition, materially contributed to or increased the extent of his insolvency by gambling or by rash and hazardous speculations, and such gambling or speculations are unconnected with his trade or business; or

(b) he has, between the date of the presentation of the petition and the date of the receiving order, lost any part of his estate by such gambling or rash and hazardous speculations as aforesaid; or

(c) on being required by the official receiver at any time, or in the course of his public examination by the Court, to account for the loss of any substantial part of his estate incurred within a
period of a year next preceding the date of the presentation of the bankruptcy petition, or between that date and the date of the receiving order, he fails to give a satisfactory explanation of the manner in which such loss was incurred:

Provided that, in determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the accused person at the time when he entered into the speculations shall be taken into consideration.

(2) A prosecution shall not be instituted against any person under this section except by order of the Court.

(3) Where a receiving order is made against a person under section 100, this section shall apply as if for references to the presentation of a petition there were substituted references to the making of the receiving order.

[Ch1101s139]139. Bankrupt failing to keep proper accounts

(1) Any person who after the expiration of a period of two years after the commencement of this Act shall be adjudged bankrupt, or in respect of whose estate a receiving order shall be made after the expiration of such period, shall be guilty of an offence, if, having been engaged in any trade or business during any period in the two years immediately preceding the date of the bankruptcy petition, he has not kept proper books of account throughout that period and throughout any further period in which he was so engaged between the date of presentation of the petition and the date of the receiving order, or has not preserved all books of account so kept:

Provided that a person who has not kept or has not preserved such books of account shall not be convicted of an offence under this section—(a) if his unsecured liabilities at the date of the receiving order did not exceed, in the case of a person who has not on any previous occasion been adjudged bankrupt or made a composition or arrangement with his creditors, £500, or, in any other case, £100; or (b) if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

(2) A prosecution shall not be instituted against any person under this section except by order of the Court.

(3) For the purposes of this section a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, statements of annual stocktakings and (except in the case of goods sold by way of retail trade to the actual consumer) accounts of all goods sold and purchased showing the buyers and sellers thereof in sufficient detail to enable the goods and the buyers and sellers thereof to be identified.

(4) Section 135 (1) (i), (j) and (k) shall, in their application to such books as aforesaid, have effect as if "two years next before the presentation of the bankruptcy petition" were substituted for the time

mentioned in those subsections as the time prior to the presentation within which the acts or omissions specified in those subsections constitute an offence.

(5) Where a receiving order is made against a person under section 100, this section shall apply as if for references to the presentation of a petition there were substituted references to the making of the receiving order.

#### [Ch1101s140]140. Bankrupt absconding with property

If any person who is adjudged bankrupt, or in respect of whose estate a receiving order has been made, after the presentation of a bankruptcy petition by or against him, or within six months before such presentation, quits Malawi and takes with him, or attempts or makes preparation to quit Malawi and take with him, any part of his property to the amount of £20 or upwards, which ought by law to be divided amongst his creditors, he shall (unless he proves that he had no intent to defraud) be guilty of an offence.

#### [Ch1101s141]141. False claim, etc.

If any creditor, or any person claiming to be a creditor, in any bankruptcy proceedings, wilfully and with intent to defraud makes any false claim, or any proof, declaration or statement of account, which is untrue in any material particular, he shall be liable to imprisonment for one year.

#### [Ch1101s142]142. Order by Court for prosecution on report of trustee

Where an official receiver or a trustee in a bankruptcy reports to the Court that in his opinion a debtor who has been adjudged bankrupt or in respect of whose estate a receiving order has been made has been guilty of any offence under this Act, or where the Court is satisfied upon the representation of any creditor or member of the committee of inspection that there is ground to believe that the debtor has been guilty of any such offence, the Court shall, if it appears to the Court that there is a reasonable probability that the debtor will be convicted and that the circumstances are such as to render a prosecution desirable, order that the debtor be prosecuted for such offence.

#### [Ch1101s143]143. Criminal liability after discharge or composition

Where a debtor has been guilty of any criminal offence, he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

# [Ch1101s144]144. Power of Court to commit for trial

(1) Where there is, in the opinion of the Court, ground to believe that the bankrupt or any other person has been guilty of any offence which is by law made an offence in cases of bankruptcy, the Court may commit the bankrupt or such other person for trial.

(2) For the purpose of committing the bankrupt or such other person for trial, the Court shall have all the powers of a magistrate as to taking depositions, binding over witnesses to appear, admitting

the accused to bail, or otherwise. Nothing in this subsection shall be construed as derogating from the powers or jurisdiction of the Court.

[Ch1101s145]145. Trial and punishment of offences

(1) A person guilty of an offence under this Act in respect of which no special penalty is imposed by this Act shall be liable to imprisonment for two years:

Provided that the maximum term of imprisonment which may be awarded on conviction for an offence under section 137 shall be one year.

(2) Proceedings in respect of any such offence shall not be instituted after one year from the first discovery thereof, either by the official receiver or by the trustee in the bankruptcy, or in the case of proceedings instituted by a creditor, by the creditor, nor in any case shall they be instituted after three years from the commission of the offence.

(3) When any person is charged with any offence under this Act a court shall take into consideration any evidence tending to show that the act charged was not committed with a guilty intent.

(4) In a charge for an offence under this Act, it shall be sufficient to set forth the substance of the offence charged in the words of this Act specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant, or document of, the Court acting under this Act.

[Ch1101s146]146. Director of Public Prosecutions to act in certain cases

Where the Court orders the prosecution of any person for any offence under this Act or for any offence arising out of or connected with any bankruptcy proceedings, it shall be the duty of the Director of Public Prosecutions to institute and carry on the prosecution:

Provided that, where the order of the Court is made on the application of the official receiver and based on his report, the official receiver may institute the prosecution and carry on the proceedings, if or so long as those proceedings are conducted before a subordinate court, unless in the course thereof circumstances arise which render it desirable that the remainder of the proceedings should be carried on by the Director of Public Prosecutions.

# [Ch1101s147]147. Evidence as to frauds by agents

A statement or admission made by any person in any compulsory examination or deposition before the Court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person in any proceeding in respect of any offence relating to frauds by agents, bankers, or factors.

PART IX

PROVISIONS FOR RECIPROCITY WITH OTHER TERRITORIES

#### [Ch1101s148]148. Declaration of reciprocating territories and courts

Where the President is satisfied that the legislature of any territory has enacted provisions for reciprocity in bankruptcy which in that territory have the like effect as the provisions contained in this Part, the President may by order declare such territory to be a reciprocating territory, and the court thereof having jurisdiction in bankruptcy a reciprocating court for the purposes of this Act, and as from the date of publication of such order in the Gazette this Part shall apply to all bankruptcy proceedings subsequently instituted in the declared territory against a debtor having property in Malawi.

[Ch1101s149]149. Local effect of receiving order, etc., made by reciprocating court against debtor having property in Malawi

Where a receiving order or order of adjudication or any appointment of a special manager or interim receiver has been made in any reciprocating territory in bankruptcy proceedings against a debtor having property in Malawi, such order or appointment shall, subject to the other provisions of this Part, have the like effect as if it had been made in bankruptcy proceedings against the debtor in Malawi, and the debtor and his creditors shall be deemed to be in the same position and have the same rights and privileges, and be subject to the same disqualifications, restrictions, obligations and liabilities in every respect as if such order or appointment had been made under this Act.

[Ch1101s150]150. Vesting of bankrupt's local property in trustee appointed in reciprocating territory

Where an order of adjudication is made by a reciprocating court, the property of the bankrupt situated in Malawi shall, by virtue of such order, vest in the person from time to time discharging the office of trustee of the property of the bankrupt in the reciprocating territory, in the same manner as if the order of adjudication and the appointment of trustee had been made in Malawi, and the superintendence of such trustee shall continue to be exercised by the committee of inspection appointed in the reciprocating territory or, if there be no such committee, by the reciprocating court.

[Ch1101s151]151. Local powers of official receiver, etc., appointed in a reciprocating territory

The official receiver, interim receiver, special manager or trustee of a reciprocating territory officiating in bankruptcy proceedings against a debtor having property in Malawi shall, subject to the control of the court by which he is appointed, be solely responsible for conducting those proceedings and managing the affairs of the debtor or bankrupt within Malawi, and for such purposes shall, each in his respective capacity, have the same powers, rights, duties, obligations and liabilities as if he had derived his authority under this Act; and in any such proceedings where by this Act a debtor, creditor or other person interested is required to do any act at the direction of an official receiver, interim receiver, special manager or trustee, or is permitted by this Act to move in any matter in connexion with such proceedings, every such debtor, creditor or person interested shall do such act at the discretion of, and in all such matters treat and negotiate with or proceed against the official receiver, interim receiver, special manager or trustee as the case may be of the reciprocating territory, except in so far as any such

official may have delegated his authority to the official receiver of Malawi as his agent in the manner hereinafter provided.

[Ch1101s152]152. Local official receiver to act as agent of official receiver, etc., of reciprocating territory

Every official receiver, interim receiver, special manager or trustee of a reciprocating territory officiating in bankruptcy proceedings against a debtor having property in Malawi may request the official receiver of Malawi to act as his agent either in regard to any specific matter, or generally to take all such steps as may be lawful under this Act for the discovery, seizure, protection, disclaimer or realization of any property of the bankrupt situated within Malawi, and in such event it shall be the duty of the official receiver of Malawi to act accordingly.

[Ch1101s153]153. Mode of requesting official receiver to act as agent

(1) Every request to act as agent aforesaid shall be made in the manner prescribed under this Act, and shall be published as a notice in the Gazette, and upon such publication and without further formality or authority the official receiver shall, as regards the debtor or bankrupt and his property and creditors situated in Malawi and for the purposes for which he is authorized, have the same rights, powers and duties as are conferred under this Act upon an official receiver, interim receiver, special manager or trustee as the case may be:

Provided that nothing herein contained shall be taken to confer on the official receiver any interest or title in any such property otherwise than as an agent as aforesaid.

(2) On the receipt of the prescribed request the official receiver shall file with the Registrar of the High Court the original or a properly authenticated copy of the request, and upon such filing the Court shall take judicial notice of the appointment as agent under this Part.

(3) Notwithstanding subsection (1), the Court may, in any case in which it is made to appear to the Court that immediate action is desirable, give the official receiver leave to commence discharging his duties as agent as aforesaid in any manner applicable to the circumstances, before the publication of the prescribed request, if upon the receipt of telegraphic or other information the Court is satisfied that—

(a) bankruptcy proceedings have been instituted in a reciprocating territory against a debtor having property in Malawi; and

(b) the prescribed request for the official receiver to act has been signed and despatched; and further

(c) that the official receiver has been indemnified against all costs, charges and expenses to be incurred by him.

Any provisional authority conferred on an official receiver by the Court under this subsection may be revoked, unless within such time as may in the circumstances seem reasonable the prescribed request is filed in pursuance of subsection (2).

(4) Unless the contrary intention appears, every request to act as agent sent to the official receiver of Malawi shall be deemed to permit him to delegate at his discretion the powers and duties vested in him as such agent to any deputy official receiver appointed in pursuance of this Act.

# [Ch1101s154]154. Duties of official receiver acting as agent

It shall be the duty of the official receiver of Malawi to remit the proceeds of the realization of the property of the bankrupt and all other money of the estate coming into his hands as such agent as aforesaid, to the person for whom he is acting, after deducting such expenses as may have been properly incurred by him; and the distribution among the creditors of all such money shall be carried out in accordance with the law of the reciprocating territory in which the adjudication order was made.

# [Ch1101s155]155. Transmission of proofs of local debts

Where a receiving order or an order of adjudication has been made in a reciprocating territory and the official receiver of Malawi is acting as agent in the manner hereinbefore provided, proofs of debts contracted by the debtor in Malawi may be filed with the local official receiver in the form prescribed by the law of such reciprocating territory, and in every such case it shall be his duty to receive, deal with and forward in the manner prescribed by the Rules made under this Part such proofs to the official receiver or trustee, as the case may be, of such reciprocating territory.

# [Ch1101s156]156. Power of local Court to make orders under sections 11 and 25

If, on the application of the official receiver or any creditor or other person interested, it appears to the Court that bankruptcy proceedings have been instituted in a reciprocating court against a debtor having property situated in Malawi, the Court may, notwithstanding that no such proceedings have been instituted in Malawi, exercise as regards the person, property and affairs of the debtor all the powers conferred by sections 11 and 25 as may in the circumstances be applicable.

# [Ch1101s157]157. Local enforcement of warrants of reciprocating court

Any order, warrant or search warrant made or issued by a reciprocating court shall be enforced by the Court of Malawi in the same manner in all respects as if such order, warrant or search warrant had been made or issued by itself.

# [Ch1101s158]158. Limitation on powers of local court to entertain proceedings

Subject to the other provisions of this section a reciprocating court shall have sole jurisdiction in all matters in or arising out of any bankruptcy proceedings taken before such court against a debtor having property in Malawi, and no court in Malawi shall entertain any suit, application or other matter arising in or out of such proceedings except—

(a) upon the institution of any proceedings by or against the local official receiver in respect of any matters within the scope of his authority in the capacity of agent as aforesaid;

(b) in the case of any civil suit or proceedings within the ordinary civil jurisdiction of such court by or against the official receiver, interim receiver, trustee or special manager of or appointed in a reciprocating territory;

(c) upon the institution of any proceedings affecting the property of the debtor or bankrupt situated in Malawi;

(d) upon the receipt of a request to act in aid of or be auxiliary to such reciprocating court;

(e) for the public examination of the debtor in regard only to his property situated within Malawi or his dealings with any person ordinarily resident or carrying on business in Malawi:Provided that such public examination shall not be held until the public examination before the reciprocating court shall have been concluded or adjourned sine die;

(f) for the exercise of powers under Part VIII in relation only to bankruptcy offences alleged to have been committed within Malawi;

(g) upon the institution of any proceedings for or arising out of the enforcement or execution of any order, warrant or search warrant made or issued by a reciprocating court; or

(h) upon an application for the exercise of the powers conferred on the Court by sections 11, 25, 26 and 52.

#### [Ch1101s159]159. Concurrent bankruptcies

(1) For the purposes of this section "concurrent bankruptcy proceedings" means bankruptcy or insolvency proceedings instituted concurrently against the same debtor in any two or more reciprocating territories, one of which may or may not be in Malawi.

Where concurrent bankruptcy proceedings have been instituted affecting property in Malawi, all such property shall vest in the trustee appointed in the territory where the order of adjudication first is made; but if two or more such orders bear the same date or if for any reason no such adjudication order is made then such property shall vest in or be administered by the trustee or receiver of the territory where the receiving order first is made.

(2) In any case where concurrent bankruptcy proceedings have been instituted in Malawi and in pursuance of subsections (1) and (3) the property of the debtor or bankrupt situated in Malawi vests in or is administered by a trustee or receiver in a reciprocating territory, the Court shall rescind its receiving order and annul its order of adjudication, if made, or dismiss the petition upon such terms, if any, as the Court may think fit. The rescission of a receiving order or an annulment of adjudication under this subsection shall not invalidate any acts lawfully done by the receiver or trustee of Malawi or any other person lawfully acting under the authority of either of them.

(3) Notwithstanding the other provisions of this section in any cases where concurrent bankruptcy proceedings have been instituted in Malawi the Court may, after such inquiry and reference to such reciprocating courts as it deems fit, order that the property of the debtor situated in Malawi shall vest in or be administered by a trustee or receiver in Malawi or in some reciprocating territory other than that determined under subsection (1) if, upon an application by the official receiver or any creditor or other person interested, it appears that a majority of the creditors in number and value are resident in Malawi or such other reciprocating territory, and that from the situation of the property of the debtor or bankrupt or other causes his estate and effects may be more conveniently administered, managed and distributed in Malawi or such other reciprocating territory.

(4) The Court shall not make an order under subsection (3) unless it appears that a similar order has first been made by the reciprocating court of the territory wherein and according to the law of which the property of the debtor would have been administered under subsection (1) but for such order.

[Ch1101s160]160. Power of official receiver, etc., of Malawi to require an official receiver in a reciprocating territory to act as his agent

(1) Where a receiving order or an order of adjudication is made in Malawi against a debtor or bankrupt having property situated in a reciprocating territory and where under this Act the property of the debtor or bankrupt is administered by or vested in the official receiver or a trustee of or appointed in Malawi, it shall be the duty of such official receiver or trustee and any interim receiver or special manager appointed in pursuance of this Act to take all such steps as may be lawful in any reciprocating territory for the proper administration of any property of the debtor or bankrupt situated in such territory, and at his discretion and without further authority to request in the prescribed manner any bankruptcy official in such territory empowered in that behalf, to act as his agent either generally or for any specific purpose, and to give such directions and to publish such notices and to do all such things in the reciprocating territory as may be lawful for the administration of the estate. Unless for any reason the contrary intention is expressed, every request sent to a bankruptcy official in a reciprocating territory requiring him to act as an agent as aforesaid shall contain a consent that he may assign the powers and duties vested in him as such agent to his deputy or any officer ordinarily authorized to act for him in the reciprocating territory.

(2) Where in any proceedings mentioned in the last preceding subsection, the official receiver, interim receiver, special manager or trustee shall have completed and despatched to a reciprocating territory a request to a bankruptcy official therein to act as his agent as aforesaid and where the circumstances of the case so require, the Court may, on the application of such official receiver, interim receiver, special manager or trustee and on an undertaking to indemnify against costs and charges being given, request the reciprocating court by telegram or otherwise to authorize the bankruptcy official of such court empowered in that behalf, to act as agent until such time as the prescribed request shall arrive in the ordinary course of post.

[Ch1101s161]161. Power to make special Rules under this Part

(1) The Chief Justice may make Rules for the purpose of carrying into effect all or any of the objects of this Part, and in addition and for such purpose shall have power to make Rules extending or varying the time limited under this Act or any Rules made under section 119 for the doing of any act or taking any proceeding, in so far as such limitation of time affects persons ordinarily resident or carrying on business in a reciprocating territory who are or may be interested in any bankruptcy proceedings in Malawi against a debtor having property in such reciprocating territory:

Provided that no Rules made under the powers conferred by this subsection shall come into force until the Chief Justice shall by notice published in the Gazette declare himself satisfied that the rule-making authorities in all reciprocating territories have made Rules having the like effect within their respective territories.

(2) Notwithstanding subsection (1), the Court may in respect of any particular matter exercise its general powers of extension of time under section 102 (4), in favour of a person ordinarily residing or carrying on business in a reciprocating territory, who is interested in bankruptcy proceedings instituted in Malawi against a debtor having property in such reciprocating territory.

## FIRST SCHEDULE s. 15

#### **MEETINGS OF CREDITORS**

1. The first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the Court for any special reason deem it expedient that the meeting be summond for a later day.

2. The official receiver shall summon the meeting by giving not less than six clear days' notice of the time and place thereof in a local paper.

3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs a notice of the time and place of the first meeting of creditors accompanied by a summary of the debtor's statement of affairs including the cause of his failure, and any observations thereon, which the official receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

4. The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors.

5. The official receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court, or so requested by a creditor in accordance with this Act.

6. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting. 7. The official receiver, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution may appoint.

8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security unless the Court on application is satisfied that the omission to value his security has arisen from inadvertence.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

12. It shall be competent to the trustee or to the official receiver, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated with an addition thereto of twenty per centum:

Provided that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official receiver, or, after the appointment of a trustee, by the trustee, and every insertion therein shall be in the handwriting of the person giving the proxy, or of any manager or clerk or other person in his regular employment, or of any person authorized to administer oaths in the Court.

17. General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the official receiver, or of any other person, shall be printed or inserted in the body of any instrument of proxy before it is so sent.

18. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

19. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters—

(a) for or against any specific proposal for a composition or scheme of arrangement;

(b) for or against the appointment of any specified person a strustee at a specified rate of remuneration, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection,

(c) on all questions relating to any matter other than those above referred to, arising at any specified meeting or adjournment thereof.

20. A proxy shall not be used unless it is deposited with the official receiver or trustee before the meeting at which it is to be used.

21. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring the trusteeship or receivership, except by the direction of a meeting of creditors, the Court shall have power, if it thinks fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

22. A creditor may appoint the official receiver to act in manner prescribed as his general or special proxy.

23. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time and from place to place.

24. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three.

25. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

26. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting.

27. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor:

Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly.

28. The vote of the trustee, or of his partner, clerk, legal practitioner or legal practitioner's clerk, either as creditor, or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

#### SECOND SCHEDULE s. 34

#### **PROOF OF DEBTS**

#### **Proof in Ordinary Cases**

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself, or by some person authorized by or on behalf of the creditor. If made by a person so authorized it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official receiver or trustee may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor and if it is found at any time that the affidavit made by or on behalf of a secured creditor has omitted to state that he is a secured creditor, the secured creditor shall surrender his security to the official receiver or trustee for the general benefit of the creditors unless the Court on application is satisfied that the omission has arisen from inadvertence, and in that case the Court may allow the affidavit to be amended upon such terms as to the repayment of any dividends or otherwise as the Court may consider to be just.

6. A creditor shall bear the cost of proving his debt, unless the Court otherwise specially orders.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times.

8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

#### **Proof by Secured Creditors**

9. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.

10. If a secured creditor surrenders his security to the official receiver or trustee for the general benefit of the creditors, he may prove for his whole debt.

11. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

12. (1) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value.

(2) If the trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the trustee, or as, in default of such agreement, the Court may direct. If the sale be by public auction the creditor, or the trustee on behalf of the estate, may bid or purchase:

Provided that the creditor may at any time, by notice in writing, require the trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the trustee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the trustee, shall vest in the creditor and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the trustee, or the Court, that the valuation and proof were made bona fide on a mistaken estimate or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the trustee shall allow the amendment without application to the Court.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money, for the time being available for dividend, any dividend or share of dividend, which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor after having valued his security subsequently realizes it, or if it is realized under rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing rules he shall be excluded from all share in any dividend.

17. Subject to rule 12, a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Act.

#### Proof in Respect of Distinct Contracts

18. If a debtor was, at the date of the receiving order, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstances that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

#### **Periodical Payments**

19. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of these periods, the persons entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

#### Interest

20. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding six per centum per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Debt Payable at a future time

21. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of £5 per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Admission or Rejection of Proofs

22. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

23. If the trustee thinks that a proof has been improperly admitted, the Court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

24. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

25. The Court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

26. For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.

27. The official receiver, before the appointment of a trustee, shall have all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

SUBSIDIARY LEGISLATION

APPOINTMENT OF OFFICIAL RECEIVER

under s. 71

G.N.32/1950

The Registrar General has been appointed official receiver for the purposes of this Act.

#### APPOINTMENT OF PRESCRIBED BANK

under s. 88

G.N. 229/1928

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BANKRUPTCY RULES

under s. 119

PART I

PRELIMINARY

1. Citation

These Rules may be cited as the Bankruptcy Rules.

2. Interpretation

In these Rules, unless the context or subject matter otherwise requires-

(a) "Court" includes a judge exercising jurisdiction in chambers;

"Court of Appeal" means the Supreme Court of Appeal;

"creditor" includes a corporation, and a firm of creditors in partnership;

"debtor" includes a firm of debtors in partnership, and includes any debtor proceeded against under the Act whether adjudged bankrupt or not;

"receiver" means the official receiver appointed under the Act;

"Registrar" means the person for the time being performing the duties of the Registrar of the High Court;

"scheme" means a scheme of arrangement pursuant to the Act;

"sealed" means sealed with the seal of the Court;

"trustee" includes the trustee appointed under a composition or scheme of arrangement, and also includes the receiver when acting as trustee;

"writing" includes typewriting and print, and "written" includes typewritten and printed;

(b) section 2 of the Act shall apply to these Rules, and any other terms or expressions defined by the Act shall, in these Rules, have the meanings thereby assigned to them.

# 3. Computation of time

(1) Section 128 of the Act shall apply to these Rules.

(2) Where by the Act or these Rules the time limited for doing any act or thing is less than six days, Sunday, Good Friday, Easter Monday, Christmas Day, Boxing Day, and any other day on which the offices of the Court are wholly closed, shall be excluded in computing such time.

(3) For the purposes of these Rules and of section 128 of the Act "a day on which the Court does not sit" shall mean a day on which the offices of the Court are closed.

# Forms

4. Use of forms in Schedule

The forms in the Schedule, where applicable and, where they are not applicable forms of a like character, with such variations as circumstances may require, shall be used. When such forms are applicable, any costs occasioned by the use of more prolix forms shall be borne by or disallowed to the party using the same, unless the Court shall otherwise direct.

PART II

# **GENERAL PROCEDURE**

**Court and Chambers** 

# 5. Matters to be heard in Court

The following matters and applications shall be heard and determined in open Court-

- (a) the public examination of debtors;
- (b) applications to approve a composition or scheme of arrangement,

(c) applications for orders of discharge or certificates of removal of disqualifications;

(d) applications to set aside or avoid any settlement, conveyance, transfer, security, or payment, or to declare for or against the title of the trustee to any property adversely claimed;

(e) applications for the committal of any person to prison for contempt;

(f) appeals against the rejection of a proof, or applications to expunge or reduce a proof, when the amount in dispute exceeds £200.

Any other matter or application may be heard and determined in chambers.

6. Adjournment from chambers into Court and vice versa

Subject to the Act and these Rules, any matter or application may at any time, if the judge thinks fit, be adjourned from chambers to Court or from Court to chambers; and if all the contending parties require any matter or application to be adjourned from chambers into Court it shall be so adjourned.

# Proceedings

7. Proceedings, how entitled

(1) Every proceeding in Court under the Act shall be dated and shall be entitled "In Bankruptcy", with the name of the Court and of the matter to which it relates. Numbers and dates may be denoted by figures. Form 1

(2) All applications and orders shall be entitled ex parte the applicant.

(3) The first proceeding in every matter shall have a distinctive number assigned to it by the Registrar, and all subsequent proceedings in the same matter shall bear the same number.

# 8. Written proceedings

All proceedings in Court shall be written or printed, or partly written and partly printed, on paper of foolscap size; but no objection shall be allowed to any proof, affidavit, or proxy on account of its being written or printed on paper of other size.

9. Records of the Court

All proceedings of the Court shall remain of record in the Court, so as to form a complete record of each matter, and they shall not be removed for any purpose, except for the use of the officers of the Court, or by special direction of the judge, but they may at all reasonable times be inspected by the trustee, the debtor, and any creditor who has proved, or any person on behalf of the trustee, debtor, or any such creditor.

# 10. Notices to be in writing

All notices required by the Act or these Rules shall be in writing, unless these Rules otherwise provide, or the Court shall in any particular case otherwise order.

## 11. Process to be sealed

All summonses, petitions, notices, orders, warrants, and other process issued by the Court shall be sealed.

# 12. Meetings summoned by Court

Where the Court orders a general meeting of creditors to be summoned under rule 5 of the First Schedule to the Act, it shall be summoned as the Court directs, and in default of any direction by the Court the Registrar shall transmit a sealed copy of the order to the trustee (or, as the case may be, the receiver); and the trustee or receiver shall, not less than seven days before such meeting, send a copy of the order to each creditor at the address given in his proof, or when he shall not have proved, the address given in the list of creditors by the debtor, or such other address as may be known to the trustee or receiver.

## 13. Office copies

All office copies of petitions, proceedings, affidavits, books, papers, and writings, or any parts thereof required by any trustee or by any debtor, or by any creditor, or by the legal practitioner of any such trustee, debtor, or creditor, shall be provided by the Registrar; and shall, except as to figures, be fairly written at length and be sealed and delivered out without any unnecessary delay, and in the order in which they shall have been bespoken.

# 14. Filing, gazetting, etc.

(1) Whenever the Gazette contains any advertisement relating to any matter under the Act, the Registrar shall file with the proceedings in the matter a memorandum referring to and giving the date of such advertisement.

(2) In the case of an advertisement in a local paper, the Registrar shall file a copy of the paper and a memorandum referring to and giving the date of such advertisement. Form 176

(3) For this purpose one copy of each local paper in which any advertisement relating to any matter under the Act is inserted shall be left with the Registrar by the person inserting the advertisement.

(4) The memorandum by the Registrar shall be prima facie evidence that the advertisement to which it refers was duly inserted in the issue of the Gazette or paper mentioned in it.

# Motions and Practice

15. Application to be by motion
Every application to the Court (unless otherwise provided by these Rules, or the Court shall in any particular case otherwise direct) shall be made by motion supported by affidavit.

## 16. Notice of motion and ex parte application

Where any party other than the applicant is affected by the motion, no order shall be made unless upon the consent of such party duly shown to the Court, or upon proof that notice of the intended motion and a copy of the affidavits in support thereof have been duly served upon such party:

Provided that the Court, if satisfied that the delay caused by proceeding in the ordinary way would or might entail serious mischief, may make an order ex parte upon such terms as to costs and otherwise, and subject to such undertaking, if any, as the Court may think just; and any party affected by such order may move to set it aside.

# 17. Length of notice

Unless the Court gives leave to the contrary, notice of motion shall be served on any party to be affected thereby not less than eight days before the day named in the notice for hearing the motion. An application for leave to serve short notice of motion shall be made ex parte.

### 18. Affidavits against motion

Where a respondent intends to use affidavits in opposition to a motion, he shall deliver copies of such affidavits to the applicant not less than two days before the day appointed for the hearing.

## 19. Notice not served on all proper parties

If, on the hearing of any motion or application, the Court shall be of opinion that any person to whom notice has not been given ought to have, or to have had, such notice, the Court may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms as the Court thinks fit.

## 20. Adjournment

The hearing of any motion or application may from time to time be adjourned upon such terms (if any) as the Court shall think fit.

## 21. Personal service

In cases in which personal service of any notice of motion, or of any order of the Court, is required, the same shall be effected, in the case of a notice of motion, by delivering to each party to be served a copy of the notice of motion; and in the case of an order, by delivering to each party to be served a sealed copy of the order.

## 22. Filing affidavits on motion

Every affidavit to be used in supporting or opposing any opposed motion shall be filed with the Registrar not later than the day before the day appointed for the hearing.

## 23. Endorsement and filing of affidavits

The Registrar, upon any affidavit being left with him to be filed, shall endorse the same with the day of the month and year when the same was so left, and forthwith file the same with the proceedings to which the same relates, and any affidavit left with the Registrar to be filed shall on no account be delivered out to any person, except by order of the Court.

### 24. Notice of motion to be filed

A party intending to move shall, previous to the public sitting of the Court, deliver to the Registrar a copy of his notice of motion. There shall be endorsed on such copy the name of the applicant's legal practitioner (if any), and also if known the name of the respondent's legal practitioner (if any).

### **Preparation of Orders**

## 25. Preparation of orders

(1) If within one week from the making of any order of adjudication, order annulling adjudication, order on application to approve a composition or scheme, order annulling a composition or scheme, or order on application for discharge, such order has not yet been completed, it shall be the duty of the Registrar to prepare and complete such order: Form 96

Provided that if in any case the judge shall be of opinion that this rule ought not to apply, he may so order:

And provided also that where an order for discharge is granted subject to the condition that judgment shall be entered against the bankrupt, nothing in this rule shall require the Registrar to prepare and complete the order until the bankrupt has given a consent to judgment being entered against him.

## Notice of appointment to settle order

(2) A person who has the carriage of an order shall obtain from the Registrar an appointment to settle the order, and shall give reasonable notice of the appointment to all persons who may be affected by the order or to their legal practitioners.

#### Security in Court

## 26. Security by bond

Except where these Rules otherwise provide, where a person is required to give security, such security shall be in the form of a bond with one or more surety or sureties to the person proposed to be secured.

## 27. Amount of bond

The bond shall be taken in a penal sum which shall be not less than the sum for which security is to be given and probable costs, unless the opposite party consents to its being taken for a less sum.

## 28. Deposit in lieu of bond

Where a person is required to give security he may, in lieu thereof, lodge in Court a sum equal to the sum in question in respect of which security is to be given and the probable costs of the trial of the question, together with a memorandum to be approved of by the Registrar and to be signed by such person or his legal practitioner or agent, setting forth the conditions on which the money is deposited.

### 29. Money lodged in Court

The Rules for the time being in force in the High Court relating to payment into and out of Court of money lodged in Court by way of security for costs shall apply to money lodged in Court under these Rules.

### 30. Security of guarantee society

The security of a guarantee association or society approved by the Court or the opposite party may be given in lieu of a bond or a deposit.

## 31. Notice of sureties

In all cases where a person proposes to give a bond by way of security, he shall serve by post or otherwise on the opposite party and on the Registrar notice of the proposed sureties, and the Registrar shall forthwith give notice to both parties of the time and place at which he proposes that the bond shall be executed, and shall state in the notice that, should the proposed obligee have any valid objection to make to the sureties, or either of them, it must be made at that time. Form 20

## 32. Justification by sureties

The sureties shall make an affidavit of their sufficiency unless the opposite party shall dispense with such affidavit, and such sureties shall attend to be cross-examined, if required. Form 21

## 33. Execution of bond

The bond shall be executed and attested in the presence of the Registrar or the receiver, or before a legal practitioner.

## 34. Notice of deposit

Where a person makes a deposit of money in lieu of giving a bond, the Registrar shall forthwith give notice to the person to whom the security is to be given of such deposit having been made.

Stamps

## 35. Defacement of stamp

Every officer of the Court who receives any document to which an adhesive stamp shall be affixed shall immediately upon the receipt of such document deface the stamp thereon in the manner for the time being prescribed for the defacement of stamps or in such other manner as the Minister may from time to time direct; and no such document shall be filed or delivered until the stamp thereon shall have been defaced in manner aforesaid, and it shall be the duty of the party presenting or receiving such document to see that such defacement has been duly made.

### 36. Application of section 131

For the purposes of section 131 of the Act "bankruptcy" shall include any proceeding under the Act, whether before or after adjudication, and whether an adjudication is made or not, and "bankrupt" shall include any debtor proceeded against under the Act.

### Affidavits

## 37. Cost of unnecessary matter

The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

#### 38. Form

Every affidavit shall be drawn up in the first person and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.

### 39. Deponent's description

Every affidavit shall state the description and true place of abode of the deponent.

#### 40. Several deponents

In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

## 41. Scandalous matter

The Court may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between legal practitioner and client.

### 42. Erasures, etc.

No affidavit having in the jurat or body thereof any interlineation, alteration or erasure shall, without leave of the Court, be read or made use of in any matter depending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer or person taking the affidavit, nor in the case of an erasure unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer or person taking it.

### 43. Blind or illiterate persons

Where an affidavit is sworn by any person who appears to the person taking the affidavit to be illiterate or blind, the person taking the affidavit shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of such person. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

### 44. Formal defects

The Court may receive an affidavit sworn for the purpose of being used in any matter notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

## 45. Filing office copies, etc.

(1) In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered and left in Court or in chambers with the proper officer, who shall send it to be filed.

(2) An office copy of an affidavit may in all cases be used, the original affidavit having been filed, and the copy duly authenticated with the seal of the Court.

## 46. Swearing of affidavit

(1) No affidavit (other than a proof of debt) shall be sufficient if sworn before the legal practitioner acting for the party on whose behalf the affidavit is to be so used, or before the party himself.

(2) Any affidavit which would be insufficient if sworn before the legal practitioner himself shall be insufficient if sworn before his clerk or partner.

(3) An affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

## 47. Time for filing

(1) Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used unless by leave of the Court.

## Affidavit in ex parte application

(2) Except by leave of the Court, no order made ex parte in Court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion.

### 48. Proof of affidavit

The Court shall take judicial notice of the seal or signature of any person authorized by or under any Act to take affidavits or to certify to such authority.

### Witnesses and Depositions

### 49. Subpoena

A subpoena for the attendance of a witness shall be issued by the Court at the instance of the receiver, a trustee, a creditor, a debtor, or any applicant or respondent in any matter, with or without a clause requiring the production of books, deeds, papers, documents, and writings in his possession or control, and in such subpoena the name of several witnesses may be inserted.

## 50. Service of subpoena

A sealed copy of the subpoena shall be served personally on the witness by the person at whose instance the same is issued, or by his legal practitioner, or by an officer of the Court, or by some person in their employ, within a reasonable time before the time of the return thereof.

## 51. Proof of service

Service of the subpoena may, where required, be proved by affidavit.

## 52. Limit of witnesses' costs

The Court may in any matter limit the number of witnesses to be allowed on taxation of costs, and their allowance for attendance shall in no case exceed the highest rate of the allowances mentioned in the scale of costs.

#### 53. Costs of witnesses

The costs of witnesses, whether they have been examined or not, may, in the discretion of the Court, be allowed.

## 54. Depositions, etc.

The Court may, in any matter where it appears necessary for the purposes of justice, make an order for the examination upon oath before the Court of any officer of the Court or any other person, and at any place, of any witness or person, and may empower any party to any such matter to give such deposition in evidence therein on such terms (if any) as the Court may direct.

### 55. Shorthand notes

If the Court shall in any case, and at any stage of the proceedings, be of opinion that it would be desirable that a person (other than the person before whom the examination is taken) should be appointed to take down the evidence of the debtor, or of any witness examined at any public sitting or private meeting under the Act, in shorthand or otherwise, it shall be competent for the Court to make such appointment; and every person so appointed shall be paid such sum as the Court may direct, and, where the Court appoints a shorthand writer, a sum not exceeding one shilling per folio of one hundred words for any transcript of evidence that may be required, and such sum shall be paid by the party at whose instance the appointment was made, or out of the estate, as may be directed by the Court.

### 56. Form of commission

An order for a commission or letter of request to examine witnesses, and the writ of commission or request, shall follow the forms for the time being in use in the High Court, with such variations as circumstances may require.

### 57. Production of document

The Court may in any matter, at any stage of the proceedings, order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court may think fit to be produced.

#### 58. Disobedience of order

Any person wilfully disobeying any subpoena or order requiring his attendance for the purpose of being examined or producing any document shall be deemed guilty of contempt of court, and may be dealt with accordingly.

#### 59. Conduct money

Any witness (other than a debtor) required to attend for the purpose of being examined or of producing any document shall be entitled to the like conduct money and payment for expenses and loss of time as upon attendance at a trial in Court.

## Discovery and Examination under Section 27

#### 60. Discovery

Any party to any proceeding in Court may, with the leave of the Court, administer interrogatories to, or obtain discovery of documents from, any other party to such proceeding.

Proceedings under this rule shall be regulated as nearly as may be by the practice of the High Court for the time being in force in relation to discovery and inspection. An application for leave under this rule may be made ex parte.

### 61. Application under section 27

Every application to the Court under section 27 of the Act shall be in writing and shall state shortly the grounds upon which the application is made. Where the application is made on behalf of the receiver or trustee it need not be verified by affidavit.

### Accounts and Sale of Mortgaged Property

### 62. Inquiry, mortgage, etc.

Upon application by motion by any person claiming to be a mortgagee of any part of the bankrupt's real or leasehold estate, and whether such mortgage shall be by deed or otherwise, and whether the same shall be of a legal or equitable nature, the Court shall proceed to inquire whether such person is such mortgagee and for what consideration and under what circumstances; and if it shall be found that such person is such mortgagee, and if no sufficient objection shall appear to the title of such person to the sum claimed by him under such mortgage, the Court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal, interest, and costs due upon such mortgage, and of the rents and profit, or dividends, interest, or other proceeds received by such person, or by any other person by his order or for his use in case he shall have been in possession of the property over which the mortgage shall extend, or any part thereof, and the Court, if satisfied that there ought to be a sale, shall direct notice to be given in such newspapers as the Court shall think fit, when and where, and by whom and in what way the said premises or property, or the interest therein so mortgaged are to be sold, and that such sale be made accordingly, and that the trustee (unless it be otherwise ordered) shall have the conduct of such sale; but it shall not be imperative on any such mortgagee to make such application. At any such sale the mortgagee may bid and purchase.

## 63. Conveyance

All proper parties shall join in the conveyance to the purchaser, as the Court shall direct.

## 64. Proceeds of sale

The moneys to arise from such sale shall be applied in the first place in payment of the costs, charges, and expenses of the trustee, of and occasioned by the application to the Court, and of such sale and attendance thereat, and in the next place in payment and satisfaction, so far as the same shall extend, of what shall be found due to such mortgagee, for principal, interest, and costs, and the surplus of the said moneys (if any) shall be paid to the trustee. But in case the moneys to arise from such sale shall be insufficient to pay and satisfy what shall be found due to such mortgagee, then he shall be entitled to prove as a creditor for such deficiency, and receive dividends thereon rateably with other creditors, but so as not to disturb any dividend then already declared.

### 65. Proceedings on inquiry

For the better taking of such inquiries and accounts and making a title to the purchaser, all parties may be examined by the Court upon interrogatories or otherwise as the Court shall think fit, and shall produce before the Court upon oath all deeds, documents, papers, books, and writings in their respective custody or power relating to the estate or effects of the bankrupt, as the Court shall direct.

### 66. Accounts, etc.

In any proceedings between a mortgagor and mortgagee or the trustee of either of them, the Court may order all such inquiries and accounts to be taken in like manner as in the High Court.

### Warrants, Arrests and Commitments

## 67. Custody and production of debtor

Where a debtor is arrested, under a warrant issued under section 25 of the Act, he shall be given into the custody of the superintendent of the prison mentioned in the warrant, who shall produce such debtor before the Court as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order; and any books, papers, moneys, goods and chattels in the possession of the debtor which may be seized shall forthwith be lodged with the receiver or trustee, as the case may be.

### 68. Execution of warrant

(1) When a person is apprehended under a warrant issued under section 27 (2) of the Act, the officer apprehending him shall forthwith bring him before the Court issuing the warrant to the end that he may be examined, and if he cannot immediately be brought up for examination or examined, the officer shall deliver him into the custody of the superintendent of the prison mentioned in the warrant, who shall receive him into custody and shall produce him before the Court as it may from time to time direct or order, and, subject to such direction or order, shall safely keep him. Forms 138, 139

(2) The officer executing a warrant issued under section 27 (2) of the Act shall forthwith, after apprehending the person named in the warrant and bringing him before the Court as in the last preceding rule mentioned, or after delivering him to the superintendent of the prison, as the case may be, report such apprehension or delivery to the Court issuing the warrant, and apply to the Court to appoint a day and time for the examination of the person so apprehended, and the Court shall thereupon appoint the earliest practicable day for the examination, and shall issue its direction or order to the said superintendent to produce him for examination at a place and time to be mentioned in such direction or order.

Notice of any such appointment shall forthwith be given by the Registrar to the receiver, trustee, or other person who shall have applied for the examination or warrant.

69. Applications to commit

An application to the Court to commit any person for contempt of court shall be supported by affidavit and be filed in Court.

## 70. Notice and hearing of application

Subject to the Act and Rules, upon the filling of an application to commit, the Registrar shall fix a time and place for the Court to hear the application, notice whereof shall be personally served on the person sought to be committed not less than three days before the day fixed for the hearing of the application:

Provided that in any case in which the Court may think it fit, the Court may allow substituted service of the notice by advertisement or otherwise, or shorten the length of notice to be given.

# 71. Suspension of issue of committal order

Where an order of committal is made against a debtor, or against a trustee, for disobeying any order of the Court or the receiver to do some particular act or thing, the Court may direct that the order of committal shall not be issued, provided that such debtor or trustee, as the case may be, complies with the previous order within a specified time.

## Service and Execution of Process

## 72. Address of legal practitioner for service

Every legal practitioner suing out or serving any petition, notice, summons, order, or other document shall endorse thereon his name or firm and place of business, which shall be called his address for service. All notices, orders, documents, and other written communications which do not require personal service shall be deemed to be sufficiently served on such legal practitioner if left for him at his address for service.

## 73. Hours for service

Service of notice, orders, or other proceedings shall be effected before the hour of four in the afternoon, except on Saturdays when it shall be effected before the hour of one in the afternoon. Service effected after four in the afternoon on any week-day except Saturday shall for the purpose of computing any period of time be deemed to have been effected on the following day. Service effected after one in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday.

## 74. Notices by whom served

It shall be the duty of the Sheriff to serve such orders, summonses, petitions, and notices as the Court may require him to serve, to execute warrants and other process, and to do and perform all such things as may be required of him by the Court.

But this rule shall not be construed to require any order, summons, petition, or notice to be served by the Sheriff which is not specifically by the Act or the Rules required to be so served, unless the Court shall in any particular proceeding by order specially so direct.

## 75. Service by post

Where notice of an order or other proceeding in Court may be served by post it shall be sent by registered letter.

## 76. Enforcement of order

Every order of the Court may be enforced as if it were a judgment of the Court to the same effect.

# Costs and Taxation

# 77. Awarding costs

(1) The Court in awarding costs may direct that the costs of any matter or application may be taxed and paid as between party and party or as between legal practitioner and client, or that full costs, charges, and expenses shall be allowed, or the Court may fix a sum to be paid in lieu of taxed costs.

(2) In the absence of any express direction, costs of an opposed motion shall follow the event and be taxed as between party and party.

(3) Where an action is brought against the receiver or trustee as representing the estate of the debtor, or where the receiver or trustee is made a party to a cause or matter, on the application of any other party thereto, he shall not be personally liable for costs unless the Court otherwise directs.

## 78. Orders to be sealed, signed and filed

Every order for payment of money and costs, or either of them, shall be sealed and be signed by the Registrar and shall be forthwith filed with the proceedings.

## 79. Scale of costs and charges

(1) In all proceedings under the Act and these Rules legal practitioners' costs shall be allowed in accordance with the Legal Practitioners Remuneration, Taxation of Costs, and Allowances to Witnesses Rules and any Rules substituted therefor or added thereto. Cap. 3:02, p. 116

(2) Where the estimated assets of the debtor do not exceed the sum of £300, a lower scale of legal practitioners' costs shall be allowed in all proceedings under the Act and these Rules in which costs are payable out of the estate, namely, three-fifths of the charges ordinarily allowed, disbursements being added.

# 80. Legal practitioner's costs in case of petition by debtor

The legal practitioner in the matter of a bankruptcy petition presented by the debtor against himself shall, in his bill of costs, give credit for such sum or security (if any) as he may have received from the debtor as a deposit on account of the costs and expenses to be incurred in and about the filing and prosecution of such petition, and the amount of any such deposit shall be noted by the taxing officer on the bill of costs.

## 81. Costs paid otherwise than out of estate

When a bill of costs is taxed under any special order of the Court, and if it appears by such order that the costs are to be paid otherwise than out of the estate of the bankrupt, the taxing officer shall state at the foot of the bill by whom or the manner in which such costs are to be paid.

### 82. Filing bills of costs

Upon the taxation of any bill of costs, charges, or expenses being completed, the Registrar shall forthwith file such bill with the proceedings in the matter.

### 83. Certificate of employment

Before the bill of charges of any legal practitioner, manager, accountant, auctioneer, broker, or other person employed by the receiver or trustee is taxed, there shall be produced a certificate in writing signed by the receiver or trustee, as the case may be, setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of a bill of costs of the legal practitioner, a copy of the authority sanctioning the employment.

#### 84. Sheriff's costs

In any case in which, pursuant to section 43 (1) of the Act, the Sheriff is required to deliver goods to the receiver or trustee, such Sheriff shall without delay bring in his bill of costs for taxation, which shall be taxed; and unless such bill of costs is brought in for taxation within one month from the date when the Sheriff makes such delivery, the receiver or trustee may decline to pay the same.

## 85. Taxation of sheriff's costs after deduction

If the receiver or trustee shall, in writing, require any costs which the Sheriff has deducted under section 43 (2) of the Act to be taxed, the Sheriff shall, within seven days from the date of the request, bring in such costs for taxation, which shall be taxed; and any amount disallowed on such taxation shall forthwith be paid over by the Sheriff to the receiver or trustee, as the case may require.

### 86. Notice of appointment

Every person whose bill or charges is or are to be taxed shall in all cases give not less than three days' notice of the appointment to tax the same to the receiver and to the trustee (if any).

## 87. Lodgment of bill

The bill or charges, if incurred prior to the appointment of a trustee, shall be lodged with a receiver, and if incurred after the appointment of a trustee, shall be lodged with a trustee, three clear days before the application for the appointment to tax the same is made. The receiver or Trustee, as the case may be, shall forthwith, on receiving notice of taxation, lodge such bill or charges with the Registrar.

### 88. Copy of bill

Every person whose bill or charges is or are to be taxed shall, on application of the receiver or the trustee, furnish a copy of his bill or charges to be so taxed, on payment at the rate of sixpence per folio, which payment may be charged to the estate. The receiver shall call the attention of the trustee to any items which in his opinion ought to be disallowed or reduced, and may attend or be represented on the taxation.

## 89. Applications for costs

Where any party to, or person affected by, any proceeding desires to make an application for an order that he be allowed his costs or any part of them incident to such proceedings, and such application is not made at the time of the proceeding—

(a) such party or person shall serve notice of his intended application on the receiver, and, if a trustee has been appointed, on the trustee;

(b) the receiver and trustee may appear on such application and object thereto; and

(c) no costs of or incident to such application shall be allowed to the applicant unless the Court is satisfied that the application could not have been made at the time of the proceeding.

## 90. Priority of costs and charges payable out of estate

The assets in every matter remaining, after payment of the actual expenses incurred in realizing any of the assets of the debtor, shall, subject to any order of the Court, be liable to the following payments, which shall be made in the following order of priority—

First.The actual expenses incurred by the receiver in protecting the property or assets of the debtor, or any part thereof, and any expenses or outlay incurred by him or by his authority in carrying on the business of the debtor;Next.The fees, percentages, and charges payable to, or costs, charges and expenses incurred or authorized by, the receiver;"The deposit or deposits lodged by the petitioning creditor pursuant to these Rules;"The deposit or deposits lodged on any application for the appointment of an interim receiver;"The remuneration of the special manager (if any); " The taxed costs of the petitioner;"The remuneration and charges of the person (if any) appointed to assist the debtor in the preparation of his statement of affairs;"Any allowance made to the debtor by the receiver;"The taxed charges of any shorthand writer appointed by the Court;"The trustee's necessary disbursements other than actual expenses of realization heretofore provided for;"The costs of any person properly employed by the trustee with the sanction of the committee of inspection;"Any allowance made to the debtor by the trustee with the sanction of the committee of inspection;"The remuneration of the trustee;"The actual out-of-pocket expenses necessarily incurred by the committee of inspection, subject to the approval of the Court.

## 91. Disallowance of costs of unnecessary petition

In any case in which, after a bankruptcy petition has been presented by a creditor against a debtor, and before the hearing of such petition, the debtor files a petition, and a receiving order is made on the petition of the debtor, unless in the opinion of the Court the estate has benefited thereby, or there are special circumstances which make it just that such costs should be allowed, no costs shall be allowed to the debtor or his legal practitioner out of the estate.

# 92. Apportionment of costs in case of partnership

In the case of a bankruptcy petition against a partnership, the costs payable out of the estates incurred up to and inclusive of the receiving order shall be apportioned between the joint and separate estates in such proportions as the receiver may in his discretion determine.

# 93. Costs out of joint or separate estate

(1) Where the joint estate of any co-debtors is insufficient to defray any costs or charges properly incurred prior to the appointment of the trustee, the receiver may pay or direct the trustee to pay such costs or charges out of the separate estates of such co-debtors, or one or more of them, in such proportions as in his discretion the receiver may think fit. The receiver may also, as in his discretion he may think fit, pay or direct the trustee to pay any costs or charges properly incurred, prior to the appointment of the trustee, for any separate estate out of the joint estate or out of any other separate estate, and any part of the costs or charges of the joint estate incurred prior to the appointment of the trustee estate, out of that separate estate.

(2) Where the joint estate of any co-debtors is insufficient to defray any costs or charges properly incurred after the appointment of the trustee, the trustee, with such consent as is hereinafter mentioned, may pay such costs or charges out of the separate estates of such co-debtors or one or more of them. He may also, with the said consent, pay any costs or charges properly incurred, for any separate estate, after his appointment out of the joint estate, and any part of the costs or charges of the joint estate incurred after his appointment which affects any separate estate out of that separate estate. No payment under this rule shall be made out of a separate estate or joint estate by a trustee without the consent of the committee of inspection of the estate out of which the payment is intended to be made, or, if the committee withhold or refuse their consent, without an order of the Court.

## Appeals

94. Restrictions on appeals

No appeal shall be brought—

(a) without the leave of the Court or of the Court of Appeal from any order made by consent or as to costs only, or from any order relating to property when it is apparent from the proceedings that the money or money's worth involved does not exceed £50;

(b) from an omission of the Court to exercise a discretionary power, unless on application made to it the Court shall have refused to exercise such power, in which latter case an appeal from the refusal may be brought.

### 95. Time for appeal

Subject to the powers of the Court of Appeal to extend the time at which the order is signed, entered, or otherwise per-of the Court shall be brought after the expiration of three months or after such other period as the Court of Appeal may from time to time prescribe. The period shall be calculated from the time at which the order is signed, entered, or otherwise perfected, or, in the case of a refusal of an application, from the date of such refusal.

### 96. Security for costs

Security for costs shall be given in accordance with any Rules made by the Court of Appeal.

### 97. Procedure on appeals

Subject to the foregoing rules, appeals to the Court of Appeal shall be regulated by any Rules made by the Court of Appeal.

PART III

### PROCEEDINGS IN BANKRUPTCY

Declaration of Inability to Pay Debts

#### 98. Form of declaration

A declaration by a debtor of his inability to pay his debts shall be dated, signed, and witnessed. The witness shall be a legal practitioner, the receiver, or the Registrar. Form 2

**Bankruptcy Notice** 

### 99. Issue of notice

A creditor desirous that a bankruptcy notice may be issued shall produce to the Registrar an office copy of the judgment or order on which the notice is founded and file the notice together with a request for issue. The creditor shall at the same time lodge with the Registrar two copies of the bankruptcy notice to be sealed and issued for service. Forms 4 and 5

100. Endorsement of address, etc.

(1) Every bankruptcy notice shall be endorsed with the name and place of business of the legal practitioner actually suing out the same, or if no legal practitioner be employed, with a memorandum that it is sued out by the creditor in person.

(2) There shall also be endorsed on every bankruptcy notice an intimation to the debtor that if he has a counter-claim, set-off, or cross-demand which equals or exceeds the amount of the judgment debt, and which he could not have set up in the action in which the judgment or order was obtained, he must within the time specified in the notice file an affidavit to that effect with the Registrar.

(3) In the case of each notice the Registrar when issuing the notice shall fix such time.

### 101. Application to set aside

The filing of such affidavit shall operate as an application to set aside the bankruptcy notice, and thereupon the Registrar shall fix a day for hearing the application, and not less than three days before the day so fixed shall give notice thereof both to the debtor and the creditor and their respective legal practitioners, if known. If the application cannot be heard until after the expiration of the time specified in the notice as the day on which the act of bankruptcy will be complete, the Registrar shall extend the time, and no act of bankruptcy shall be deemed to have been committed under the notice until the application has been heard and determined.

### 102. Duration of notice

Subject to the power of the Court to extend the time, a bankruptcy notice to be served in Malawi shall be served within one month from the issue thereof.

#### 103. Service of notice

A bankruptcy notice shall be served and service thereof shall be proved in the like manner as is by these Rules prescribed for the service of a creditor's petition.

### 104. Setting aside notice

When the Court makes an order setting aside the bankruptcy notice, it may at the same time declare that no act of bankruptcy has been committed by the debtor under such notice.

### **Bankruptcy Petitions**

## 105. Form of petition

Every petition shall be fairly written or printed, or partly written and partly printed, and no alterations, interlineations, or erasures shall be made without the leave of the Registrar, except so far as may be necessary to adapt a printed form to the circumstances of the particular case. Forms 3, 9

#### 106. Description and address of debtor

(1) Where a petition is presented by a debtor he shall, besides inserting therein his name and description and his address at the date when the petition is presented, further describe himself as lately residing or carrying on business at the address or several addresses, as the case may be, at which he has incurred debts and liabilities which at the date of the petition remain unpaid or unsatisfied.

(2) Where a petition is presented against a debtor who resides or carries on business at an address other than the address at which the debtor was residing or carrying on business at the time of contracting the debt or liability in respect of which the petition is presented, the petitioning creditor, in addition to stating in the petition the description of the debtor, as of his then present address and description, shall in the petition describe the debtor as lately residing or carrying on business at the address at which he was residing or carrying on business when the debt or liability was incurred.

#### 107. Attestation

Every bankruptcy petition shall be attested. If it be attested in Malawi, the witness must be a legal practitioner or the receiver or the Registrar. If it be attested out of Malawi, the witness must be a judge or magistrate or a notary public.

#### 108. Deposit by petitioner

(1) Upon the presentation of a petition either by the debtor, or by a creditor, the petitioner shall deposit with the receiver the sum of £10, and such further sum (if any) as the Court may from time to time direct, to cover the fees and expenses to be incurred by the receiver; and no petition shall be received unless the receipt of the receiver for the deposit payable on the presentation of the petition is produced to the proper office of the Court. G.N. 221/1968

(2) The receiver shall account for the money so deposited to the creditor, or, as the case may be, to the debtor's estate, and any sum so paid by a petitioning creditor shall be repaid to such creditor (except and so far as such deposit may be required by reason of insufficiency of assets for the payment of the fees of and expenses incurred by the receiver) out of the proceeds of the estate in the priority prescribed by these Rules.

## **Creditor's Petition**

## 109. Security for costs

A petitioning creditor who is resident abroad, or whose estate is vested in a trustee under any law relating to bankruptcy, or against whom a petition is pending under the Act, or who has made default in payment of any costs ordered by any court to be paid by him to the debtor, may be ordered to give security for costs to the debtor.

#### 110. Verification and copies

Every creditor's petition shall be verified by affidavit, and when it is filed there shall be lodged with it two or more copies to be sealed and issued to the petitioner.

### 111. Who to verify

When the petitioning creditor cannot himself verify all the statements contained in his petition, he shall file in support of the petition the affidavit of some person who can depose to them. Forms 11 and 12

### 112. Joint petitioners

Where a petition is presented by two or more creditors jointly, it shall not be necessary that each creditor shall depose to the truth of all the statements which are within his own knowledge; but it shall be sufficient that each statement in the petition is deposed to by someone within whose knowledge it is.

### 113. Investigation of petition

After the presentation of a creditor's petition and before sealing the copies of the petition for service, the statements in the petition shall be investigated by the Registrar, and where some of the statements in the petition cannot be verified by affidavit, witnesses may be summoned to prove the same.

### Service of Creditor's Petition

114. Personal service

A creditor's petition shall be personally served by delivering to the debtor a sealed copy of the filed petition.

## 115. Substituted service

A petition shall be served upon the debtor by an officer of the Court, or by the creditor or his legal practitioner, or by some person in their employ:

Provided that if personal service cannot be effected, the Court may extend the time for hearing the petition, or if the Court is satisfied by affidavit or other evidence on oath that the debtor is keeping out of the way to avoid such service, or service of any other legal process, or that for any other cause prompt personal service cannot be effected, it may order substituted service to be made by delivery of the petition to some adult inmate at his usual or last known residence or place of business, or by registered letter, or in such other manner as the Court may direct, and that such petition shall then be deemed to have been duly served on the debtor. Form 16

### 116. Proof of service

Service of the petition shall be proved by affidavit with a sealed copy of the petition attached, which shall be filed in Court forthwith after the service.

117. Service out of jurisdiction

Where a debtor petitioned against is not in Malawi, the Court may order service to be made within such time and in such manner and form as it shall think fit.

#### 118. Service after death of debtor

If a debtor against whom a bankruptcy petition has been filed dies before service thereof, the Court may order service thereof to be effected on the personal representative of the debtor, or on such other persons as the Court may think fit.

### **Interim Receiver**

### 119. Appointment of interim receiver

After the presentation of a petition, upon the application of a creditor or of the debtor himself, and upon proof by affidavit of sufficient grounds for the appointment of the receiver as an interim receiver of the property of the debtor, or any part thereof, the Court may, if it thinks fit, and upon such terms as may be just, make such appointment.

### 120. Form and contents of order

Where an order is made appointing the receiver to be interim receiver of the property of the debtor, such order shall bear the number of the petition in respect of which it is made, and shall state the locality of the property of which the receiver is ordered to take possession, and may direct him to take immediate possession of all books of accounts and other papers and documents belonging to the debtor and relating to his business.

## 121. Deposit

Before any order is issued, the person who has made the application therefor shall deposit with the receiver the sum of £10 towards the prescribed fee for the receiver, and such further sum as the Court shall direct for the expenses which may be incurred by him. G.N. 221/1968

#### 122. Further deposit necessary

If the sum of £10, and such further sum so to be deposited for the expenses which may be incurred by the receiver, shall prove to be insufficient, the person on whose application the order has been made shall from time to time deposit with the receiver such additional sum as the Court may, on the application of the receiver, from time to time direct; and such sum shall be deposited within twenty-four hours after the making of the order therefor. If such additional sum shall not be so deposited, the order appointing the interim receiver may be discharged by the Court. G.N. 221/1968

## 123. Repayment of deposit

If an order appointing an interim receiver is followed by a receiving order, the deposits made by the creditor on whose application such interim receiver was appointed shall be repaid to him (except and so far as such deposits may be required by reason of insufficiency of assets for the payment of the fees chargeable and the expenses incurred by the interim receiver) out of the proceeds of the estate in the order of priority prescribed by these Rules.

#### 124. Damages if petition dismissed

Where, after an order has been made appointing an interim receiver, the petition is dismissed, the Court shall, upon application to be made within twenty-one days from the date of the dismissal thereof, adjudicate with respect to any damage or claim thereto arising out of the appointment, and shall make such order as the Court thinks fit; and such decision or order shall be final and conclusive between the parties, unless the order be appealed from.

### **Hearing of Petition**

### 125. Proceedings on petition

(1) Where a petition is filed by a debtor, the Court shall forthwith make a receiving order thereon. Form 26

(2) A creditor's petition shall not be heard until the expiration of eight days from the service thereof:

Provided that where the act of bankruptcy alleged is that the debtor has filed a declaration of inability to pay his debts, or where it is proved to the satisfaction of the Court that the debtor has absconded, or in any other case for good cause shown, the Court may, on such terms, if any, as the Court may think fit to impose, hear the petition at such earlier date as the Court may deem expedient.

#### 126. Time of hearing

The Registrar shall appoint the time and place at which the petition will be heard, and notice thereof shall be written on the petition and sealed copies, and where the petition has not been served the Registrar may from time to time alter the first day so appointed, and appoint another day and hour.

#### 127. Several respondents

Where there are more respondents than one to a petition, the rules as to service shall be observed with respect to each respondent, but where all the respondents have not been served, the petition may be heard separately or collectively as to the respondent or such of the respondents as has or have been served, and separately or collectively as to the respondents not then served, according as service upon them is effected.

#### 128. Debtor intending to show cause

Where a debtor intends to show cause against a petition he shall file a notice with the Registrar, specifying the statements in the petition which he intends to deny or dispute, and transmit by post to the petitioning creditor and his legal practitioner, if known, a copy of the notice three days before the day on which the petition is to be heard. Form 17

### 129. Non-appearance of debtor

If the debtor does not appear at the hearing, the Court may make a receiving order on such proof of the statements in the petition as the Court shall think sufficient.

## 130. Appearance of debtor to show cause

On the appearance of the debtor to show cause against the petition, the petitioning creditor's debt, and the act of bankruptcy, or such of those matters as the debtor shall have given notice that he intends to dispute, shall be proved, and if any new evidence of those matters or any of them shall be given, or any witness or witnesses to such matters shall not be present for cross-examination, and further time shall be desired to show cause, the Court shall, if the application appears to the Court to be reasonable, grant such further time as the Court may think fit.

### 131. Non-appearance of creditor

If any creditor neglects to appear on his petition, no subsequent petition against the same debtor or debtors, or any of them, either alone or jointly with any other person, shall be presented by the same creditor in respect of the same act of bankruptcy without the leave of the Court.

### 132. Personal attendance of creditor, when dispensed with

The personal attendance of the petitioning creditor and of the witnesses to prove the debt, and act of bankruptcy or other material statements, upon the hearing of the petition may, if the Court shall think fit, be dispensed with.

## 133. Proceedings after trial of disputed question

Where proceedings on a petition have been stayed for trial of the question of the validity of the petitioning creditor's debt, and such question has been decided in favour of the validity of the debt, the petitioning creditor may apply to the Registrar to fix a day on which further proceedings on the petition may be had, and the Registrar, on production of the judgment or an office copy thereof, shall give notice to the petitioner by post of the time and place fixed for the hearing of the petition, and a like notice to the debtor at the address given in his notice to dispute, and also to their respective legal practitioners, if known.

#### 134. Application to dismiss

Where proceedings on a petition have been stayed for the trial of the question of the validity of the petitioning creditor's debt, and such question has been decided against the validity of the debt, the debtor may apply to the Registrar to fix a day on which he may apply to the Court for the dismissal of the petition with costs, and the Registrar, on the production of the judgment or an office copy thereof, shall give notice to both the petitioner and debtor (and to their respective legal practitioners, if known) by post of the time and place fixed for the hearing of the application.

## 135. Application for extension of time

An application for an extension of time for hearing a petition shall be in writing, but need not be supported by affidavit unless in any case the Court shall otherwise require.

## 136. Order for extension of time

On an application for an extension of time for the hearing of a petition, no order shall be made for an extension beyond fourteen days from the day fixed for the hearing of the petition, unless the Court is satisfied that such extension of time will not be prejudicial to the general body of creditors. Any costs occasioned by such application shall not be allowed out of the estate unless so ordered by the Court.

### 137. Adjournments of hearing

After the expiration of one month from the day appointed for the first hearing of a petition (provided such petition shall have been duly served) no further adjournment of the hearing merely by consent of the parties shall be allowed, except for the reasons set forth in rule 130, or for such other sufficient reason to be stated in the order for adjournment as the Court thinks fit; but in every such case, unless an order for adjournment is made, the Court shall either make a receiving order or dismiss the petition.

#### **Receiving Order**

### 138. Contents

When a receiving order is made on a creditor's petition there shall be stated in the receiving order the nature and date or dates of the act or acts of bankruptcy upon which the order has been made. Every order shall contain at the foot thereof a notice requiring the debtor to attend on the receiver forthwith on the service thereof at the place mentioned therein. Form 27

#### 139. Preparation

Every receiving order, and order for the appointment of the receiver as interim receiver of a debtor's property, shall be prepared or, if otherwise prepared, settled by the Registrar, and, in cases in which printed forms can be conveniently used, may be partly in print and partly in writing. Where the petitioner is represented by a legal practitioner the receiving order shall be endorsed with the name and address of such legal practitioner.

#### 140. Transmission of copy to receiver

A copy of every receiving order, and order for the appointment of the receiver as interim receiver of the debtor's property, sealed with the seal of the Court, shall forthwith be sent by post or otherwise by the Registrar to the receiver.

#### 141. Service of receiving order

The receiver shall cause a copy of the receiving order sealed with the seal of the Court to be served on the debtor.

### 142. Service where debtor abroad

Where a debtor against whom a receiving order has been made is not in Malawi, the Court may order service on the debtor of the receiving order, order of adjudication, order to attend the public examination or any adjournment thereof, or of any other order made against, or summons issued for the attendance of, the debtor, to be made within such time and in such manner and form as it shall think fit.

#### 143. Receiving order on bankruptcy notice

A receiving order shall not be made against the debtor on a petition in which the act of bankruptcy alleged is non-compliance with a bankruptcy notice within the appointed time, where such debtor has applied to set aside such notice until after the hearing of the application, or where the notice has been set aside, or during a stay of the proceedings thereon; but in such case the petition shall be adjourned or dismissed as the Court may think fit.

### 144. Stay of proceedings

There may be included in a receiving order an order staying any action or proceeding against the debtor or staying proceedings generally.

#### 145. Advertisement

Where a receiving order is made, the receiver shall forthwith send notice thereof for insertion in the Gazette, and in a local paper. Forms 29, 30 and 176 (1)

## 146. Costs of petition, etc.

(1) The costs of all proceedings under the Act, down to and including the making of a receiving order, shall be borne by the party prosecuting the same, unless the Court shall order that the debtor shall pay the whole or any part of them, or, in the case of a receiving order being made on a debtor's petition while a creditor's petition against such debtor is pending, that they shall be paid out of the estate. When a receiving order is made on a creditor's petition the costs of the petitioning creditor (including the costs of the bankruptcy notice (if any) sued out by him) shall be taxed and be payable out of the estate.

(2) When the proceeds of the estate are not sufficient for the payment of any costs necessarily incurred by the receiver (in excess of the deposit) between the making of a receiving order and the conclusion of the first meeting of creditors, the Court may order such costs to be paid by the party prosecuting the proceedings.

#### 147. Notice of application to rescind receiving order, etc.

An application to the Court to rescind a receiving order or to stay proceedings thereunder, or to annul an adjudication, shall not be heard except upon proof that notice of the intended application, and a copy of the affidavits in support thereof, have been duly served upon the receiver. Unless the Court gives leave to the contrary, notice of any such application shall be served on the receiver not less than seven days before the day named in the notice for hearing the application. Pending the hearing of the application, the Court may make an interim order staying such of the proceedings as it thinks fit. Form 98

### Statement of Affairs

## 148. How made out

Every debtor shall be furnished by the receiver with instructions for the preparation of his statement of affairs. The statement of affairs shall be made out in duplicate, and one copy shall be verified. The receiver shall file in Court the verified statement of affairs submitted to him by the debtor. Form 31

# 149. Extension of time

Where any debtor requires any extension of the time for the filing by him of his statement of affairs, he shall apply to the receiver, who may, if he thinks fit, give a written certificate extending such time, which certificate shall be filed, and shall render an application to the Court under section 16 of the Act unnecessary.

## **Public Examination**

## 150. Time for holding public examination

When a receiving order has been made against a debtor, it shall be the duty of the receiver to make an application to the Court to appoint a day and hour for holding the public examination of the debtor and, upon such application being made, the Court shall, by an order, appoint the day and hour for such public examination, and shall order the debtor to attend the Court upon such day and at such hour.

## 151. Default by debtor in attending

If the debtor fails to attend the public examination at the time and place appointed by any order for holding or proceeding with the same, and no good cause is shown by him for such failure, it shall be lawful for the Court, upon it being proved to the satisfaction of the Court that the order requiring the debtor to attend the public examination was duly served, and without any further notice to the debtor, to issue a warrant for his arrest as provided by section 25 (1) (d) of the Act, or to make such other order as the Court shall think just.

#### 152. Notice to creditors

Where any order is made appointing the time and place for holding the public examination of a debtor, the receiver shall serve a copy thereof on the debtor, and shall give to the creditors notice of such order, and of the time and place appointed thereby. The receiver shall also send a notice of such order to a local paper and shall forward notice of such order to be gazetted.

## 153. General proxy holders may question debtor

The holder of a general proxy or general power of attorney from a creditor who has tendered a proof may question the debtor at his public examination concerning his affairs and the causes of his failure.

#### 154. Adjournments sine die

Where the Court is of opinion that a debtor is failing to disclose his affairs, or where the debtor has failed to attend the public examination or any adjournment thereof, or where the debtor has not complied with any order of the Court in relation to his accounts, conduct, dealings, and property, and no good cause is shown by him for such failure, the Court may adjourn the public examination sine die, and may make such further or other order as the Court shall think fit.

### 155. Application to proceed

The Court may on the application either of the receiver or of the debtor appoint a day for proceeding with a public examination which has been adjourned sine die.

## 156. Proceedings after adjournment sine die

Where an examination has been adjourned sine die, and the debtor desires to have a day appointed for proceeding with his public examination, the expenses of gazetting, advertising, and giving notice to creditors of the day to be appointed for proceeding with such examination shall, unless the receiver or trustee, as the case may be, consents to the costs being paid out of the estate, be at the cost of the debtor, who shall, before any day is appointed for proceeding with the public examination, deposit with the receiver such sum as the receiver shall think sufficient to defray the expenses aforesaid. The balance of the deposit, after defraying the expenses aforesaid, shall be returned to the debtor.

## 157. Notice of proceedings after adjournment sine die

In any case in which a public examination has been adjourned sine die, and the Court afterwards makes an order for proceeding with such public examination, notice to creditors of the time and place appointed for proceeding with such public examination shall be sent by the receiver, and notice shall also be inserted in a local paper in which the notice of the first holding of the public examination was inserted, seven days before the day appointed.

## 158. Public examination of debtor who is a lunatic, etc.

(1) An application for an order dispensing with the public examination of a debtor, or directing that the debtor be examined in some manner or at some place other than is usual, on the ground that

the debtor is a lunatic, or suffers from mental or physical affliction or disability rendering him unfit to attend a public examination, may be made by the receiver, or by any person who has been appointed by any court having jurisdiction so to do to manage the affairs of or represent the debtor, or by any relative or friend of the debtor who may appear to the Court to be a proper person to make the application. Forms 70, 71

(2) Where the application is made by the receiver, it may be made ex parte, and the evidence in support of the application may be given by a report of the receiver to the Court, the contents of which report shall be received as prima facie evidence of the matters therein stated.

(3) Where the application is made by some person other than the receiver, it shall be made by motion, of which notice shall be given to the receiver and trustee (if any), and shall, except in the case of a lunatic so found by inquisition, be supported by an affidavit of a duly registered medical practitioner as to the physical and mental condition of the debtor.

(4) Where the order is made on the application of the receiver, the expense of holding the examination shall be deemed to be an expense incurred by the receiver within the meaning of rule 90. Where the application is made by any other person, he shall, before any order is made on the application, deposit with the receiver such sum as the receiver shall certify to be necessary for the expenses of the examination.

## Composition or Scheme

## 159. Forms where proposal submitted by the debtor

Where a debtor intends to submit a proposal for a composition or scheme, the prescribed forms of proposal, notice, and report shall be used by the receiver for the purpose of the meeting of creditors for consideration of the proposal. Forms 38, 74-76

## 160. Application by debtor or receiver for approval of the Court

Where the creditors have accepted a composition or scheme, and the public examination of the debtor has been concluded, the receiver or the debtor may forthwith apply to the Court to fix a day for the hearing of an application for the approval of such composition or scheme. The receiver shall not by making such application be deemed necessarily to approve of the composition or scheme.

#### 161. Notice to receiver

Any person other than the receiver who applies to the Court to approve a composition or scheme shall, not less than ten days before the day appointed for hearing the application, send notice of the application to the receiver.

162. Notice to creditors

Where application is made to the Court to approve a composition or scheme, the receiver shall, not less than three days before the day appointed for hearing the application, send notice of the application to every creditor who has proved his debt.

### 163. Receiver's report to be filed

In every case of an application to the Court to approve a composition or scheme, the report of the receiver shall be filed not less than four days before the time fixed for hearing the application.

### 164. Hearing and appeal

On the hearing of any application to the Court to approve a composition or scheme, the Court shall, in addition to considering the report of the receiver, hear the receiver and the trustee (if any) thereon, and an appeal to the Court of Appeal shall lie at the instance of the receiver, or of the trustee (if any) from any order of the Court made upon such an application.

## 165. Costs of application by debtor

No costs incurred by a debtor, of or incidental to an application to approve a composition or scheme, shall be allowed out of the estate if the Court refuses to approve the composition or scheme.

### 166. Evidence and order

(1) The Court before approving a composition or scheme shall, in addition to investigating the other matters as required by the Act, require proof that the provisions of section 18 (1) and (2) of the Act have been complied with. Form 85

(2) The Registrar shall forthwith cause a notice of every order made on an application to approve a composition or scheme to be gazetted. Form 176 (5)

## 167. Provision in composition or scheme for costs and charges

Where a composition or scheme has been duly accepted by the creditors, such composition or scheme shall not be approved by the Court unless the Court is satisfied, on the report of the receiver, that provision is made for payment of all proper costs, charges, and expenses of and incidental to the proceedings, and all fees and percentages payable to the receiver under the scale of fees and percentages in force for the time being.

### 168. Fees on application

The fee prescribed to be charged for and in respect of an application to the Court to approve a composition or scheme may be allowed and paid out of the estate of the debtor in any case in which there are sufficient funds in the hands of the receiver or trustee, as the case may be, available for the purpose.

## 169. Correction of formal slips, etc.

At the time a composition or scheme is approved, the Court may correct or supply any accidental or formal slip, error, or omission therein, but no alteration in the substance of the composition or scheme shall be made.

## 170. Proceedings if scheme approved

When a composition or scheme is approved, the receiver shall, on payment of all costs, charges, and expenses of and incidental to the proceedings, and all fees and percentages payable to the receiver, forthwith put the debtor (or, as the case may be, trustee under the composition or scheme, or the other person or persons to whom under the composition or scheme the property of the debtor is to be assigned) into possession of the debtor's property. The Court shall also discharge the receiving order.

### 171. Cases in which receiver is to be trustee

In every case of a composition or scheme in which a trustee is not appointed, or, if appointed, declines to act, or becomes incapable of acting, or is removed, the receiver shall, unless and until another trustee is appointed by the creditors, be the trustee for the purpose of receiving and distributing the composition, or for the purpose of administering the debtor's property, and carrying out the terms of the composition or scheme, as the case may be.

### 172. Security by trustee under composition or scheme

Where under a composition or scheme a trustee is appointed, he shall, after the composition or scheme has been approved by the Court, give security to the satisfaction of the Court in like manner as if he were a trustee in bankruptcy. If the trustee fails to give such security within the time required he may be removed by the Court.

## 173. Default in payment of composition

Where a composition or scheme has been approved, and default is made in any payment thereunder either by the debtor or the trustee (if any), no action to enforce such payment shall lie, but the remedy of any person aggrieved shall be by application to the Court.

## 174. Vesting of property on annulment of composition

Where a composition or scheme is annulled, the property of the debtor shall, unless the Court otherwise directs, forthwith vest in the receiver without any special order being made or necessary.

## 175. Annulment of composition or scheme

Where a composition or scheme is annulled, the trustee under the composition or scheme shall account to the trustee under the bankruptcy for any money or property of the debtor which has come to his hands, and pay or deliver over to the said trustee any money or property which has not been duly administered.

#### 176. Dividends under composition or scheme

Where under any composition or scheme provision is made for the payment of any moneys to creditors entitled thereto, and any claim, in respect of which a proof has been lodged, is disputed, the Court may, if it thinks fit, direct that the amount which would be payable upon such claim, if established, shall be secured in such manner as the Court directs, until the determination of the claim so disputed, and on the determination thereof, the sum so secured shall be paid as the Court may direct.

## 177. Proof of debts in composition or scheme

Every person claiming to be a creditor under any composition or scheme, who has not proved his debt before the approval of such composition or scheme, shall lodge his proof with the trustee thereunder, if any, or, if there is no such trustee, with the receiver, who shall admit or reject the same. And no creditor shall be entitled to enforce payment of any part of the sums payable under a composition or scheme unless and until he has proved his debt and his proof has been admitted.

### 178. Compositions and schemes under sections 18 and 23

All rules relating to compositions or schemes shall apply to compositions or schemes under section 18 of the Act, and, so far as applicable, also to compositions or schemes under section 23 of the Act.

### 179. Adjudication on application of debtor

At the time of making a receiving order, or at any time thereafter, the Court may, on the application of the debtor himself, adjudge him a bankrupt. Such application may be made orally and without notice. Form 96

## 180. Adjudication on application of other parties

When a receiving order has been made, and a quorum of creditors do not attend at the time and place appointed for the first meeting, or one adjournment hereof, or where the receiver satisfies the Court that the debtor has absconded, or that the debtor does not intend to propose a composition or scheme, or in any of the other cases mentioned in the Act, the Court may, either on the application of a creditor or of the receiver, forthwith adjudge the debtor bankrupt. Form 92

## 181. Adjudication on failure of composition or scheme

Where a composition or scheme is not accepted by the creditors at the first meeting or at one adjournment thereof, the Court may, on the application of the receiver or of any person interested, adjudge the debtor bankrupt.

## 182. Adjudication where public examination adjourned sine die

Where the public examination of a debtor is adjourned sine die and the debtor has not previously been adjudged bankrupt, the Court may forthwith, and without any notice to the debtor, adjudge him bankrupt.

### 183. Notice of order of adjudication

When a debtor is adjudged bankrupt, notice thereof shall be advertised and gazetted, in the like manner as is provided in the case of a receiving order. Form 96

## 184. Order annulling adjudication

(1) When an adjudication is annulled the Registrar shall forthwith cause the amendment to be gazetted.

(2) The order of the Court annulling an adjudication shall not relieve a trustee from the liability imposed on trustees by the Act and Rules to account to the Court for all transactions of such trustee in connexion with the estate.

### Discharge

### 185. Application

A bankrupt intending to apply for his discharge shall produce to the Registrar a certificate from the receiver specifying the number of his creditors of whom the receiver has notice (whether they have proved or not). The Registrar shall, not less than twenty-eight days before the day appointed for hearing the application, give notice of the time and place of the hearing of the application to the receiver and trustee. The Registrar shall forthwith cause a copy of such notice to be gazetted, and the receiver shall send a copy of such notice to each creditor not less than fourteen days before the day so appointed. Form 102, Form 103

## 186. Appeals

An appeal to the Court of Appeal shall lie at the instance of the receiver, and at the instance of the trustee (if any), from any order of the Court made upon such an application.

#### 187. Report of receiver

In every case of an application by a bankrupt for his discharge, the report of the receiver shall be filed not less than seven days before the time fixed for hearing the application.

#### 188. Evidence in answer to report

Where a bankrupt intends to dispute any statement with regard to his conduct and affairs contained in the receiver's report, he shall, not less than two days before the hearing of the application for discharge, give notice in writing to the receiver, specifying the statements in the report, if any, which he proposes at the hearing to dispute. Any creditor who intends to oppose the discharge of a bankrupt on grounds other than those mentioned in the receiver's report shall give notice of the intended opposition, stating the grounds thereof, to the receiver and to the bankrupt not less than two days before the hearing of the application.

### 189. Costs of application

A bankrupt shall not be entitled to have any of the costs of or incidental to his application for his discharge allowed to him out of his estate. This rule shall not apply to costs of a successful appeal from a refusal to grant a discharge.

### 190. Orders conditional on consent to judgment

(1) Where the Court grants an order of discharge conditionally upon the bankrupt consenting to judgment being entered against him by the receiver or trustee for the balance or any part of the balance of the debts provable under the bankruptcy which is not satisfied at the date of his discharge, the order of discharge shall not be signed, completed, or delivered out until the bankrupt has given the required consent. Forms 109, 110

(2) If the bankrupt does not give the required consent within one month of the making of the conditional order, the Court may, on the application of the receiver or trustee, revoke the order or make such other order as the Court may think fit.

### 191. Order

The order of the Court made on an application for discharge shall be dated of the day on which it is made, and shall take effect from the day on which the order is drawn up and signed; but such order shall not be delivered out or gazetted until after the expiration of the time allowed for appeal, or, if an appeal be entered, until after the decision of the Court of Appeal thereon. Forms 104, 108

## 192. Gazetting order

When the time for appeal has expired or, as the case may be, when the appeal has been decided by the Court of Appeal, the Registrar shall forthwith cause a notice of the order to be gazetted. Form 176 (9)

## 193. Execution on judgment in case of conditional discharge

(1) An application by the receiver or trustee for leave to issue execution on a judgment entered pursuant to a conditional order of discharge shall be in writing and shall state shortly the grounds on which the application is made. When the application is lodged, the Registrar shall fix a day for the hearing.

(2) The receiver or trustee shall give notice of the application to the debtor not less than eight days before the day appointed for the hearing, and shall at the same time furnish him with a copy of the application.

## 194. Accounts of after-acquired property

When a bankrupt is discharged subject to the condition that judgment shall be entered against him, or subject to any other condition as to his future earnings or after-acquired property, it shall be his duty until such judgment or condition is satisfied, from time to time to give the receiver such information as he may require with respect to his earnings and after-acquired property and income, and not less than once a year to file in the Court a statement showing the particulars of any property or income he may have acquired subsequent to his discharge.

### 195. Verification of statements of after-acquired property

Any statement of after-acquired property or income filed by a bankrupt whose discharge has been granted subject to conditions, shall be verified by affidavit, and the receiver or trustee may require the bankrupt to attend before the Court to be examined on oath with reference to the statements contained in such affidavit, or as to his earnings, income, after-acquired property, or dealings. Where a bankrupt neglects to file such affidavit or to attend the Court for examination when required so to do, or properly to answer all such questions as the Court may put or allow to be put to him, the Court may, on the application of the receiver or trustee, rescind the order of discharge. Form 111

### 196. Application for modification of order

Where after the expiration of two years from the date of any order made upon a bankrupt's application for discharge, the bankrupt applies to the Court to modify the terms of the order on the ground that there is no reasonable probability of his being in a position to comply with the terms of such order, he shall give fourteen days' notice of the day fixed for hearing the application to the receiver and to all his creditors.

#### **Meetings of Creditors**

## 197. Notice to debtor of first meeting

The receiver shall give three days' notice to the debtor of the time and place appointed for the first meeting of creditors. The notice may be either delivered to him personally or sent to him by prepaid post letter, as may be convenient. It shall nevertheless be the duty of the debtor to attend such first meeting although the notice is not sent to or does not reach him. Form 41

#### 198. Notice to creditors of first meeting

The receiver shall fix the day for the first meeting and shall forthwith cause the same to be gazetted, and shall also give notice to the creditors.

#### 199. Notices of other meetings

The notices of subsequent meetings shall be issued to creditors by the receiver or trustee. Where no special time is prescribed the notices shall be sent off not less than three days before the day appointed for the meeting. Form 48

#### 200. Non-reception of notice by creditors

Where a meeting of creditors is called by notice, the proceedings had and resolutions passed at such meeting shall, unless the Court otherwise orders, be valid, notwithstanding that some creditors shall not have received the notice sent to them.

#### 201. Notice to receiver

Where a trustee summons a meeting of creditors he shall send the receiver a copy of the notice convening the meeting.

### 202. Proof of notice

A certificate by the receiver or other officer of the Court or by the clerk of any such person, or an affidavit by the trustee or his legal practitioner or by the clerk of either of such persons, that the notice of any meeting of creditors or sitting of the Court has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed. Form 49

#### 203. Copy of resolution for Registrar

The receiver, or as the case may be, the trustee, shall send to the Registrar a copy, certified by him, of every resolution of a meeting of creditors.

### 204. Adjournment

Where a meeting of creditors is adjourned, the adjourned meeting shall be held at the same place as the original place of meeting, unless in the resolution for adjournment another place is specified.

#### 205. Quorum

In calculating a quorum of creditors present at a meeting, those persons only who are entitled to vote at the meeting shall be reckoned.

#### Proof of Debts

#### 206. Swearing proof

An affidavit of proof of debt may be sworn before the receiver or any clerk of the receiver duly authorized by the Court in that behalf.

#### 207. Workmen's wages

In any case in which it shall appear from the debtor's statement of affairs that there are numerous claims for wages by workmen and others employed by the debtor, it shall be sufficient if one proof for all such claims is made either by the debtor, or his foreman, or some other person on behalf of all such creditors. Such proof shall have annexed thereto, as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said workmen and others. Form 57

#### 208. Production of bills of exchange and promissory notes

Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the debtor is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the receiver, chairman of a meeting, or trustee, as the case may be, before the proof can be admitted either for voting or for dividend.

### 209. Time for lodging proofs

A proof intended to be used at the first meeting of creditors shall be lodged with the receiver not later than the time mentioned for that purpose in the notice convening the meeting, which time shall not be earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before, the day appointed for such meeting.

A proof intended to be used at an adjournment of the first meeting (if not lodged in time for the first meeting) must be lodged not less than twenty-four hours before the time fixed for holding the adjourned meeting.

### 210. Transmission of proofs to trustee

Where a trustee is appointed in any matter, all proofs of debts that have been received by the receiver shall be handed over to the trustee, but the receiver shall first make a list of such proofs and take a receipt thereon from the trustee for such proofs.

## 211. Proofs to be sent by receiver to Registrar

The receiver, where no other trustee is appointed, shall, forthwith after the final payment has been made in a composition or scheme of arrangement duly approved by the Court, and in a bankruptcy after a final dividend has been declared, send to the Registrar all proofs tendered in the proceeding, with a list thereof certified to be correct, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected.

## 212. Proofs to be sent by trustee to Registrar

Every trustee in bankruptcy, other than the receiver, shall, on the first day of every month, send to the Registrar a certified list of all proofs, if any, received by him from the receiver, or otherwise tendered during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and in the case of proofs admitted or rejected, he shall transmit the proofs themselve for the purpose of being filed.

## 213. Procedure where creditor appeals

The receiver, or, as the case may be, the trustee, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof with the Registrar, with a memorandum thereon of his disallowance thereof. After the appeal has been heard by

the Court, the proof, unless wholly disallowed, shall be given back to the receiver or trustee, as the case may be.

## 214. Time for admission or rejection of proofs by receiver

Subject to the power of the Court to extend the time, the receiver, as trustee, not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend, as the time within which such proofs must be lodged, shall, in writing, either admit or reject wholly or in part every proof lodged with him, or require further evidence in support thereof.

### 215. Time for admission or rejection of proofs by trustee

Subject to the power of the Court to extend the time, the trustee, other than the receiver, within twenty-eight days after receiving a proof which has not been previously dealt with by the receiver, shall, in writing, either admit or reject it wholly or in part, or require further evidence in support thereof:

Provided that where the trustee has given notice of his intention to declare a dividend, he shall, within fourteen days after the date mentioned in such notice as the latest date up to which proofs must be lodged, examine and in writing admit or reject every proof which has not been already admitted or rejected, and give notice of his decision rejecting a proof wholly or in part to the creditor affected thereby.

### 216. Notice of admission of proof

Where a creditor's proof has been admitted, the notice of dividend shall be sufficient notification to such creditor of such admission.

#### 217. Appeal from rejection of proof

Subject to the power of the Court to extend the time, no application to reverse or vary the decision of the receiver or trustee in rejecting a proof shall be entertained after the expiration of twenty-one days from the date of the decision complained of.

## 218. Costs of appeal from decision as to proofs

The receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

#### **Proxies and Voting Letters**

## 219. Form and filing of proxies

(1) A proxy shall be lodged with the receiver or trustee not later than four o'clock on the day before the meeting or adjourned meeting at which it is to be used. Forms 59, 60

(2) As soon as a proxy or voting letter has been used it shall be filed with the proceedings in the matter.

### 220. Signature of proxy

A proxy given by a creditor shall be deemed to be sufficiently executed if it is signed by any person in the employ of the creditor having a general authority to sign for such creditor, or by the authorized agent for such creditor if resident abroad; such authority shall be in writing, and shall be produced to the receiver, if required.

### 221. Filling in when creditor blind, etc.

The proxy of a creditor blind or incapable of writing may be accepted if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; and provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request of the creditor and in his presence before he attached his signature or mark.

### 222. Minors not to be proxies

No person shall be appointed a general or special proxy who is a minor.

### Dividends

## 223. Notice of intention to declare dividend

(1) Not more than two months before declaring a dividend, the trustee shall give notice of his intention to do so to such of the creditors mentioned in the bankrupt's statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall be not less than fourteen days from the date of such notice. The trustee shall also cause such notice to be gazetted. Forms 157, 158, 160, 162

(2) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date upon which proof may be lodged, appeals against the decision of the receiver or trustee rejecting a proof, such appeal shall subject to the power of the Court to extend the time in special cases, be commenced, and notice thereof given to the receiver or trustee within seven days from the date of the notice of the decision against which the appeal is made, and the receiver or trustee shall in such case make provision for the dividend upon such proof, and the probable costs of such appeal in the event of the proof being admitted. Where no appeal has been commenced within the time specified in this rule, the trustee shall exclude all proofs which have been rejected from participation in the dividend.

(3) Immediately after the expiration of the time fixed by this rule for appealing against the decision of the trustee, he shall proceed to declare a dividend, and shall cause the same to be gazetted,
and shall also send a notice of dividend to each creditor whose proof has been admitted, accompanied by a statement showing the position of the estate.

(4) If it becomes necessary, in the opinion of the trustee and the committee of inspection, to postpone the declaration of the dividend beyond the prescribed limit of two months, the trustee shall cause a fresh notice of his intention to declare a dividend to be forthwith gazetted; but it shall not be necessary for such trustee to give a fresh notice to such of the creditors mentioned in the bankrupt's statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

224. Production of bills, notes, etc.

Subject to the provisions of section 70 of the Bills of Exchange Act, or of any enactment amending or substituted for the same, and subject to the power of the Court in any other case on special grounds to allow production to be dispensed with, every bill of exchange, promissory note, or other negotiable instrument or security, upon which proof has been made, shall be exhibited to the trustee before payment of dividend thereon, and the amount of dividend paid shall be endorsed on the instrument. Cap. 48:02

225. Dividend may be sent by post

The amount of the dividend may, at the request and risk of the creditor, be transmitted to him by post.

226. Payment of dividends to a nominee

If a person to whom dividends are payable desires that they shall be paid to some other person, he may lodge with the trustee a request to that effect which shall be a sufficient authority for payment of the dividend to the person therein named.

Appropriation of Pay, Salary, Pensions, etc.

227. Notice to bankrupt of application

When a trustee intends to apply to the Court for an appropriation order under section 52 of the Act, he shall give to the bankrupt notice of his intention so to do. Such notice shall specify the time and place fixed for hearing the application, and shall state that the bankrupt is at liberty to show cause against such order being made. Form 140

228. Notice to head of department

When the application is made under section 52 (1) of the Act, a copy of the proposed order shall be sent by the Registrar to the head of the department under which the pay or salary is enjoyed, and the application shall stand adjourned until the consent of such head of department is obtained as required by the Act.

#### 229. Copy of order to department

Where an order is made under section 52 (2) of the Act, the Registrar shall give to the trustee a sealed copy of the order, who shall communicate the same to the head of the department or other person under whom the pay, half-pay, salary, income, emolument, pension, or compensation is enjoyed.

## 230. Review of order

Where an order has been made for the payment by a bankrupt, or by his employer for the time being, of a portion of his income or salary, the bankrupt may, upon his ceasing to receive a salary or income of the amount he received when the order was made, apply to the Court to rescind the order or to reduce the amount ordered to be paid by him to the trustee.

## Disclaimer of Lease

# 231. Disclaimer of lease

(1) A lease may be disclaimed without the leave of the Court in any of the following cases— Forms 145, 147, 150, 151

(a) where the bankrupt has not sublet the demised premises or any part thereof or created a mortgage or charge thereon; and

(i) the rent reserved and real value of the property leased are less than  $\pm 20$  per annum; or

(ii) the estate is administered under the provisions of section 117 of the Act; or

(iii) the trustee serves the lessor with notice of his intention to disclaim, and the lessor does not within seven days after the receipt of such notice give notice to the trustee requiring the matter to be brought before the Court;

(b) where the bankrupt has sublet the demised premises or created a mortgage or charge upon the lease, and the trustee serves the lessor and the sublessee or the mortgagees with a notice of his intention to disclaim, and neither the lessor nor the sublessee nor the mortgagees, or any of them, within fourteen days after the receipt of such notice require or requires the matter to be brought before the Court.

(2) Except as provided by this rule the disclaimer of a lease without leave of the Court shall be void.

# 232. Procedure on disclaimer

(1) Where the trustee disclaims a leasehold interest, he shall forthwith file the disclaimer with the proceedings in the Court; and the disclaimer shall contain particulars of the interest disclaimed, and a statement of the persons to whom notice of disclaimer has been given. Until the disclaimer is filed by the trustee the disclaimer shall be inoperative.

(2) Where, in pursuance of notice by the trustee of his intention to disclaim a leasehold interest, the lessor, sublessee, or mortgage requires the trustee to apply to the Court for leave to disclaim, the costs of the lessor, sublessee, or mortgagee shall not be allowed out of the estate of the bankrupt, except in cases in which the Court is satisfied that such application was necessary in order to do justice between the parties.

(3) A disclaimer made without leave of the Court under the preceding rule shall not be void or otherwise affected on the ground only that the notice required by such rule has not been given to some person who claims to be interested in the demised property.

(4) Where any person claims to be interested in any part of the property of the bankrupt burdened with onerous covenants, he shall, at the request of the receiver or trustee, furnish a statement of the interest so claimed by him.

Proceeding by or against Firm

## 233. Attestation of signature of firm

Where any notice, declaration, petition, or other document requiring attestation is signed by a firm of creditors or debtors in the firm name, the partner signing for the firm shall add also his own signature, e.g., "Brown and Co., by James Green, a partner in the said firm".

## 234. Service on firm

Any notice or petition for which personal service is necessary shall be deemed to be duly served on all the members of a firm if it is served at the principal place of business of the firm in Malawi, on any one of the partners, or upon any person having at the time of service the control or management of the partnership business there.

# 235. Individual trading as of firm

The last preceding rule shall, so far as the nature of the case will admit, apply in the case of any person carrying on business within the jurisdiction in a name or style other than his own.

# 236. Debtor's petition by firm

Where a firm of debtors file a declaration of inability to pay their debts or a bankruptcy petition, the same shall contain the names in full of the individual partners, and if such declaration or petition is signed in the firm name the declaration or petition shall be accompanied by an affidavit made by the partner who signs the declaration or petition, showing that all the partners concur in the filing of the same.

# 237. Receiving order against firm

A receiving order made against a firm shall operate as if it were a receiving order made against each of the persons who at the date of the order is a partner in that firm.

#### 238. Statement of affairs

In cases of partnership the debtors shall submit a statement of their partnership affairs, and each debtor shall submit a statement of his separate affairs.

## 239. Adjudication against partners

No order of adjudication shall be made against a firm in the firm name but it shall be made against the partners individually.

## 240. First meeting

Where a receiving order is made against a firm, the joint and separate creditors shall collectively be convened to the first meeting of creditors.

# 241. Acceptance of composition, etc., by joint and separate creditors

The joint creditors, and each set of separate creditors, may severally accept compositions or schemes of arrangement. So far as circumstances will allow, a proposal entertained by joint creditors may be approved in the prescribed manner, notwithstanding that the proposals or proposal of some or one of the debtors made to their or his separate creditors may not be accepted.

## 242. Voting on composition

Where proposals for compositions or schemes are made by a firm, and by the partners therein individually, the proposal made to the joint creditors shall be considered and voted upon by them apart from every set of separate creditors; and the proposal made to each separate set of creditors shall be considered and voted upon by such separate set of creditors, apart from all other creditors. Such proposals may vary in character and amount. Where a composition or scheme is approved, the receiving order shall be discharged only so far as it relates to the estate, the creditors of which have accepted the composition or scheme.

#### 243. Adjudication: trustee

On the adjudication in bankruptcy of a partnership, the trustee appointed by the joint creditors, or by the Court under section 21 (5) or section 77 (3) of the Act, as the case may be, shall be the trustee of the separate estates. Each set of creditors may appoint its own committee of inspection, but if any separate set of creditors does not appoint a separate committee, the committee (if any) appointed by the joint creditors shall be deemed to have been appointed also by such separate creditors.

#### 244. Separate firms

If any two or more of the members of a partnership constitute a separate and independent firm, the creditors of such last-mentioned firm shall be deemed to be a separate set of creditors, and to be on the same footing as the separate creditors of any individual member of the firm. And where any surplus shall arise upon the administration of the assets of such separate or independent firm, the same shall be

carried over to the separate estates of the partners in such separate and independent firm according to their respective rights therein.

## 245. Apportionment of trustee's remuneration

Where joint and separate estates are being administered, the remuneration of the trustee in respect of the administration of the joint estate may be fixed by the creditors, or (if duly authorized) by the committee of inspection of such joint estate, and the remuneration of the trustee in respect of the administration of any separate estate may be fixed by the creditors, or (if duly authorized) by the committee of inspection of such separate estate.

## Lunatics

# 246. Lunatics

(1) Where it appears to the Court that any debtor or creditor or other person who may be affected by any proceeding under the Act or Rules is a lunatic, not so found by inquisition (hereinafter called "the lunatic"), the Court may appoint such person as it may think fit to appear for, represent, or act for, and in the name of the lunatic, either generally, or in and for the purpose of any particular application or proceeding, or the exercise of any particular rights or powers which under the Act and Rules the lunatic might have exercised if he had been of sound mind. The appointment may be made by the Court either on an application made as hereinafter mentioned, or, if the Court thinks fit to do so, without any previous application.

(2) An application to the Court to make an appointment under this rule may be made by any person who has been appointed by any court having jurisdiction so to do, to manage the affairs or property of or to represent the lunatic, or by any relative or friend of the lunatic who may appear to the Court to be a proper person to make the application, or by the receiver.

(3) The application may be made ex parte and without notice, but in any case in which the Court shall think it desirable the Court may require such notice of the application as it shall think necessary to be given to the receiver or trustee (if any), or to the petitioning creditor, or to the person alleged to be a lunatic, or to any other person, and for that purpose may adjourn the hearing of the application.

(4) Where the application is made by some person other than the receiver, it shall be supported by an affidavit of a duly registered medical practitioner as to the physical and mental condition of the lunatic. Where the application is made by the receiver, it may be supported by a report of the receiver, the contents of which shall be received as prima facie evidence of the facts therein stated.

(5) Where a person has been appointed under this rule, any notice under the Act and Rules served on or given to such person shall have the same effect as if the notice had been served on or given to the lunatic.

#### Small Bankruptcies

## 247. Small estates

Where an estate is ordered to be administered in a summary manner under section 117 of the Act, the Act and Rules shall, subject to any special direction of the Court, be modified as follows—

(a) there shall be no advertisement of any proceedings in a local paper unless the Court otherwise directs;

(b) the title of every document in the proceedings subsequent to the making of the order for summary administration shall have inserted thereon the words "Summary Case";

(c) if no proposal for a composition or scheme is lodged with the receiver within the time specified for that purpose in section 18 of the Act, or within such time thereafter as the receiver may fix, or if the receiver satisfies the Court that the debtor has absconded, or that the debtor does not intend to propose a composition or scheme, or that the composition or scheme proposed is not reasonable or calculated to benefit the general body of creditors, the Court may forthwith adjudge the debtor bankrupt. A report by the receiver under this paragraph shall be prima facie evidence of the facts therein stated;

(d) if during or at the conclusion of the public examination of the debtor it appears to the Court that a composition or scheme ought not to be sanctioned by reason of the conduct of the debtor, the Court may forthwith adjudge the debtor bankrupt;

(e) all payments shall, unless the Court otherwise orders, be made into and out of such bank as may be directed by the Court;

(f) the first meeting of creditors may, where it is expedient, be held on the day appointed for the public examination, or on any other day fixed by the receiver. If a quorum of creditors be not present, it shall not be necessary to adjourn the meeting;

(g) meetings of creditors shall, unless the receiver for special reasons otherwise determines, be held in the office of the receiver;

(h) on an application by a bankrupt for his discharge the certificate of the receiver shall not include, nor shall notices be sent to, creditors whose debts do not exceed £2;

(i) in lieu of the copy of the account to be filed with the Court, as prescribed by section 90 (4) of the Act, a statement showing the position of the estate analogous, as nearly as may be, to that prescribed by Form 168 shall be filed;

(j) notices of meetings, other than of first meetings, or of sittings of the Court, shall only be sent to creditors whose debts or claims exceed the sum of £2;

(k) the time mentioned in sections 63 (2) of the Act shall be extended to six months;

(I) the estate shall be realized with all reasonable despatch, and, where practicable, distributed in a single dividend when realized;

(m) the costs or charges payable out of the debtor's estate or any person other than of a legal practitioner may be paid and allowed without taxation where such costs or charges are within the prescribed scale:

Provided that the receiver may require such costs or charges to be taxed.

## Administration of Estate of Deceased Insolvents

248. Verification of petition

A creditor's petition and a petition by the legal personal representative of the deceased under section 118 of the Act shall be verified by affidavit. Form 10

#### 249. Gazetting

Where an administration order under section 118 of the Act is made, such order shall be gazetted and advertised in the same manner in all respects as an order of adjudication is gazetted and advertised.

## 250. Service

(1) The petition shall, unless the Court otherwise directs, be served on each executor who has proved the will, or, as the case may be, on each person who has taken out letters of administration. The Court may also, if the Court thinks fit, order the petition to be served on any other person.

(2) Service shall be proved in the same way as is provided in the case of an ordinary creditor's petition, and the petition shall be heard in the like manner.

#### 251. Duties of executor, etc.

When an administration order under section 118 of the Act has been made, it shall be the duty of the executor or legal personal representative of the deceased debtor to lodge with the receiver forthwith (in duplicate) an account of the dealings with, and administration of (if any), the deceased's estate by such executor or legal personal representative, and such executor or legal personal representative shall also furnish forthwith in duplicate a list of the creditors, and a statement of the assets and liabilities, and such other particulars of the affairs of the deceased as may be required by the receiver. Every account, list, and statement to be made under this rule shall be made and verified as nearly as may be in accordance with the practice for the time being of the High Court in suits for the administration of the estates of deceased persons.

The expense of preparing, making, verifying, and lodging any account, list, and statement under this rule shall, after being taxed, be allowed out of the estate on production of an office copy of the taxed bill.

#### 252. Executor de son tort

In any case in which an administration order under section 118 of the Act has been made, and it appears to the Court, on the report of the receiver, that no executor or legal personal representative exists, the account, list, and statement mentioned in the last preceding rule shall be made, verified, and lodged by such person as in the opinion of the Court, upon such report, may have taken upon himself the administration of, or may otherwise have intermeddled with, the property of the deceased, or any part thereof.

253. Meetings of creditors, trustees, etc.

In proceedings under an order for the administration of the estate of a person dying insolvent, where a meeting of creditors is summoned for the appointment of a trustee—

(a) the provisions of the First Schedule to the Act, relating to the mode of summoning a meeting of creditors and to the persons entitled to a vote at a meeting;

(b) the provisions of these Rules, which refer to creditors, meetings of creditors, trustees, and committees of inspection,

shall so far as applicable, apply as if the proceedings were under a receiving order and order of adjudication.

## 254. Modifications where summary order made

Where under an administration order under section 118 of the Act the estate is ordered to be administered in a summary way, the modifications imposed by section 117 of the Act and rule 247 shall not apply, but in lieu thereof the modifications following shall apply—

(a) the receiver shall be trustee under the order unless the creditors at any time by special resolution resolve that some person other than the receiver shall be appointed trustee, in which case the administration shall proceed as if an order for the summary administration had not been made;

(b) there shall be no committee of inspection, but the Court shall exercise the powers of a committee of inspection;

(c) there shall be no advertisement of any proceedings in a local paper unless the Court otherwise directs;

(d) the title of every document in the proceedings subsequent to the making of the order for summary administration shall have inserted thereon the words "Summary Case";

(e) all payments shall, unless the Court otherwise orders, be made into and out of such bank as may be directed by the Court;

(f) meetings of creditors shall, unless the receiver for special reasons otherwise determines, be held in the office of the receiver;

(g) in lieu of the copy of the account to be filed with the Court, as prescribed by section 90 (4) of the Act, a statement showing the position of the estate analogous, as nearly as may be, to that prescribed by Form No. 168 shall be filed;

(h) notices of meetings, other than of first meetings, or of sittings of the Court, shall only be sent to creditors whose debts or claims exceed the sum of £2;

(i) the time mentioned in section 63 (2) of the Act shall be extended to six months;

(j) the estate shall be realized with all reasonable despatch, and, where practicable, distributed in a single dividend when realized;

(k) the costs, or charges payable out of the debtor's estate, of any person other than of a legal practitioner may be paid and allowed without taxation where such costs or charges are within the prescribed scale:

Provided that the receiver may require such costs or charges to be taxed.

# PART IV

RECEIVER, TRUSTEES, SPECIAL MANAGERS, SECURITY BY TRUSTEE OR SPECIAL MANAGER, ACCOUNTS AND AUDIT, UNCLAIMED FUNDS

# 255. Duties as to debtor's statement of affairs

(1) As soon as the receiver receives notice that he has been appointed to the receivership of an estate, he shall furnish the debtor with a copy of instructions for the preparation of his statement of affairs. Form 31

(2) The receiver or some person deputed by him shall also forthwith hold a personal interview with the debtor for the purpose of investigating his affairs and determining whether the estate should be administered under section 117 of the Act.

(3) It shall be the duty of the debtor to attend at such time and place as the receiver may appoint.

256. Subsistence allowance to debtor

Subject to any general or special directions of the Court, the receiver, while in the possession of the property of a debtor, may make him such allowance out of his property for the support of himself and his family as may be just. In fixing the amount of such allowance the assistance rendered by the debtor in the management of his business or affairs may be taken into account.

257. Special report as to person employed to assist debtor

Whenever, under the powers given by section 73 of the Act, the receiver employs any person to assist the debtor in the preparation of his statement of affairs, he shall forthwith report the matter to

the Court in writing, justifying his action therein, and specifying the remuneration (if any) to be allowed to such person.

#### 258. Use of proxies by deputy

Where the receiver holds any proxies and cannot conveniently attend any meeting of creditors, at which such proxy or proxies might be used, he may depute some person in his employment or under his official control, or some Government officer, by writing under his hand, to attend such meeting and use such proxies on his behalf and in such manner as he may direct.

## 259. Personal performance of duties

The Court may, by general or special directions, determine what acts or duties shall be performed by the receiver in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ or under his official control.

## 260. Registrar to act in sudden emergency

In any case of sudden emergency, where the receiver is incapable of acting, any act or thing required or authorized to be done by the receiver may be done by the Registrar.

## 261. Removal of special manager

Where the receiver appoints a special manager he may at any time remove him if his employment seems unnecessary or unprofitable to the estate and he shall remove him, if so required by a special resolution of the creditors.

# 262. Mode of application to Court

Applications by the receiver to the Court may be made personally, and without notice or other formality; but the Court may in any case order that an application be renewed in a formal manner, and that such notice thereof be given to any person likely to be affected thereby as the Court may direct.

#### 263. Evidence on application by receiver

Where for the purposes of any application to the Court by the receiver for directions, or to adjudge a debtor bankrupt, or for leave to disclaim a lease, or for an extension of time to apply for leave to disclaim a lease, or for an order to take criminal proceedings against a bankrupt, or to commit a bankrupt, it is necessary that evidence be given by him in support of such application, such evidence may be given by a report of the receiver to the Court, and need not be given by affidavit, and any such report of the receiver to the Court shall be received by the Court as prima facie evidence of the matters reported upon.

#### 264. Application for directions

In any case of doubt or difficulty or in any matter not provided for by the Act or these Rules relating to any proceeding in Court, the receiver may apply to the Court for directions.

#### 265. Duties where no assets

Where a debtor against whom a receiving order has been made has no available assets, the receiver shall not be required to incur any expense in relation to his estate without the express directions of the Court.

#### 266. Accounting by receiver

(1) Where a composition or scheme is sanctioned by the Court, the receiver shall account to the debtor, or, as the case may be, to the trustee under the composition or scheme.

(2) Where a debtor is adjudged bankrupt, and a trustee is appointed, the receiver shall account to the trustee in the bankruptcy.

(3) If the debtor, or, as the case may be, the trustee, is dissatisfied with the account, or any part thereof, he may report the matter to the Court, which shall take such action (if any) thereon as it may deem expedient.

(4) The provisions of this Part of these Rules as to trustees and their accounts shall not apply to the receiver when acting as trustee, but he shall account in such manner as the Court may from time to time direct.

#### 267. Trading account of debtor

The debtor shall, on the request of the receiver, furnish him with trading and profit and loss accounts, and a cash and goods account for such period not exceeding two years prior to the date of the receiving order as the receiver shall specify:

Provided that the debtor shall, if ordered by the Court so to do, furnish such accounts as the Court may order for any longer period. If the debtor fails to comply with the requirements of this rule the receiver shall report such failure to the Court, and the Court shall take such action on such report as the Court shall think just.

#### 268. Liability for costs, expenses, and damages

The following provisions shall apply to every case in which proceedings are taken either by action, motion, or in any other manner, against the receiver in respect of anything done or default made by him, when acting, or in the bona fide and reasonable belief that he is acting, in pursuance of the Act or in execution of the powers given to a receiver by the Act—

(a) subject to the provisions of the next following paragraph, the costs, damages, and expenses which the receiver may have to pay, or to which he may be put under such proceedings, shall be paid out of the estate of the debtor;

(b) as soon as any such proceedings are commenced it shall be the duty of the receiver to report the same to the Minister, who shall determine whether or not such proceedings shall be resisted or defended;

(c) the receiver shall not, unless the Court shall otherwise order, be entitled to be paid out of the estate any costs or expenses which he may have to pay or bear in consequence of resisting or defending any such proceedings, unless the Minister shall have determined that such proceedings shall be resisted or defended;

(d) the receiver shall, if necessary, apply to the Court for any reasonable adjournment of any motion or other summary proceedings before it, pending the determination of the Minister upon the question whether such motion or proceedings should be resisted or defended. And the Court may grant an adjournment upon such terms as it shall think fit;

(e) if such proceedings are commenced before the appointment of a trustee by the creditors, or before the approval of a composition or scheme, the receiver may, before putting the trustee appointed by the creditors, or in the case of a composition the debtor himself, into possession of the debtor's property, retain the whole or some part of the debtor's estate according as the Minister shall in each case direct, to meet the damages, costs or expenses which the receiver may have to pay or bear in consequence of the said proceedings. If such proceedings are commenced after the appointment of a trustee by the creditors, or after the approval of a composition or scheme, the receiver shall forthwith give notice of such proceedings to the trustee or other person in whom the estate of the debtor may be vested (including where necessary the debtor himself), and the estate of the debtor shall, as from the date of such notice, be deemed to be charged with the payment of the said damages, costs, and expenses.

# Trustees

# 269. Notice of appointment

Where the appointment of a trustee is certified, the trustee shall forthwith insert notice of his appointment in the Gazette and in a local paper. The expense of such gazetting and notice shall be borne by the trustee, and may be charged by him to the estate. Form 113

# 270. Notice of objection

(1) Where the receiver objects to the appointment of a trustee, and is required by a majority in value of the creditors to notify the objection to the Court, the receiver on receipt of the requisition shall forthwith transmit a copy thereof to the Registrar, who shall fix a time for the hearing of the matter.

(2) Notice of the time fixed for hearing the matter shall be given to the receiver, to the person objected to, and to the person objecting.

(3) At the hearing the person objected to, the receiver, and every creditor shall be entitled to be heard.

## 271. Trustee not accounting under section 134

It shall be sufficient objection to the appointment of a trustee that he has not complied with the requirements of section 134 of the Act, or of any order of the Court made thereunder in respect of any matter as to which he was under an obligation to comply.

# 272. Removal of trustee

It shall be a sufficient reason for refusing to certify the appointment of a person as trustee that in any other proceeding under the Act such person has either been removed under section 93 (2) of the Act from the office of trustee, or has failed or neglected, without good cause shown by him, to render his accounts for audit for two months after the date by which the same should have been rendered.

## 273. Failing to keep up security

Where a trustee or special manager has given security in the prescribed manner, but fails to keep up such security, or, if called upon to do so, to increase such security, the Court may, if it thinks fit, remove him from his office.

## 274. Notice of resignation

A trustee intending to resign his office shall call a meeting of creditors to consider whether his resignation shall be accepted or not, and shall give not less than seven days' notice of the meeting to the receiver.

# 275. Remuneration of trustee

The creditors, or, as the case may be, the committee of inspection, in voting the remuneration of the trustee, shall distinguish between the commission or percentage payable on the amount realized, and the commission or percentage payable on the amount distributed in dividend.

#### 276. Limit of remuneration

Except as provided by the Act or Rules, no trustee shall be entitled to receive out of the estate any remuneration for services rendered to the estate, except the remuneration to which under the Act and Rules he is entitled as trustee.

# 277. Remuneration of trustee appointed by the Court

In any case in which, under the provisions of section 21 (5) or section 77 (3) of the Act, the Court appoints a trustee, the trustee shall receive out of the estate such remuneration as the Court shall determine.

#### 278. Trustee carrying on business

(1) Where the trustee carries on the business of the debtor, he shall keep a distinct account of the trading, and shall incorporate in the cash book the total weekly amount of the receipts and payments on such trading account.

(2) The trading account shall from time to time, and not less than once every month, be verified by affidavit, and the trustee shall thereupon submit such account to the committee of inspection (if any), or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the same.

#### 279. Application for release

A trustee before making application to the Court for his release shall give notice of his intention so to do to all the creditors of the debtor who have proved their debts, and to the debtor, and shall send with such notice a summary of his receipts and payments as trustee: Forms 170 and 156

Provided that where such application is made upon the trustee ceasing to act by reason of a composition having been approved under section 23 of the Act, such notice and summary shall be sent to the debtor only.

## 280. Gazetting of release

Where the Court has granted to a trustee his release, a notice of the order granting such release shall be gazetted. The trustee shall be required to provide the requisite stamp fee, which may be charged to the estate.

# 281. Delivery of books, etc. on release of trustee

The release of a trustee shall not take effect unless and until he has delivered over to the receiver all the books, papers, documents, and accounts which by the Rules he is required to deliver over on his release.

#### 282. Meeting to consider removal of trustee

Where one-sixth in value of the creditors desire that a general meeting of the creditors may be summoned to consider the propriety of removing the trustee, such meeting may be summoned by a member of the committee of inspection, or by the receiver, on the deposit of a sum sufficient to defray the expenses of summoning such meeting.

#### 283. Payments out of Bankruptcy Estates Account

All payments out of the Bankruptcy Estates Account shall be made in such manner as the receiver may from time to time direct.

284. Application for directions

Where a trustee desires to apply to the Court for directions in any matter, he shall file an application, and the Court shall then hear the application or fix a day for hearing it and direct the trustee to apply by motion. Form 154

## 285. Copy of trustee's accounts

Any creditor who has proved his debt may apply to the trustee for a copy of the accounts (or any part thereof) relating to the estate as shown by the cash book up to date, and on paying for the same at the rate of three pence per folio he shall be entitled to have such copy accordingly.

## 286. Statements of accounts to be furnished to creditors

Where in pursuance of section 84 of the Act the receiver or trustee is required to transmit to creditors a statement of the accounts, the cost of furnishing and transmitting such statement shall be calculated at the rate of three pence per folio for each statement where the creditors do not exceed ten, and where the creditors exceed ten, one shilling per folio, for the preparation of the statement and the actual cost of printing. Form 168

## 287. Purchase of part of estate by trustee or committee forbidden

Neither the trustee nor any member of committee of inspection of an estate shall, while acting as trustee or member of such committee, except by leave of the Court, either directly or indirectly, by himself or any partner, clerk, agent, or servant, become purchaser of any part of the estate. Any such purchase made contrary to the provisions of this rule may be set aside by the Court on the application of the receiver or any creditor.

#### 288. Dealings with estate by trustee and committee of inspection

(1) Where the trustee carries on the business of the debtor, he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from his employer (if any), or from any person whose connexion with the trustee is of such a nature as would result in the trustee obtaining any portion of the profit (if any) arising out of the transaction.

(2) No member of a committee of inspection of an estate shall, except under and with the sanction of the Court, directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the bankruptcy, or to receive out of the estate any payment for services rendered by him in connexion with the administration of the estate, or for any goods supplied by him to the trustee for or on account of the estate. If it appears to the Court that any profit or payment has been made contrary to the provisions of this rule, the Court may direct the receiver to disallow such payment or recover such profit, as the case may be, on the audit of the trustee's account.

Sanction of payments to members of committee of inspection

(3) Where the sanction of the Court under this rule to a payment to a member of a committee of inspection for services rendered by him in connexion with the administration of the estate is obtained, the order shall specify the nature of the services, and shall only be given where the service performed is of a special nature. No payment shall, under any circumstances, be allowed to a member of a committee for services rendered by him in the discharge of his duties attaching to his office as a member of such committee.

(4) In any case in which the sanction of the Court is obtained under this rule or under rule 287, the costs of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the debtor's estate.

289. Discharge of costs, etc., before estate handed over to trustee

(1) Where a debtor is adjudged bankrupt, and a trustee is appointed, the receiver shall forthwith put the trustee in possession of all the property of the bankrupt of which the receiver may be possessed:

Provided that such trustee shall have, before the estate is handed over to him by the receiver, discharged any balance due to the receiver on account of fees, costs, and charges properly incurred by him and payable under the Act, and on account of all advances properly made by him in respect of the estate, together with interest on such advances at the rate of four pounds per centum per annum, and shall have discharged or undertaken to discharge all guarantees which have been properly given by the receiver for the benefit of the estate; and the trustee shall pay all fees, costs, and charges of the receiver which may not have been discharged by the trustee before being put into possession of the property of the bankrupt, and whether incurred before or after he has been put into such possession.

(2) The receiver shall be deemed to have a lien on the estate until such balance shall have been paid, and such guarantees and other liabilities have been discharged.

(3) It shall be the duty of the receiver, if so requested by the trustee, to communicate to the trustee all such information respecting the bankrupt and his estate and affairs as may be necessary or conducive to the due discharge of the duties of the trustee.

290. Meetings of creditors to consider the conduct of trustee

Where the receiver is of opinion that any act done by the trustee or any resolution passed by a committee of inspection should be brought to the notice of the creditors, for the purpose of being reviewed or otherwise, the receiver may summon a meeting of creditors accordingly to consider the same, and the expenses of summoning such meeting shall be paid by the trustee out of any available assets under his control.

Special Manager

291. Remuneration of special manager

Where a special manager is appointed, and his remuneration is not fixed by the creditors, he shall be paid such remuneration as the Court shall think fit.

#### 292. Accounts

Every special manager shall account to the receiver, and the special manager's accounts shall be verified by affidavit in the prescribed form, and, when approved by the receiver, the totals of the receipts and payments shall be added to the receiver's accounts.

Security by Trustee or Special Manager

## 293. Standing security

In the case of a trustee or special manager, the following rules as to security shall be observed—

(a) the security shall be given to such officers or persons and in such manner as the Court may from time to time direct;

(b) it shall not be necessary that security shall be given in each separate matter; but security may be given either specially in a particular matter or generally to be available for any matter in which the person giving security may be appointed either as trustee or special manager;

(c) the Court shall fix the amount and nature of such security, and may from time to time, as it thinks fit, either increase or diminish the amount of special or general security which any person has given.

# Accounts and Audit

# 294. Record Book

The receiver, until a trustee is appointed, and thereafter the trustee, shall keep a book to be called the "Record Book" in which he shall record all minutes, all proceedings had, and resolutions passed at any meeting of creditors, or of the committee of inspection, and all such matters as may be necessary to give a correct view of his administration of the estate, but he shall not be bound to insert in the record any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors), nor need he exhibit such document to any person other than a member of the committee of inspection

#### 295. Cash Book

The receiver, until a trustee is appointed, and thereafter the trustee shall keep a book to be called the "Cash Book", which shall be in such form as the receiver may from time to time direct, in which he shall (subject to these Rules as to trading accounts) enter from day to day the receipts and payments made by him.

# 296. Books to be submitted to committee of inspection

The trustee shall submit the Record Book and Cash Book, together with any other requisite books and vouchers, to the committee of inspection (if any) when required, and not less than once every three months.

## 297. Audit of Cash Book

The committee of inspection shall, not less than once every three months, audit the Cash Book and certify therein under their hands the day on which the said book was audited. Form 163

## 298. Audit of trustee's accounts

(1) Every trustee shall, at the expiration of six months from the date of the receiving order, and at the expiration of every succeeding six months thereafter until his release, transmit to the receiver a copy of the Cash Book in duplicate for such period, together with the necessary vouchers and copies of the certificates of audit by the committee of inspection. He shall also forward with the first accounts a summary of the debtor's statement of affairs, in such form as the receiver may direct, showing thereon in red ink the amounts realized, and explaining the cause of non-realization of such assets as may be unrealized.

(2) When the estate has been fully realized and distributed, or, if the adjudication is annulled, the trustee shall forthwith send in his accounts to the receiver, although the six months may not have expired.

(3) The accounts sent in by the trustee shall be certified and verified by him. Form 164

#### 299. Copy of accounts to be filed

When the trustee's account has been audited, the receiver shall certify that the account has been duly passed, and thereupon the duplicate copy, bearing a like certificate, shall be transmitted to the Registrar, who shall file the same with the proceedings in the bankruptcy.

#### 300. Affidavit of no receipts

Where a trustee has not, since the date of his appointment or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the debtor's estate, he shall, at the period when he is required to transmit his estate account to the receiver, forward to the receiver an affidavit of no receipts or payments.

#### 301. Proceedings on resignation, etc., of trustee

Upon the trustee resigning or being released or removed from his office, he shall deliver over to the receiver, or, as the case may be, to the new trustee, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of trustee.

#### 302. Joint and separate estates accounts

Where a receiving order has been made against debtors in partnership, distinct accounts shall be kept of the joint estate and of the separate estate or estates, and no transfer of a surplus from a separate estate to the joint estate, on the ground that there are no creditors under such separate estate, shall be made until notice of the intention to make such transfer has been gazetted.

## 303. Expenses of sales

Where property forming part of a debtor's estate is sold by the trustee through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent on the production of his taxed bill of charges. Every trustee by whom such auctioneer or agent is employed, shall be accountable for the proceeds of every such sale, unless the Court otherwise orders.

## 304. Allowance to debtor

In any case in which, under the provisions of section 59 of the Act, the trustee makes an allowance to a bankrupt out of his property, such allowance, unless the creditors by special resolution determine otherwise shall be in money, and the amount allowed shall be duly entered in the trustee's accounts.

## **Unclaimed Funds**

## 305. Mode of payment into bank

Any person whose duty it is, pursuant to section 134 of the Act, to pay into the Bankruptcy Estates Account any unclaimed funds or dividends, shall first apply to the receiver for a paying-in order. The paying-in order shall be an authority to the bank to receive the payment.

# 306. Application for payment out by party entitled

An application, under section 134 of the Act, for payment out of the Bankruptcy Estates Account of any sum to which any person claims to be entitled, shall be made in such form and manner as the Court may from time to time direct and shall (unless the Court dispenses therewith) be supported by the affidavit of the claimant and such further evidence as the Court may require.

# 307. Accounts by trustees of unclaimed funds

For the purposes of section 134 (1) of the Act, the Court may at any time order the trustee under any bankruptcy, composition, or scheme, to submit to the Court an account verified by affidavit of the sums received and paid by him under or in pursuance of any such bankruptcy, composition, or scheme, and may direct and enforce an audit of the account, and payment of any unclaimed or undistributed moneys arising from the property of the debtor in the hands or under the control of such trustee into the Bankruptcy Estates Account in accordance with the terms of the said subsection.

PART V

#### JUDGMENT DEBTORS

#### 308. Fee on receiving order

(1) When a receiving order is made under section 100 of the Act, the creditor shall pay the like fee and deposit as are prescribed in the case of a bankruptcy petition.

(2) Where the Court is of opinion that a receiving order ought to be made in lieu of committal, and the judgment creditor does not consent to pay the required fee and deposit, the Court may dismiss the application or adjourn it on such terms, as to costs and otherwise, as may be just.

#### 309. Summary administration

When a receiving order is made under section 100 of the Act, the Court may, if satisfied by affidavit or otherwise, or by the report of the receiver, that the property of the debtor (after deduction of any property in the hands of secured creditors, debts enforceable by distraint, the costs of execution under section 43 (1) of the Act, and all debts which under the Act are directed to be paid in priority to other debts), is not likely to exceed in value £300, make an order that the debtor's estate be administered in a summary manner pursuant to section 117 of the Act and these Rules.

PART VI

#### MISCELLANEOUS

## 310. Power of receiver to make orders

The receiver may from time to time issue general orders or regulations for the purpose of regulating any matters under the Act or these Rules, which are of an administrative and not of a judicial character. All such orders and regulations shall be gazetted and shall be judicially noticed.

#### 311. Falsification of documents

(1) Any person who knowingly falsifies or fraudulently alters any document in or incidental to any proceeding under the Act or these Rules shall be deemed to be guilty of contempt of court and shall be liable to be punished accordingly.

(2) The penalty imposed by this rule shall be in addition to, and not in substitution for, any other penalty, punishment, or proceeding to which such person may be liable.

#### 312. No lien on debtor's books

No person shall, as against the receiver or trustee, be entitled to withhold possession of the books of accounts belonging to the debtor, or to set up a lien thereon.

313. Disposal of debtor's books

The Court may, on the application of the receiver, direct that the debtor's books of account and other documents given up by him may be sold, destroyed, or otherwise disposed of.

#### 314. Effect of non-compliance with Rules

Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceeding void unless the Court shall so direct, but such proceeding may be set aside, either wholly or in part, as irregular, or amended or otherwise dealt with in such manner and upon such terms as the Court may think fit.

## 315. Abridgment or enlargement of time

The Court may, under special circumstances and for good cause shown, extend or abridge the time appointed by these Rules or fixed by any order of the Court for doing any act or taking any proceeding.

## 316. Saving for existing law

When no other provision is made by the Act or the Rules, the present law, procedure, and practice in bankruptcy matters shall, in so far as applicable, remain in force. Save as provided by these Rules or Rules amending them, the Rules of the High Court shall not apply to any proceeding in bankruptcy.

SCHEDULE r. 4

# LIST OF FORMS

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FORMS

No. 1

**GENERAL TITLE r. 7** 

in the High Court of Malawi

In Bankruptcy.

No..... of 19.....

Re [James Brown]

Ex parte [here insert "the debtor or "J.S., a creditor," or "the Receiver" or "the Trustee."]

No. 2

DECLARATION OF INABILITY TO PAY r. 98

(Title)

I, A.B. [name and description of debtor,] residing at...... [and carrying on business at .....], hereby declare that I am unable to pay my debts.

Dated this ..... 19 .....

#### (Signature)

# A.B.

Signed by the debtor in my presence.

Signatu	re of witness		
Address	s		
Descrip	tion		
	Filed the	day of	19

NOTE.—Where a debtor resides at a place other than his place of business both addresses should be inserted.

No. 3

DEBTOR'S PETITION r. 105

(Title)

I, (a) ...... lately residing at .....and carrying on business at (b) .....having for the greater part of the past six months resided at ......[and carried on business at.....] within the jurisdiction of the Court and being unable to pay my debts, hereby petition the Court that a receiving order be made in respect of my estate [and that I may be adjudged bankrupt].(a) Insert name, address, and description of debtor

of......19...... NOTE.—Where a debtor resides at a place other than his place of business both addresses should be inserted.

No. 4

**REQUEST FOR ISSUE OF BANKRUPTCY NOTICE r. 99** 

In the High Court of Malawi.

In Bankruptcy.

1. I, C.D., of ....., hereby request that a bankruptcy notice be issued by this Court against [here insert name, description, and address of judgment debtor].

2. The said A.B. has for the greater part of the past six months resided at ...... [or carried on business at ......] within the jurisdiction of this Court.

4. Execution on the said judgment has not been stayed.

Dated this ..... 19 .....

C.D., judgment creditor

or,

[E.F., legal practitioner for the judgment creditor.]

NOTE.—Where the debtor resides at a place other than his place of business both addresses should be inserted.

No. 5

**BANKRUPTCY NOTICE r. 99** 

(Title)

claimed by (c)..... and which you could not set up in the action or other proceedings in which the judgment or order was obtained.(a) Strike out if no agent authorized

(b) Insert name of creditor

(c) "him" or "them"

## ENDORSEMENT OF NOTICE

You are specially to note— That the consequences of not complying with the requisitions of this notice are that you will have committed an act of bankruptcy, on which bankruptcy proceedings may be taken against you. If, however, you have a counter-claim, set-off, or cross-demand which equals or exceeds the amount claimed by (e).....in respect of the judgment or order and which you could not set up in the action or other proceedings in which the said judgment or order was obtained, you must within......days apply to the Court to set aside this notice by filing with the Registrar an affidavit to the above effect.

(e) Name of creditor (f)(f) Name and address of solicitor suing out the notice or "This notice is sued out by ...... in person"

No. 6

# AFFIDAVIT OF SERVICE OF BANKRUPTCY NOTICE

(Title)

In the matter of a bankruptcy notice issued.

I, L.M., of.....make oath and say-

2. A sealed copy of the said notice marked A is hereunto annexed.

Sworn at, etc.

L.M.

NOTE.—If the service is effected on one partner on behalf of his firm or on a person having at the time of service the control or management of the partnership business there or of a business carried on by any person in a name or style other than his own, the affidavit must, after the word "at", contain the words "being the principal place of business of the said......".

No. 7

AFFIDAVIT ON AN APPLICATION TO SET ASIDE BANKRUPTCY NOTICE

(Title)

I, A.B., of ..... make oath and say-

That I have satisfied the judgment claimed by C.D. by (state nature of satisfaction).

Or

2. That I have a counter-claim (or set-off or cross-demand) for  $\pm$  ..... being a sum equal to (or exceeding) the claim of the said C.D. in respect of (here state grounds of counter-claim).

3. That I could not have set up the said counter-claim (or as the case may be) in the action in which the said judgment was obtained against me.

Sworn, etc.

No. 8

ORDER SETTING ASIDE BANKRUPTCY NOTICE.

(Title)

In the matter of a bankruptcy notice issued

Upon the application of A.B. to set aside this notice, and upon reading the affidavit of A.B.[and upon hearing C.D. (if present)], it is ordered that this notice be set aside, and that C.D. (or as the case may be) pay to A.B. the sum of  $\pounds$ ...... or the costs of this matter.

Dated this ..... 19 .....

By the Court,

Registrar

Or

(Title)

In the matter of a bankruptcy notice issued-

Upon the application of A.B. to set aside this notice, and upon reading...... and hearing ...... and upon the said A.B. having entered into a bond in the penal sum of (the amount of the alleged debt and probable costs or such other sum as the Court may direct), with such two sufficient sureties as the Court (or C.D.) has approved (or having deposited in Court the sum of ......), as security for the amount claimed by the notice, the condition of the bond (or deposit) being (here insert condition), it is ordered, etc.

Dated this ...... 19 ......

By the Court,

Registrar

No. 9

CREDITORS' PETITION r. 105

(Title)

I, C.D., of ...... (or we,C.D., of ...... and E.F., of ......) hereby petition the Court that a receiving order may be made in respect of the ...... estate of (a) ...... of (b) ......and lately carrying on business at (or residing at) (c)...... and say—(a) Insert name of debtor

(b) Insert present address and description of debtor

(c) Insert address or addresses at which the debtor has lately resided, or carried on business

Note —The address at which the debtor was residing or carring on bussiness when the petitioning creditor's debt was incurred should in all cases appear in the petition (see rule 116) 1. That the said A.B. has for the greater part of six months next preceding the presentation of this petition resided (or carried on business) at .....within the jurisdiction of this Court. 2. That the said A.B. is amount of debt, debtors and the consideration). 3. That I (or we) do not, nor does any person on my (or our) behalf hold any security of the said debtor's estate, or any part thereof, for the payment of the said sum.Or That I hold security for the payment of (or part of) the said sum but that I will give up such security for the benefit of the creditors of A.B. in the event of his being adjudged bankrupt (or and I estimate the value of such security at the sum of £.....).Or That I, C.D., one of your petitioners, hold security for the payment of, etc.Or That I, E.F., another of your petitioners, hold security for the payment of, etc. 4. That A.B. within three months before the date of the presentation of this petition has committed the following act (or acts) of bankruptcy namely(here set out the nature and dates or date of the act or acts of bankruptcy relied on). Dated this..... day of ......19......(Signed) C.D.

E.F. Signed by the petitioner in my presence. Signature of witness

Address.....

Description...... NOTE.—If there be more than one petitioner, and they do not sign together, the signature of each must be separately attested, e.g., "Signed by the petitioner E.F. in my presence." If the petition is signed by a firm the partner signing should add also his own signature, e.g., "A.S. & Co. F.S., a partner in the said firm." If the debtor resides at any place other than the place where he carries on business both addresses should be inserted.

#### ENDORSEMENT

And you the said A.B. are to take notice that if you intend to dispute the truth of any of the statements contained in the petition you must file with the Registrar of this Court a notice showing the grounds upon which you intend to dispute the same, and send by post a copy of the notice to the petitioner (three) days before the date fixed for the hearing.

No. 10

CREDITORS' PETITION FOR ADMINISTRATION OF ESTATE OF DECEASED DEBTOR UNDER SECTION 118 OF THE BANKRUPTCY ACT r. 248

(Title)

1. That the said A.B. for the greater part of six months next preceding his decease resided (or carried on business at ...... within the jurisdiction of this Court.

3. That (I) do not nor does any person on (my) behalf hold any security on the said deceased debtor's estate, or on any part thereof, etc.(or as in Form No. 9, Creditor's Petition).

4. That A.B. within three months next before the said date of his decease committed the following act (or acts) of bankruptcy, namely (here set out the nature and date or dates of the acts of bankruptcy relied on).

Or

# Or

That letters of administration (or as the case may be) were on the......day of......19......, granted to J.S. of...... and G.H. of...... and that the estate of the said A.B. is (according to my information and belief) insufficient to pay his debts.

Dated this ...... 19 ......

(Signed) C.D.

# E.F.

Signed by the petitioner in my presence.
Signature of witness
Address
Description

# ENDORSEMENT

If you, the said J.S. or G.H., intend to dispute the matter of any of the statements contained in the petition, you must file with the Registrar of this Court a notice showing the ground upon which you intend to dispute the same.

No. 11

AFFIDAVIT OF TRUTH OF STATEMENT IN PETITION r. 111

(Title)

I, the petitioner named in the petition hereunto annexed, make oath (if the petitioner declare or affirm, alter the form accordingly) and say—

That the several statements in the said petition are within my own knowledge true.

Sworn at, etc.,

# C.D.

NOTE.—If the petitioner cannot depose that the truth of all the several statements in the petition is within his own knowledge he must set forth the statements the truth of which he can depose to, and file a further affidavit by some person or persons who can depose to the truth of the remaining statements.

# No. 12

AFFIDAVIT OF TRUTH OF STATEMENTS IN JOINT PETITION r. 111

## (Title)

We, C.D., E.F., G.H., etc., the petitioners named in the petition hereunto annexed, severally make oath and say—

And first I, the said C.D. for myself say-

1. That A.B. is justly and truly indebted to me in the sum of ...... as stated in the said before-mentioned petition.

2. That the said A.B. committed the act (or acts) of bankruptcy stated to have been committed by him in the said before-mentioned petition.

3. That A.B. has for the greater part of the past six months resided (or carried on business) at

And I, the said E.F., for myself say-

4. That A.B. is justly and truly indebted to me in the sum of ...... as stated in the said before-mentioned petition.

And I, the said G.H., for myself say-

5. That A.B. is, etc.

Sworn by the deponents C.D., E.F., and G.H., etc.

C.D.

E.F.

G.H.

(See note to last Form)

No. 13

#### APPLICATION FOR INTERIM RECEIVER

(Title)

I, C.D., of ......do, on the grounds set forth in the annexed affidavit, apply to the Court to appoint some fit and proper person as interim receiver of the property of the said A.B. and (here insert any special directions to the receiver that may be desired).

Dated this ...... 19 ......

(Signed) C.D.

ORDER THEREON

Upon reading this application and the affidavit therein referred to, and hearing ...... it is ordered that upon a deposit of £ ...... being lodged by the applicant, X.Y., of ...... be thereupon constituted interim receiver of the property of the said A.B. and (here insert directions, if any).

Dated this ..... 19 .....

By the Court,

Registrar

No. 14

AFFIDAVIT OF SERVICE OF PETITION

(Title)

In the matter of a petition dated.....

I, L.M., of ....., make oath and say-

2. A sealed copy of the said petition is hereunto annexed.

Sworn at, etc.

L.M., Sheriff, creditor,

Legal Practitioner or his clerk

NOTE.—If the service is effected on one partner on behalf of his firm the affidavit must, after the word "at," contain the words "being the principal place of business of the said"

No. 15

SUBSTITUTED SERVICE OF PETITION OR BANKRUPTCY NOTICE

#### NOTICE IN GAZETTE

In the High Court of Malawi.

In Bankruptcy.

No. 16

ORDER FOR SUBSTITUTED SERVICE OF A PETITION OR BANKRUPTCY NOTICE

(Title)

It is ordered that the sending of a sealed copy of the above-mentioned petition (or bankruptcy notice) together with a sealed copy of this order, by registered post, addressed to.....and/or by publication in the Malawi Government Gazette and/or in the..... newspapers (of the presentation of such petition and the time and place fixed for hearing the petition) or (of the issuing of such bankruptcy notice) shall be deemed to be good and sufficient service of the said petition (or

bankruptcy	notice)	on the	said		on	the	day		
of1919, completing such posting or publication as aforesaid.									
Given under the seal of the Court thisday ofday of									
By the Court,									
Registrar									
No. 17									
NOTICE BY DEBTOR OF INTENTION TO OPPOSE PETITION r. 128									
(Title)									
In the matter of a bankruptcy petition presented against me A.B. of on the									
I, the above A.B., do hereby give you notice that I intend to oppose the making of a receiving order as prayed and that I intend to dispute the petitioning creditor's debt (or the act of bankruptcy, or as the case may be).									
Dated	this		day	of		19			

To C.D., of....., and to..... and to the Registrar of the said Court.

.....

A.B.

No. 18

ORDER TO STAY PROCEEDINGS ON PETITION

(Title)

In the matter of a bankruptcy petition against A.B., of .....

Upon the hearing of this petition this day and the said A.B. appearing and denying that he is indebted to the petitioner (where petition presented by more than one creditor, add the name of the creditor whose debt is denied) in the sum stated in the petition (or alleging that he is indebted to the petitioner in a sum of a less amount than ......) (or that he is indebted to C.D., one of the petitioners, in a sum less than the sum stated to be due from him in the petition), it is ordered that the said A.B. shall within ....... days enter into a bond in the penal sum of (the amount of the alleged debt and probable costs, or such other sum as the Court may direct), with two such sufficient sureties as the Court shall approve of to pay (or deposit with the Registrar the sum of .....as security for the payment of) such sum or sums as shall be recovered against the

said A.B. by C.D. the petitioner (or one of the petitioners) in any proceeding taken or continued by him against the said A.B., together with such costs as shall be given by the Court.

And it is further ordered, that upon the said A.B. entering into the bond aforesaid all proceedings on this petition shall be stayed until after the Court in which the proceedings shall be taken shall have come to a decision thereon.

Dated this ..... 19 .....

By the Court,

Registrar

No. 19

BOND ON STAY OF PROCEEDINGS, SECURITY, ETC.

(Title)

Know all men by these presents, that we, A.B. of, etc., and C.D. of, etc., and E.F. of, etc., are jointly and severally held and firmly bound to L.M. of, etc., in £....., to be paid to the said L.M., or his certain attorney, executors, administrators, or assigns. For which payment to be made we bind ourselves and each and every one of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this ..... day of ..... one thousand nine hundred and

Whereas a bankruptcy petition against the said A.B. having been presented to the Court he did appear at the hearing of the said petition and deny that he was indebted to the petitioner [or to one or more of the petitioners] [or alleged that he was indebted to the petitioner in the sum of  $\pounds$ .....only, or as the case may be].

Now, therefore, the condition of this obligation is such that if the above-bounden A.B. or the said C.D. or E.F. shall on demand well and truly pay or cause to be paid to L.M., his attorney or agent, such sum or sums as shall be recovered against the said A.B. by any proceedings taken or continued within twenty-one days from the date hereof in any competent court by the said L.M. for the payment of the debt claimed by him in the said petition, together with such costs as shall be given to the said L.M. by such Court [or whatever the condition of the bond is]this obligation shall be void, otherwise shall remain in full force.

A.B. [L.S.]

C.D. [L.S.]

E.F. [L.S.]

Signed, sealed and delivered by the above-bounden..... in the presence of.....

NOTE.—If a deposit of money be made the memorandum should follow the terms of the conditions of the bond. This form may be adapted to other cases.

No. 20

NOTICE OF SURETIES

(Title)

In the matter of a bankruptcy petition(or In the matter of a bankruptcy notice by C.D. of.....].

Take notice that the sureties whom I propose as my security in the above matter [here state the proceedings which have rendered the sureties necessary] are [here state the full names and descriptions of the sureties, and their residence, therein mentioning the places, streets, and numbers, if any].

Dated this ..... 19 ......

A.B.

To the Registrar of the Court.

And to L.M. of.....

No. 21

#### AFFIDAVIT OF JUSTIFICATION

In the matter of a bankruptcy petition against A.B. [or In the matter of a bankruptcy notice by L.M. against A.B. of......]

I, E.F., of...... make oath and say—

1. That I am a householder [or as the case may be] residing [describing particularly the street or place, and the number of the house, if any].

2. That I am worth property to the amount of £..... [the amount required] over and above what will pay my just debts [if security in any other action or for any other purpose, add, and every sum for which I am now security].
5. That I have for the last six months resided ...... (describing the place of such residence, or if he has had more than one residence during that period, state in the same manner as above- directed).

Sworn at, etc.

E.F.

No. 22

ADJOURNMENT OF PETITION

(Title)

Dated this ..... 19 .....

By the Court,

Registrar

No. 23

DISMISSAL OF PETITION

(Title)

In the matter of a bankruptcy petition filed the (date).

Upon the hearing of this petition this day, and upon reading ...... and hearing ...... it is ordered that this petition be dismissed (and that the petitioner do pay to the said A.B. the taxed costs thereof.)

Dated this ...... 19 .....

By the Court,

Registrar

No. 24

DISMISSAL OF PETITION UPON WHICH PROCEEDINGS ARE STAYED WHERE A RECEIVING ORDER HAS BEEN MADE ON A SUBSEQUENT PETITION

(Title)

Dated this ..... 19 .....

By the Court,

Registrar

No. 25

ORDER RESTRAINING ACTION, ETC., BEFORE RECEIVING ORDER

(Title)

Upon the application of ....., it is ordered that L.M. of ....., shall be restrained from taking any further proceedings in the action brought by him [or upon the judgment recovered or obtained by him] against the said A.B. in [here state the Court in which proceedings are], or, it is ordered that the proceedings in the action (or suit) brought by him against the said A.B. in [here state the court in which proceedings are] may be proceeded with on [here insert terms fixed by the Court].

Dated this ..... 19 .....

By the Court,

Registrar

No. 26

RECEIVING ORDER ON DEBTOR'S PETITION r. 125

(Title)

No. 27

RECEIVING ORDER ON CREDITORS' PETITION r. 138

(Title)

The name and address of the legal practitioner to the petitioning creditor are [insert name and address].

No. 28

RECEIVING ORDER UNDER SECTION 100 OF THE BANKRUPTCY ACT

(Title)

In the matter of ....., a debtor.

And whereas the debtor has made default in payment of ...... payable in pursuance of the said order.

Now upon reading the consent of the judgment creditor that a receiving order should be made against the debtor in lieu of an order for commitment to prison, and the prescribed fees having been paid.

It is ordered that a receiving order be made against the debtor in lieu of an order of commitment to prison, and a receiving order is hereby made against the debtor, and the Official Receiver is hereby constituted receiver of the estate of the said debtor.

Dated this ..... 19 .....

By the Court,

Registrar

NOTE.—The above-named debtor is required, immediately after the service of this order upon him, to attend the receiver at his offices at .....

The receiver's offices are open, except on holidays, every week-day from 9 a.m. to 4 p.m., except Saturdays, when they close at 12 noon.

#### Endorsement

The name and address of the legal practitioner to the judgment creditor are [insert name and address].

No. 29

NOTICE OF RECEIVING ORDER, ETC. (FOR LOCAL PAPER) r. 145

# (Title)



(Signed) .....

Official Receiver

(Address)

Dated this ..... 19 .....

No. 30

NOTICE OF RECEIVING ORDER, ETC., IN SUMMARY CASES (FOR GAZETTE) r. 145

In Bankruptcy.

Re A.B., of (insert here as concisely as possible, name, address and description of debtor, and add where Court held and No. of proceedings).



No. 31

STATEMENT OF AFFAIRS r. 148

(Title)

To the Debtor—(a) Sheet L should be substituted for any one or more of such of the sheets named as will have to be returned blankYou are required to fill up, carefully and accurately, this sheet, and such of the several sheets A, B, C, D, E, F, G, H, I, J, and K (a), as are applicable, showing the state of your affairs on the day on which the Receiving Order was made against you, viz., the...... day of ......19....... Such sheets, when filled up, will constitute your statement of affairs.

When completed such statement must be verified by oath or declaration

Gross liabilitiesLiabilities (as stated and estimated by debtor)Expected to rankAssets (as stated and estimated by debtor)Estimated to produce£s.d.Unsecured Creditors, as per list (A)£s.d.Property as per list (H), viz.—£s.d. £s.d. (a) Cash at BankersCreditors fully secured, as per list (B) (b) Cash in hand (c) Cash deposited with solicitor for costs of petitionEstimated value of securities (d) Stock-in-trade (cost £)Surplus (e) MachineryLess amount thereof carried to Sheet (C)

Trade fixtures, fittings, utensils, etc. Farming stockBalance thereof to contra (f) (g) (h) Growing crops and tenant right (i) FurnitureCreditors partly secured as per list (C) (j) Life policies (k) Stocks and shares (1) Reversionary or other interests under willsLess estimated value of securities Liabilities on bills discounted other than debtor's own acceptances for value, as per list (D), viz. (m) Other property viz.—Total as per list (H)Book Debts as per list (I), viz.—f.s.d. Goodf.s.d. On accommodation bills as drawer, acceptor, or endorser f Doubtful Bad£ On other bills as drawer or endorser £ Estimated to produceOf which it is expected will rank against the estate for dividend Bills of exchange or other securities on hand, as per list (J)  $\pm$ : :Contingent or other liabilities as per list (E) f : :Estimated to produceOf which it is expected will rank against the estate for dividendSurplus from securities in the hands of creditors fully secured (per contra) Creditors for rent, etc., recoverable by distress as per list (F)fs.d.f

Deduct creditors for distrainable rents and for preferential rates, taxes, wages, Sheriff's charges, etc. (per contra) Creditors for rates, taxes, wages, etc., payable in full as per list (G)Sheriff's charges payable under section 43 of the Act estimated atDeficiency explained in statement (K)Deducted contra Surplus explained in statement (K)  $\pm$ 

I, ..... of ......make oath and say that the above statement and the several lists hereunto annexed marked ......make oath and say that the best of my knowledge and belief a full, true, and complete statement of my affairs on the date of the above-mentioned Receiving Order made against me.

Sworn at ......this ...... day of ......19...... before me,Signature .....

А

**Unsecured Creditors** 

The names to be arranged in alphabetical order and numbered consecutively, creditors for £10 and upwards being placed first.

No.NameAddress and occupationAmount of debtDate when contractedConsideration

Signature.....

Dated ......19.....

NOTES.—1. When there is a contra account against the creditor, less than the amount of his claim against the estate, the amount of the creditor's claim and the amount of the contra account should be shown in the third column, and the balance only be inserted under the heading "Amount of debt," thus—

£s.d.Total amount of claim Less contra account

No such set-off should be included in Sheet I.

2. The particulars of any bills of exchange and promissory notes held by a creditor should be inserted immediately below the name and address of such creditor.

В

**Creditors Fully Secured** 

No.Name of CreditorAddress and occupationAmount of debtDate when contractedConsiderationParticulars of securityDate when givenEstimated value of securityEstimated surplus from securityMonthYear

Signature.....

Dated.....19.....

С

**Creditors Partly Secured** 

No.Name of CreditorAddress and occupationAmount of debtDate when contractedConsiderationParticulars of securityDate when givenEstimated value of securityBalance of debt unsecuredMonthYear

Signature.....

Dated .....19.....

D

**Contingent or Other Liabilities** 

Full particulars of all liabilities not otherwise scheduled to be given here.

No.Name of creditor or claimantAddress and occupationAmount of liability or claimDate when liability incurredNature of liabilityMonthYear

Signature.....

Dated .....19.....

Е

Preferential Creditors for Rates, Taxes and Wages

No.Name of CreditorAddress and OccupationNature of ClaimPeriod during which claim accruedDate when dueAmount of ClaimAmount payable in fullDifference ranking for Dividend

Signature.....

Dated ......19.....

F

Liabilities of Debtor on Bills other than his own Acceptances

No.Acceptor's Name, Address and OccupationWhether liable as drawer or endorserDate when dueAmountHolder's Name Address and Occupation (if known)Amount expected to rank against Estate for DividendAccommodation billsOther bills  $\pm$  s. d. $\pm$ s.d.

Signature.....

Dated ......19.....

G

Creditors for Rent, etc., Recoverable by Distress

No.Name of CreditorAddress and OccupationNature of ClaimPeriod during which claim accrued dueDate when dueAmount of ClaimAmount payable in fullDifference ranking for Dividend (to be carried to list A) £s.d.£s.d.

Signature.....

Dated ......19.....

н

Property

Full particulars of every description of property in possession and in reversion as defined by section 2 of the Bankruptcy Act, not included in any other list, are to be set forth in this list.

Full statement and nature of propertyEstimated to produce Cash at banker£s.d. (b) (a) Cash deposited with legal practitioner for costs of Petition Cash in hand (d) (c) Stock in trade in Malawi (cost £.....) (e) Stock in trade out of Malawi (cost £.....) Stock in trade and Goods in transit (cost £.....) Machinery, trade (f) (g) fixtures, fittings, utensils, etc. (h) Farming stock (i) Growing crops (where not owner of the Household Furniture and Effects at Life Policies Other land) at (i) (k) (1) Property (state particulars), viz.

Signature.....

Dated .....19.....

T

Debts due to the Estate

No.Name of debtorResidence and occupationAmount of debtFolio of ledger or other book where particulars to be foundWhen contractedEstimated to produceParticulars of any securities held for debtGoodDoubtfulBadMonthYear fs.d.fs.d.

Signature.....

Dated ......19.....

NOTE.—If any debtor to the estate is also a creditor but for a less amount than his indebtedness, the gross amount due to the estate and the amount of the contra account should be shown in the third column, and the balance only be inserted under heading "Amount of debt," thus—

£ s. d.Due to estate Less contra account

No such claim should be included in Sheet A.

J

Bills of Exchange, Promissory Notes, etc., available as Assets

No.Name of acceptor of bill or noteAddress, etc.Amount of bill or noteDate when dueEstimated to produceParticulars of any property held as security for payment of bill or note £s.d. £s.d.

Signature.....

Dated ......19.....

Κ

**Deficiency Account** 

£s.d.£s.d. £s.d.£s.d. Excess of assets over liabilities on theThe date should be twelve months before date of receiving order or such other time as the Receiver may have fixed.(a)...... day of...... 19......, (if any)

Net profit (if any) arising from carrying on business from the The date should be twelve months before date of receiving order or such other time as the Receiver may have fixed.(a)......day of......19......, to date of......receiving order, after deducting usual trade expenses

Income or profit from other sources (if any) since the The date should be twelve months before date of receiving order or such other time as the Receiver may have fixed.(a)......day of......19......,

Deficiency as per statement of affairs Excess of liabilities over assets on the The date should be twelve months before date of receiving order or such other time as the Receiver may have fixed.(a)...... day of......19......, (if any)

Net loss (if any) arising from carrying on business from the the date should be twelve months before date of receiving order or such other time as the Receiver may have fixed.(a)......day of......19......, to date of......receiving order, after deducting from profits the usual trade expenses

Bad debts (if any) as per Schedule I This schedule must show when the debts were contracted.(b) ......Expenses incurred since the The date should be twelve months before date of receiving order or such other time as the Receiver may have fixed.(a)......day of ......19......, other than usual trade expenses, viz.—household expenses of self and Add "wife and children" (if any) stating the number of the latter.(c)......

Here add particulars of other losses or expenses (if any) including depreciation in the value of stock and effects or other property as estimated for realization, and liabilities (if any), for which no consideration received. (d)Other losses and expenses (if any)

Surplus as per statement of affairsTotal amount to be accounted for These figures should agree.(e)£ Total amount to be accounted for These figures should agree.(e)£

Signature.....

Dated.....19.....

L

IN SUBSTITUTION for such of the Sheets named "A" to "J" as will have to be returned blank

DEBTOR'S REMARKSListParticulars, as per front sheetWhere no particulars are entered by the debtor on any one or more of the lists named "A" to "J" the word "Nil" should be inserted in this column opposite the particular list or lists thus left blankAUnsecured creditors BCreditors fully securedCCreditors partly securedDLiabilities of debtor on bills discounted other than his own acceptances for valueEContingent or other liabilitiesFCreditors for rent, etc., recoverable by distressGPreferential creditors for rates, taxes and wagesHPropertyIDebts due to the estateJBills of Exchange, Promissory Notes, etc., available as assets

Signature.....

Dated .....19.....

No. 32

APPLICATION FOR SUMMARY ADMINISTRATION UNDER SECTION 117 OF THE BANKRUPTCY ACT

(Title)

I, ....., the Official Receiver, hereby report to the Court that the property of the debtor is not likely to exceed in value £300 and I apply that the Court may order the estate to be administered in a summary manner pursuant to section 117 of the Bankruptcy Act.

Dated this ......19.....

.....

**Official Receiver** 

No. 33

ORDER FOR SUMMARY ADMINISTRATION

(Title)

Upon the application of ...... and reading ..... it is ordered that the estate of the above-named debtor be administered in a summary manner pursuant to section 117 of the Bankruptcy Act.

Dated this ..... day of .....19....

By the Court,

.....

Registrar

No. 34

APPLICATION FOR EXTENSION OF TIME FOR HOLDING FIRST MEETING, AND ORDER THEREON

(Title)

ORDER THEREON

Dated this ..... day of .....19....

By the Court,

Registrar

No. 35

NOTICE TO CREDITORS OF FIRST MEETING WHEN NO ORDER FOR SUMMARY ADMINISTRATION HAS BEEN MADE, AND THE DEBTOR HAS NOT SUBMITTED A PROPOSAL FOR COMPOSITION OR SCHEME

(Title)

(Under receiving order dated the...... day of ...... 19......)

Any creditor who has tendered a proof, or his representative, authorized in writing, or the holder of a general proxy or general power of attorney from a creditor may question the debtor on his public examination concerning his affairs and the causes of his failure.

.....

**Official Receiver** 

Address.....

(The debtor's statement of affairs (a)......)(a) Here insert "has not been lodged" or "has been lodged and summary is enclosed" NOTE.—At the first meeting the creditors may amongst other things— 1. By ordinary resolution resolve that the debtor be adjudged bankrupt, and in that case they may also, by ordinary resolution, appoint a trustee.2. By ordinary resolution fix the remuneration

of the trustee, or resolve that the same be left to the committee of inspection. 3. By ordinary resolution appoint a committee of inspection from among the creditors or the holders or intended holders of general powers of attorney for the creditors.

No. 36

NOTICE TO CREDITORS OF FIRST MEETING IN SUMMARY CASE WHERE DEBTOR HAS NOT SUBMITTED AN OFFER OF COMPOSITION

(Title)

# SUMMARY CASE

(a) The debtor has been adjudged bankrupt, and an order for summary administration has been made by the Court. Under section 117 of the Bankruptcy Act, the Official Receiver is the trustee in the bankruptcy, but the creditors can, by special resolution, appoint a trustee in his place.(a) Strike out this paragraph if adjudication order not made (b) An order for summary administration has been made by the Court. If the creditors resolve that the debtor shall be adjudged bankrupt the Official Receiver will become the trustee in the bankruptcy, but the creditors can, by special resolution, appoint a some other person to be trustee.(b) Strike out this paragraph if adjudication order has been made

# No. 37

NOTICE OF FIRST OR OTHER MEETING WHERE DEBTOR SUBMITS AN OFFER OF COMPOSITION OR SCHEME (WHERE NO ORDER FOR SUMMARY ADMINISTRATION HAS BEEN MADE)

(Title)

Creditors required to vote at such meeting may, by a resolution passed by majority in number, and three-fourths in value, of all the creditors who have proved their debts, accept the proposal made by the debtor for a composition (or scheme), the terms of which are set forth in the accompanying report, or any amendment of such proposal which in the opinion of the Official Receiver is calculated to benefit the general body of creditors.

Proxies and voting letters to be used at the meeting must be lodged not later than......o'clock on the......day of ......19.....

Creditors who prove their debts, and whose proofs are admitted, and who do not vote on the debtor's proposal, will be reckoned as voting against it.

Any creditor who has tendered a proof, or his representative authorized in writing, or the holder of a general proxy or general power of attorney from a creditor, may question the debtor on his public examination concerning his affairs and the causes of his failure.

Dated this .....19.....

.....

**Official Receiver** 

Address.....

NOTES.—1. Creditors who have proved may vote for or against the acceptance of the debtor's proposals by means of the voting letter attached to the Official Receiver's report.

2. If the proposal is not accepted the meeting may, if the debtor has not already been adjudged bankrupt, resolve on his adjudication, and in that case they may also by ordinary resolutions appoint a trustee and a committee of inspection, and fix the remuneration of the trustee or resolve that it be left to the committee of inspection.

3. A form of proof and forms of general and special proxy and a summary of the statement of affairs are sent herewith.

No. 38

NOTICE OF MEETING IN SUMMARY CASE WHERE DEBTOR SUBMITS AN OFFER OF COMPOSITION, ETC. r. 159

(Title)

(Under receiving order dated.....)

Creditors qualified to vote at such meeting may, by a resolution passed by a majority in number, and three-fourths in value, of those who have proved their debts, accept the proposal made by the debtor for a composition [or scheme], the terms of which are set forth in the accompanying report, or any amendment of such proposal which, in the opinion of the receiver, is calculated to benefit the general body of creditors.

Creditors who prove their debts, and whose proofs are admitted, and who do not vote on the debtor's proposal, will be reckoned as voting against it.

Any creditor who has tendered a proof, or his representative, authorized in writing, may question the debtor on his public examination concerning his affairs and the causes of his failure.

Dated this .....19.....

.....

**Official Receiver** 

Address.....

NOTES.—1. Creditors who have proved may vote for or against the acceptance of the debtor's proposal by means of the voting letter attached to the receiver's report.

2. If the proposal be not accepted the meeting may, if the debtor has not already been adjudged bankrupt, resolve on his adjudication, when the Official Receiver will become the trustee, unless the creditors by special resolution appoint a trustee.

3. Forms of proof and of general and special proxy and a summary of the statement of affairs are sent herewith.

No. 39

NOTICE TO CREDITORS OF ADJOURNED MEETING

(Title)

Agenda. [Insert here nature of business to be transacted.]

Dated this ...... day of ......19.....

.....

Official Receiver

Address:....

No. 40

AFFIDAVIT OR CERTIFICATE OF POSTAGE OF NOTICES. FIRST MEETING

(Title)

I, ....., a clerk in the office of the Official Receiver, in the above matter (a) make oath and say as follow (b)—(a) or as the case may be

(b) or "hereby certify"

(c) Insert here if necessary "adjourned" or "new" or "adjourned new"

(d) Strike out the words in italics if summary not sent

#### No. 41

## NOTICE TO DEBTOR TO ATTEND FIRST MEETING OF CREDITORS r. 197

(Title)

No. 42

AUTHORITY TO DEPUTY TO ACT AS CHAIRMAN OF MEETING AND USE PROXIES

(Title)

No. 43

### RESOLUTIONS WHERE ADJUDICATION RESOLVED ON

(Title)

Resolved as follows (unanimously)—

That A.B. shall be adjudged bankrupt, and that the Official Receiver do apply to the Court to make the adjudication.

That G.H., of ...... shall be the trustee of the property of the bankrupt at (here state remuneration) (or that the appointment of a trustee be made by the committee of inspection).

That I.K., L.M., N.O., etc., be appointed the committee of inspection in this bankruptcy, for the purpose of superintending the administration of the property of the bankrupt by the trustee.

(Add any other resolution, if any.)

.....

Official Receiver, or F.K., Chairman

NumberAssenting Creditors' SignaturesAmount of ProofNumberDissenting Creditors' SignaturesAmount of Proof £s.d. £s.d.

NOTE.—When a resolution is carried unanimously the creditors need not sign, but when a division is taken all creditors and holders of proxies voting should sign. The signatures must be attached at the meeting. Resolutions should be put separately.

No. 44

MEMORANDUM OF PROCEEDINGS AT FIRST MEETING IN SUMMARY CASES

SUMMARY CASE

(Title)

Memorandum.—The first meeting of creditors in the above matter was held at the place and time above-mentioned, and the several proofs of debt lodged were produced; but no resolution was passed.

.....

Chairman

No. 45

MEMORANDUM OF ADJOURNMENT OF FIRST OR OTHER MEETING

(Title)

No. 46

## MEMORANDUM OF PROCEEDINGS AT ADJOURNED FIRST MEETING WHERE NO QUORUM

(Title)

Memorandum.—The adjourned meeting of creditors in the above matter was held at the time and place above-mentioned, and the several proofs of debt lodged were produced; but it appearing that there was not a quorum of creditors qualified to vote present or represented no resolution was passed, and the meeting was not further adjourned.

.....

Chairman

No. 47

ORDER OF COURT FOR GENERAL MEETING OF CREDITORS

(Title)

Upon	the application of	C.D., of	, it is ordered th	at the trustee of t	the property of
the bankrupt	or the Official Rec	ceiver] do summon a r	meeting of the cre	ditors of the bank	rupt to be held
at	on the	day of	19	, at	o'clock
in the	noon (here	state the purpose for	r which meeting ca	lled).	

Dated this ..... day of .....19....

By the Court,

Registrar

No. 48

NOTICE OF MEETING (GENERAL FORM) r. 199

(Title)

Official Receiver or TrusteeAddress.....

No. 49

# AFFIDAVIT AND CERTIFICATE OF POSTAGE OF NOTICES (GENERAL) r. 202

(Title)

I, ....., a clerk in the office of C.D., Official Receiver (a) make oath and say as follows— (b) .....(a) or as the case may be

(b) or "hereby certify"

(c) Insert here "general" or "adjourned general" as the case may be 1. That I did on the also to all creditors mentioned in the debtor's statement of affairs, a notice of the time and the place of 2. That such notices a (c)..... meeting, in the form hereunto annexed, marked "A". were addressed to such of the said creditors who have proved their debts according to the addresses in their respective proofs, and to such as have not proved, according to their respective names and addresses appearing in the statement of affairs of the said debtor. 3. That I sent the said notices by putting the same into the Post Office at..... before the hour of ..... o'clock in the.....noon on the said day. Sworn, etc. (d)(d) or Dated this ...... day of ..... 19.....Signature.....

No. 50

NOTICE TO CREDITORS OF MEETING TO REMOVE TRUSTEE AND TO APPOINT A PERSON TO FILL THE VACANCY

## (Title)

Dated this .....19.....

.....L.M.,

A Member of the Committee of

Inspection (or Official Receiver)

No. 51

NOTICE OF MEETING TO BE HELD TO APPOINT A NEW TRUSTEE

(Title)

Dated this ..... day of .....19....

.....C.D.,

**Official Receiver** 

To X.Y.

No. 52

MINUTES OF MEETING FOR RECEIVING RESIGNATION OF TRUSTEE, ETC.

(Title)

Chairman of the meeting, E.F., of .....

Resolved (here should follow resolutions).

E.F.....

Chairman of this meeting

No. 53

LIST OF CREDITORS ASSEMBLED TO BE USED AT EVERY MEETING

(Except a meeting where scheme or composition has been considered)

(Title)

Meeting held at.....this......day of.....19.....

NumberNumber of creditors present or assembledAmount of proof £s.d.1 2 3 4 5 6 7 7Total numbers of creditors present or assembled

No. 54

LIST OF CREDITORS FOR USE AT MEETING HELD FOR CONSIDERATION OF COMPOSITION OR SCHEME

(Title)

Meeting held at.....19.....

No.Names of all creditors whose proofs have been admittedHere state as to each creditor whether he voted, and if so, how, whether personally, by proxy, or voting letterAmount of assetsAmount of proof admitted Total numberTotal amount£s.d.£s.d.

Required number for majority Required value £.....

No. 55

PROOF OF DEBT (GENERAL FORM)

(Title)

Re (a).....No. (a) ...... of 19......[You should attend carefully to these instructions]

(a) Here insert the number of matter, and the name of debtor as given on the notice of meeting

(b) Fill in full name, address, and occupation of deponent

If proof made by creditor strike out clauses (c) and (d)

If made by clerk of creditors strike out (d)

If by clerk or agent of company strike out (e) (e) Insert "me" or, in case of a firm "we" and "C.D. and E.F. my co-partners in trade" (if any), or, if by clerk insert name, address and description of principal I, (b) ....., of ......, of ....., make oath and say; (c) That I am in the employ of the under-mentioned creditor and that I am duly authorized by ...... to make this affidavit and that it is within my own knowledge that the debt hereinafter deponed to was incurred, and for the consideration stated, and that such debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

(d)That I am duly authorized, under the seal of the company hereinafter named, to make the proof of debt on its behalf. That the said ...... was, at the date of the receiving order, viz., the ......day of ......day of truly indebted to (e).....as shown by the account endorsed hereon, or by the following account, viz., .....for which sum or any part thereof I say that I have not nor hath (g).....or any person by (h).....order to my knowledge or belief for (h)..... use had or received any manner of satisfaction or security whatsoever, save and except the following (i).....Admitted to vote for £..... the......day of...... 19......Official ReceiverDateDrawerAcceptorAmountDue date fs.d. Admitted to rank for dividend for £..... this......day of ...... 19....Sworn at ......this me.....(g) ..... The proof cannot be admitted for voting at the first meeting unless it is properly completed and lodged with the Official Receiver before the time named in the notice convening such meeting. (f) State consideration as—Goods sold and delivered by me [and my said partner] to him [or them] at his [or their] request between the dates of, [or, moneys] advanced by me in respect of the under-mentioned bill of exchange, [or, as the case may be]. (See back.)

(g) My said partners or any of them or the above-named creditor (as the case may be). (h) My or our or their or his (as the case may be). (i) Here state the particulars of all securities held and, where the securities are on the property of the debtor, assess the value of the same and if any bills or other negotiable securities be held, specify them in the schedule.

No. 56

## PROOF BY TRUSTEE IN PRIOR BANKRUPTCY

(Title)

I, ..... make oath and say:-

2. There was at the date of the receiving order herein, namely, the......day of......day of......, 19......, and still is an unsatisfied balance of the debts provable in the aforesaid bankruptcy, of which I am trustee, amounting to £...., as shown in the statement endorsed hereon (or annexed hereto and marked "A").

3. I claim to prove in the present bankruptcy for the said amount. Sworn, etc., before me, ......

.....

Official Receiver or Trustee

Admitted to rank for dividend for £..... this ...... day of......

.....

Official Receiver or Trustee

А

Particulars of account referred to on other side

(Credit should be given for contra accounts)

If space not sufficient, let the particulars be annexed, but where the particulars are on a separate sheet of paper the same must be marked by the person before whom the affidavit is sworn.

DateConsiderationAmountRemarks £s.d.(a)(a) The Voucher (if any) by which the account can be substantiated should be set out here

.....

Signature of Deponent

No. 57

PROOF OF DEBT TO WORKMEN r. 207

(Title)

## SCHEDULE (above referred to)

1.2.3.4.5.6.No.Full name of workmanAddressDescriptionPeriod over which wages dueAmount due £s.d.

Sworn at	t	this	day of	one	thousand	nine
hundred and						

.....

Deponent's signature

Before me .....

No. 58

NOTICE OF REJECTION OF PROOF OF DEBT

### (Title)

Take notice that, as Official Receiver of the above estate, I have this day rejected your claim against such estate (a) (to the extent of  $\pm$  .....), on the following grounds—(a) If proof wholly rejected strike out words in italics

No. 59

**GENERAL PROXY r. 219** 

(Title)

I, (a) C.D., of ....., creditor, hereby appoint the Official Receiver in the above matter (or Mr. A.B., of ....., a clerk in my regular employ) to be my (or our) general proxy in the above matter (excepting as to the receipt of dividend).(a) If a firm write "we" and set out the full name of the firm

(b) If a firm sign the firm's trading title, and add "by X. Y. a partner in the said firm" Dated this ......19......(Signed) ..... day of (b) C.D..... Signature of witness ......NOTES (1) When the creditor desires that his general proxy should receive dividends he should strike out the words "excepting as to the receipt of dividend", putting his initials thereto. (2)The authorized agent of a corporation may fill up blanks, and sign for the corporation, thus-"For the (3) A proxy given by a creditor may be filled up and signed by any person having a general authority in writing to sign for such firm or person. Such person shall sign- J.S.....(duly authorized by a general authority in writing to sign on behalf of [name of firm or person]) (c). (c) The receiver or trustee may require the authority to sign to be produced for his inspection Certificate to be signed by person other than creditor filling up the above proxy. l, ..... of ...... hereby certify that all insertions in the above proxy are in my own handwriting, and have been made by me at the request of the above-named ....., and in his presence before he attached his signature (or mark) thereto. Dated this ..... day of The proxy must be lodged with the Official Receiver or trustee not later than four o'clock on the day before the meeting at which it is to be used.

No. 60

SPECIAL PROXY r. 219

(Title)

(b) Here insert either "Mr...... of" the Official Receiver in the above matter"(

c) Here insert the word "for" or "against" as the case may require and specify the particular resolution, name of proposed trustee, etc.

(d) If a firm, sign the firm's trading title, and add "A.B. partner in the said firm" Dated this..... (Signed) (d) C.D..... Signature of witness day of ..... 19..... ...... Address ......NOTES 1. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters— (a) for or against any specific proposal for a composition or scheme for or against the appointment of any specified person as trustee at a of arrangement; (b) specified rate of remuneration, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection; on all questions relating to any matter, other than those above referred to, arising at (c) any specified meeting or adjournment thereof. 2. The authorized agent of a corporation may fill up blanks and sign for the corporation thus—"For the......Company, J.S...... (duly authorized under the seal of the Company)." 3. A proxy given by a creditor may be filled up and signed by any person in the employ of the creditor having a general authority in writing to sign for such creditor. Such person shall sign—"J.S.....(duly authorized by a general authority in writing to sign on behalf of [name of creditor]) (e)."(e) The receiver may require the authority to sign to be produced for his Certificate to be signed by person other than creditor filling up the above proxy. inspection I,..... of ...... hereby certify that all insertions in the above proxy are in my own handwriting, and have been made by me at the request of the above-named ..... and in his presence before he attached his signature (or mark) thereto. Dated this .....Signature..... The proxy must be lodged with the Official Receiver or trustee, not later than four o'clock on the day before the meeting at

No. 61

which it is to be used.

APPLICATION BY THE RECEIVER FOR AN ORDER APPOINTING A SITTING FOR THE PUBLIC EXAMINATION OF THE DEBTOR

(Title)

A receiving order having been made in the above matter, application is hereby made to the Court by the Official Receiver for an order appointing the ...... day of ...... at ..... or such other time and place as the Court shall direct for holding the public examination of the debtor, and that the debtor do attend such public examination.

Dated this ..... day of .....19....

.....

**Official Receiver** 

No. 62

ORDER APPOINTING A TIME FOR PUBLIC EXAMINATION OF THE DEBTOR

(Title)

Upon the application of the Official Receiver in the above matter it is ordered that the public examination of the above-named debtor be held at (a) ..... on the ..... day of at ...... o'clock in the ...... And it is ordered that the above-named debtor do attend at the place and time above-mentioned.(a) Insert the place for the examination Dated this ......By the Court, Registrar NOTE.—Notice is hereby given that if you, the above-named debtor, fail without reasonable excuse to attend at the time and place aforesaid you will be liable to be committed to prison without further notice. No. 63 REPORT OF REGISTRAR WHERE DEBTOR OR WITNESS REFUSES TO ANSWER TO HIS SATISFACTION (Title) At the (public) examination of (a) .....held before me this ..... day of ......19......, the following question was allowed by me to be put to the said ( ......).(a) The above-named debtor, or A.B., a witness in the above matter Q. (b) .....(b) Here state question The (c) refused to answer the said question ...... (or) The (c) answered the said question as follows—(c) Debtor or witness A. (d) .....(d) Here insert answer (if any) T thereupon named of the.....day be reported to the Honourable Mr. Justice ..... Dated this ..... day of 

No. 64

NOTICE OF DAY FOR PROCEEDING WITH PUBLIC EXAMINATION (FOR LOCAL PAPER)

(Title)

Not	ice is hereby g	iven that the	above-nar	ned Court	has appointed	ed	day	y, the
	day of		19	, at		. o'clock in t	thenoo	n, for
proceeding	with the public	examination o	of the abov	/e-named	debtor, which	n, on the		day
of	19	, was adjourne	ed sine die.					

Dated this ..... day of .....19....

.....

**Official Receiver** 

No. 65

APPOINTMENT OF SHORTHAND WRITER TO TAKE EXAMINATION OF DEBTOR

(Title)

Upon the application of the Official Receiver .....the Court hereby appoints.....to take down in shorthand the examination of the said .....at his public examination this day pursuant to rule 55 of the Bankruptcy Rules.

Dated this ..... day of .....19....

By the Court,

Registrar

No. 66

DECLARATION BY SHORTHAND WRITER

(Title)

I, ..... of ...... of ....., the shorthand writer appointed by this Court to take down the examination of the said ....., do solemnly and sincerely declare that I will truly and faithfully take down the questions and answers put and given by the said .....in this matter and will deliver true and faithful transcripts thereof as the Court may direct.

Dated this .....19.....

Declared before me at the time and place above-mentioned.

.....

Registrar

No. 67

NOTES OF PUBLIC EXAMINATION OF DEBTOR WHERE A SHORTHAND WRITER IS APPOINTED

(Title)

Public Examination of the Debtor

Before...... at the High Court this ...... day of ...... 19......

The above-named debtor, being sworn and examined at the time and place above-mentioned, upon the several questions following being put and propounded to him, gave the several answers thereto respectively following each question—

А

.....

Shorthand Writer

No. 68

NOTES OF PUBLIC EXAMINATION OF DEBTOR WHERE SHORTHAND WRITER IS NOT APPOINTED

(Title)

Public Examination of the Debtor

Before ......day of .....

The above-named debtor being sworn and examined at the time and place above-mentioned, upon his oath saith as follows—

А

.....

Registrar

No. 69

ORDER OF ADJOURNMENT OF PUBLIC EXAMINATION

(Title)

No. 70

# ORDER DISPENSING WITH PUBLIC EXAMINATION OF DEBTOR r. 158

(Title)

Upon the application of the Official Receiver (or, of (a) ...... of ...... of ...... in the above matter and, upon residing ...... and upon hearing ...... and it appearing to the Court that the debtor is (b) ...... it is ordered that the public examination of the debtor be dispensed with.(a) Insert name and address of applicant, and capacity in which he makes the application

(b) State what the disability is Dated this ......By the Court,Registrar

No. 71

ORDER AS TO EXAMINATION OF DEBTOR WHO IS SUFFERING FROM MENTAL OR PHYSICAL AFFLICTION OR DISABILITY r. 158

(Title)

(b) This part of the order to be adapted to circumstances of the case

(c) Insert place of examination

No. 72

MEMORANDUM OF PUBLIC EXAMINATION OF DEBTOR

(Title)

MEMORANDUM.—That I, ....., the above-named debtor, being sworn and examined, upon my oath, say that the notes of my public examination, marked "A" and appended hereto, were read over by or to me, and are correct.

And I further say, that at the time of this my examination, I have delivered up to the Official Receiver or the trustee of my estate, all property, estate, and effects, and all books, papers, and writings relating thereto.

And I further say, that I have made a full disclosure of all my assets and of all my debts and liabilities of whatever kind, and that I have not removed, concealed, embezzled, or destroyed any part of my estate, movable or immovable, nor any books of account, papers, or writings relating thereto, with an intent to defraud my creditors, or to conceal the state of my affairs.

(Here insert any special matter)

Sworn before me this......day of ......19.....

(Signature).....

No. 73

ORDER OF COURT THAT EXAMINATION IS CONCLUDED

(Title)

Whereas the above-named A.B. has duly attended before the Court, and has been publicly examined as to his conduct, dealings, and property:

And whereas the Court is of opinion that the affairs of the said A.B. have been sufficiently investigated, it is hereby ordered that the examination of the said A.B. is concluded.

Dated this ..... day of .....19....

By the Court,

Registrar

No. 74

# PROPOSAL FOR A COMPOSITION r. 159

(Title)

I, ..... the above-named debtor, hereby submit the following proposal for a composition in satisfaction of my debts—

1. That payment in priority to all other of my debts of all debts directed to be so paid in the distribution of the property of a bankrupt shall be provided for as follows—

(Set out terms of proposal so far as relates to preferential claims.)

2. That provision for payment of all proper costs, charges, and expenses of and incidental to the proceedings, and all fees and percentages payable shall be made in the following manner—

(Set out proposal for provisions for fees, charges, costs, etc.)

3. That the following composition shall be paid as hereinafter mentioned on all provable debts-

(Set out terms of composition)

4. That the payment of the composition be secured in the following manner-

(Set out full names and address of sureties (if any) and complete particulars of all securities-intended to be given.)

No. 75

**PROPOSAL FOR A SCHEME** 

(Title)

I, ....., the above-named debtor, hereby submit the following proposal for a scheme of arrangement of my affairs in satisfaction of my debts.

1. That—

(Set out terms of scheme.)

2. That payment in priority of all other of my debts of all debts directed to be so paid in the distribution of the property of a bankrupt is provided for as follows—

(Set out or indicate, by reference to the scheme, how it is proposed to satisfy preferential claims.)

3. That provision for the payment of all proper costs, charges, and expenses of and incidental to the proceedings and all fees and percentages payable is provided for as follows—

(Set out or indicate, by reference to the scheme, how it is proposed to provide for fees, costs, charges, etc.)

(Set out any other terms.)

No. 76

REPORT OF OFFICIAL RECEIVER ON PROPOSAL FOR COMPOSITION OR SCHEME AND VOTING LETTER

(Title)

The Official Receiver of the above estate hereby reports-

That the debtor has lodged with him a proposal for a composition (or scheme) to be submitted to the creditors, of which the following is a copy—

(Here set out fully the terms of proposal.)

That the liabilities, as shown by the debtor's statement of affairs, amount to the sum of  $\pounds$ ...... and the assets are estimated by the debtor at the sum of  $\pounds$ ..... after payment of preferential debts.

That the value of the assets is (fairly estimated by the debtor) (or, as the case may be).

That the terms of the debtor's proposal (set out report as to proposal and the debtor's conduct).

Dated this ..... day of .....19....

.....

**Official Receiver** 

VOTING LETTER

(Title)

I,...... of ......, a creditor in the above matter for the sum of £...... hereby request the Official Receiver of the said estate to record my vote (a) ......the acceptance of the above proposal and/or (b) ......any amendment thereof which shall in the opinion of the Official Receiver be calculated to benefit the general body of the creditors.(a) Insert here the word "for" or the word "against" as the case may require

No. 77

# **RESOLUTION ACCEPTING COMPOSITION**

(Title)

Resolved as follows (unanimously)-

That the debtor's proposal for a composition, as set forth in the annexed paper writing, marked "A", be accepted.

F.K.....

Chairman

NumberAssenting creditors' signaturesAmount of proofNumberDissenting creditors' signaturesAmount of proof £s.d. £s.d.

NOTE.—When a resolution is carried unanimously the creditors need not sign, but when a division is taken all creditors and holders of proxies voting should sign. The signatures must be attached at the meeting. Resolutions should be put separately.

No. 78

## **RESOLUTION ACCEPTING A SCHEME OF ARRANGEMENT**

(Title)

That the debtor's proposal for a scheme of arrangement as set forth in the paper writing hereunto annexed, and marked with the letter "A", be accepted.F.K.....Chairman

NumberAssenting creditors' signaturesAmount of proofNumberDissenting creditors' signaturesAmount of proof £s.d. £s.d.

NOTE.—When a resolution is carried unanimously the creditors need not sign, but when a division is taken all creditors and holders of proxies voting should sign. The signatures must be attached at the meeting. Resolutions should be put separately.

No. 79

APPLICATION TO EXTEND TIME FOR APPROVING A COMPOSITION OR SCHEME, AND ORDER THEREON

(Title)

Ex parte the Official Receiver.

ORDER

Before.....

Dated this ..... day of .....19....

By the Court,

Registrar

No. 80

APPLICATION TO COURT TO APPOINT A DAY FOR APPROVING COMPOSITION OR SCHEME

(Title)

 majority in number representing three-fourths in value of all the creditors who have proved their debts.(a) A composition or scheme of arrangement And whereas the public examination of the said debtor was concluded on the ...... day of ...... 19...... Now the (b) ..... applies to the Court to fix a day for the consideration of the above-mentioned (a) .....(b) "Debtor" or "Official Receiver" The gross amount of the (c) ...... on which the ad valorem fee will be payable is £.....(c) "Estimated assets" (but not exceeding the gross amount of the unsecured liabilities), or "composition" Dated this day of ..... ......Debtor (or Official Receiver)

#### ORDER

#### No. 81

APPLICATION TO COURT TO APPOINT DAY FOR APPROVING COMPOSITION OR SCHEME IN A SUMMARY CASE

(Title)

SUMMARY CASE

(b) "Debtor" or "Official Receiver"

ORDER
## No. 82

NOTICE TO CREDITORS OF APPLICATION TO COURT TO APPROVE COMPOSITION OR SCHEME OF ARRANGEMENT

# (Title)

Dated this ..... day of .....19....

.....

**Official Receiver** 

No. 83

NOTICE TO CREDITORS OF APPLICATION TO COURT TO APPROVE COMPOSITION OR SCHEME OF ARRANGEMENT IN A SUMMARY CASE

(Title)

#### SUMMARY CASE

Dated this .....19.....

.....

**Official Receiver** 

No. 84

NOTICE TO OFFICIAL RECEIVER OF APPLICATION TO COURT BY DEBTOR TO APPROVE COMPOSITION OR SCHEME

(Title)

TAKE NOTICE that application will be made to the Court on the...... day of......19......, at...... o'clock in the......noon, to sanction the composition (or scheme) approved on the...... day of......19......, by the statutory majority of creditors.

Dated this ..... day of .....19....

G.H.....

No. 85

ORDER ON APPLICATION TO APPROVE COMPOSITION OR SCHEME r. 166

(Title)

On the application of ......, and on reading the report of the Official Receiver, filed on the ......day of ......................., and hearing the Official Receiver and ......, and the Court being satisfied that the creditors in the above matter have duly accepted and approved a composition (or scheme) in the following terms, namely (here insert terms if short; if not, insert "in the terms contained in the paper writing marked 'A' annexed hereto"),\* and being satisfied that the case is one in which the Court would not be required, if the debtor were adjudged bankrupt, to refuse an order of discharge (and as the case may be). And being satisfied

(a) That no facts have been proved which would justify the Court in refusing, qualifying, or suspending an order of discharge;

Or

(b) that facts have been proved which would justify the Court in refusing, qualifying, or suspending an order of discharge, but that having regard to the nature of such facts, and the composition (or scheme) providing reasonable security for payment of not less than five shillings in the pound on all unsecured debts provable against the debtor's estate, the said composition (or scheme) is hereby approved, and it is ordered—

(i) that the receiving order made against the said ...... on the......day of ......19......, be and the same is hereby discharged;

Or

(ii) That the order of adjudication made against the said ...... on the ......day of...... 19....., be and the same is hereby annulled; Or\*

and being satisfied that the said terms are not reasonable or calculated to benefit the general body of creditors;

And being satisfied

(a) that the case is one in which the Court would be required, if the debtor were adjudged bankrupt, to refuse his discharge;

(b) That facts have been proved which would under the Bankruptcy Act justify the Court in refusing, qualifying or suspending the debtor's discharge;

the Court doth refuse to approve the said composition (or scheme).

Dated this .....19.....

By the Court,

Registrar

No. 86

APPLICATION FOR ENFORCEMENT OF PROVISION IN A COMPOSITION OR SCHEME

(Title)

In the matter of a composition (or scheme of arrangement) made by A.B., of.....

I, F.M., of ....., do apply to this Court for an order for the enforcement of the provisions of the said composition (or scheme of arrangement) against....., on the grounds set forth in the annexed affidavit.

Dated this ..... day of .....19....

F.M.....

No. 87

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ENFORCEMENT OF PROVISIONS OF A COMPOSITION OR SCHEME

(Title)

In the matter of a composition (or scheme of arrangement) made by A.B., of.....

I, F.M., of ....., make oath and say-

1. That I am interested in the said composition (or scheme of arrangement), having proved my debt as a creditor of the said A.B. (or as the case may be).

2. That (one of) the provisions of the said composition (or scheme of arrangement) is (or are) (here set it or them out).

3. That .....has failed to comply with the said provisions (or as the case may be).

Sworn at, etc.

F.M.....

No. 88

ORDER FOR ENFORCEMENT OF PROVISIONS IN A COMPOSITION OR SCHEME

(Title)

In the matter of a composition (or scheme of arrangement) made by A.B., of.....

Upon the application of F.M., of ....., and reading (here insert evidence), and upon hearing ......, the Court being of opinion that the provisions of the said composition (or scheme of arrangement) mentioned in the said affidavit should be enforced, it is ordered that (here insert order).

Dated this.....19.....

By the Court,

Registrar

То.....

Take notice that unless you obey the direction contained in this order, you will be deemed to have committed a contempt of court.

No. 89

CERTIFICATE OF APPROVAL OF COMPOSITION OR SCHEME

(Title)

Dated this.....19.....

.....

**Official Receiver** 

No. 90

NOTICE TO DEBTOR OF INTENDED APPLICATION FOR ADJUDICATION

(Title)

No. 91

APPLICATION FOR ADJUDICATION UNDER SECTION 16 OF THE BANKRUPTCY ACT

(Title)

The Official Receiver in the above matter reports to the Court-

That a receiving order was made against the above-named debtor on the ...... day of......

That a copy of the form hereunto annexed was ......to the said debtor on the ...... day of ...... 19......

That the debtor has not submitted a statement of and in relation to his affairs as required by section 16 of the Bankruptcy Act nor has he furnished the Official Receiver with any reasonable excuse for his failure to do so.

The Official Receiver accordingly, in pursuance of section 16 of the Bankruptcy Act, makes application to the Court to adjudge the said debtor bankrupt.

Dated this ......day of .....19.....

.....

**Official Receiver** 

No. 92

APPLICATION FOR ADJUDICATION UNDER SECTION 16 OF THE BANKRUPTCY ACT AND RULE 180 OF THE BANKRUPTCY RULES

(Title)

The Official Receiver in the above matter reports to the Court-

That the act of bankruptcy on which the petition was founded was the allegation that the debtor had within three months before the date of presentation of the petition.....

That from inquiries made since the receiving order, the statement that the debtor had .....appears to have been well founded, and the present place and residence of the debtor has not been ascertained.

That the debtor has failed to attend at the office of the Official Receiver to be examined in respect to his property and creditors, and to give necessary information relative to his estate, affairs, conduct, and dealings, and to receive instructions as to the preparation of a statement of and in relation to his affairs in accordance with the notice (a copy of which is hereto annexed) sent by post addressed to......as aforesaid.

That the debtor has not submitted a statement of and in relation to his affairs in pursuance of section 16 of the Bankruptcy Act.

That Official Receiver accordingly, in pursuacne of section 16 of the Bankruptcy Act and rule 180 of the Bankruptcy Rules, makes application to the Court to adjudge the said debtor.....bankrupt.

Dated this.....19.....

.....

**Official Receiver** 

No. 93

APPLICATION FOR ADJUDICATION AFTER RESOLUTION FOR BANKRUPTCY OR BY CONSENT

(Title)

No. 94

APPLICATION FOR ADJUDICATION. No QUORUM. SUMMARY ADMINISTRATION

(Title)

# SUMMARY CASE

No. 95

### APPLICATION FOR ADJUDICATION WHERE NO QUORUM AT ADJOURNED MEETING

(Title)

The Official Receiver to the Court— That a receiving order was made against the above-
named debtor on the day of 19 19
creditors was duly summoned to be held at, on the day of 19
The creditors qualified to vote not being present or represented thereat to form a quorum, the
said meeting was adjourned to the day of 19 19
adjourned meeting creditors qualified to vote not being present or .represented to form a quorum no
resolution was passed.(a) "Notice of this application was on the day of19 sent by
post addressed to the debtor" or "the debtor has consented in writing to the Court adjudging him
bankrupt" That (a) The
Official Receiver accordingly, in pursuance of section 20 of the Bankruptcy Act, makes application to the
Court to adjudge the said debtor bankrupt. Dated this day of 19
Official Receiver

No. 96

ORDER OF ADJUDICATION rr. 179 and 183

(Title)

Pursuant to a petition dated .....against (here insert name, description and address of debtor) on which a receiving order was made on the (date) and on the application of (here insert "the Official Receiver" or "the debtor himself" or "A.B., of....., a creditor"), and on reading ...... and hearing ....., it is ordered that the debtor be and the debtor is hereby adjudged bankrupt.

Dated this.....day of.....19.....

By the Court,

Registrar

Or

Whereas pursuant to a petition dated ...... against A.B., a receiving order was made on the (date). And whereas it appears to the Court that at the first meeting of creditors held on the (date) (or at an adjournment of the first meeting of creditors) at ...... it was duly resolved that the debtor be adjudged bankrupt, it is ordered that the debtor be and the said debtor is here by adjudged bankrupt.

Dated this.....19.....

By the Court,

Registrar

No. 97

ORDER OF ADJUDICATION AFTER RECEIVING ORDER UNDER SECTION 100 OF THE BANKRUPTCY ACT

(Title)

And whereas it appears to this Court that (grounds of application for adjudication)

It is ordered that the debtor be and the said debtor is hereby adjudged bankrupt.

Dated this..... day of ..... 19.....

By the Court,

Registrar

No. 98

# APPLICATION TO ANNUL ADJUDICATION UNDER SECTION 31 OF THE BANKRUPTCY ACT r. 147

(Title)

I, R.S., of ..... being interested in this matter, do hereby make application to the Court that the order of adjudication against A.B. be annulled (here state grounds of application).

Dated this..... day of..... 19.....

R.S.....

No. 99

ORDER ANNULLING ADJUDICATION UNDER SECTION 31 OF THE BANKRUPTCY ACT

(Title)

On the application of R.S., of ...... and on reading ....., and hearing ....., it is ordered that the order of adjudication dated ....., against A.B., of ....., be and the same is hereby annulled.

Dated this.....day of.....19.....

By the Court,

Registrar

No. 100

APPLICATION FOR ORDER OF DISCHARGE

(Title)

My public examination was concluded on the ......day of...... 19......

Annexed hereto is the certificate of the Official Receiver certifying the number of my creditors.

Dated this..... day of .....19.....

(Signed) A.B.

To The Registrar of the High Court.

No. 101

# CERTIFICATE OF NUMBER OF CREDITORS

(Title)

I certify that the creditors of the above bankrupt who require to be notified of his intention to apply for his discharge are .....in number.

Dated this..... day of ..... 19.....

.....

**Official Receiver** 

No. 102

NOTICE TO OFFICIAL RECEIVER AND TRUSTEE OF APPLICATION FOR DISCHARGE r. 185

(Title)

Dated this..... day of..... 19.....

.....

Registrar

To the Official Receiver and Trustee.

No. 103

NOTICE TO CREDITORS OF APPLICATION FOR DISCHARGE r. 185

(Title)

Take notice that the Bankrupt A.B., of ....., has applied to the Court for his discharge, and that the Court has fixed the......day of......19....., at......o'clock, for hearing the application.

Dated this..... day of..... 19.....

.....

**Official Receiver** 

To X.Y.

No. 104

ORDER GRANTING OR REFUSING DISCHARGE r. 191

(Title)

And whereas it has not been proved that the bankrupt has committed any offence under the Act, or any offence connected with his bankruptcy, and proof has not been made of any of the facts mentioned in section 28 (3) or section 29 of the Bankruptcy Act, or that the bankrupt has been guilty of any misconduct in relation to his property and affairs.

It is ordered that he be and he hereby is discharged.

Or

And whereas it has been proved that the bankrupt has committed the following offences, namely—(here state particulars)

Or

And whereas it has not been proved that the bankrupt has committed any offences mentioned in the Bankruptcy Act; but proof has been made of the following facts under section 28 (3) (and/or section 19) of the Bankruptcy Act, namely—(here state particulars)

And/or that he has been guilty of misconduct in relation to his property and affairs, namely— (here state particulars)

It is ordered that the bankrupt's discharge be and it is hereby refused.

Dated this .....day of .....19.....

By the Court,

Registrar

No. 105

ORDER SUSPENDING DISCHARGE

(Title)

On the application of.....

### (Commencement as in Form 104)

And whereas it has not been proved that the bankrupt has committed any of the offences mentioned in section 28 of the Bankruptcy Act (or it has been proved that the bankrupt has committed the following offences, namely—(set them out), but the Court has for the following special reasons (state them) determined that his discharge shall not on that ground be absolutely refused); but proof has been made of the following facts under section 28 (3) of the Bankruptcy Act (and/or section 29 of the Bankruptcy Act) (here state particulars). And/or that he has been guilty of misconduct in relation to his property and affairs, namely—(here state particulars)

It is ordered that the bankrupt's discharge be suspended until a dividend of not less than ten shillings in the pound has been paid to his creditors, with liberty to the bankrupt at any time after the expiration of two years from the date of his order to apply for a modification thereof, pursuant to section 28 of the Bankruptcy Act.

Or

It is ordered that the bankrupt's discharge be suspended for ...... years, and that he be discharged as from the.......day of....... 19......

Dated this ......day of .....19.....

By the Court,

Registrar

No. 106

ORDER OF DISCHARGE WHERE ONLY FACT PROVED THAT ASSETS NOT EQUAL TO 10S. IN THE  $\pm$ 

(Title)

On the application of.....

(Commencement as in Form 104)

And whereas it has not been proved that the bankrupt has committed any of the offences mentioned in section 28 of the Bankruptcy Act, and whereas the only fact under subsection (3) of that section and section 29 of which proof has been made is the fact that the bankrupt's assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities.

Dated this .....19.....

By the Court,

## Registrar

No. 107

ORDER OF DISCHARGE SUBJECT TO CONDITIONS AS TO EARNINGS, AFTER-ACQUIRED PROPERTY, AND INCOME

(Title)

On the application of.....

(Commencement as in Form 104)

No. 108

ORDER OF DISCHARGE SUBJECT TO A CONDITION REQUIRING THE BANKRUPT TO CONSENT TO JUDGMENT BEING ENTERED UP AGAINST HIM r. 191

(Title)

On the application (a)..... It is ordered that the bankrupt be discharged subject to the following condition to be fulfilled before the discharge takes effect, namely, he shall, before the signing of the order, consent to judgment being entered against him in the High Court, ......by the Official Receiver (or trustee) for the sum of £....., being the balance (or part of the balance) of the debts provable in the bankruptcy which is not satisfied at the date of this order, and £.....for costs of the judgment.(a) Formal parts and recitals as in the last preceding form And it is further ordered, without prejudice and subject to any execution which may be issued on the said judgment with the leave of the Court, that the said sum of £......be paid out of the future earnings and after-acquired property of the bankrupt in manner following, that is to say, after setting aside out of the bankrupt's earnings and after-acquired property a yearly sum of £...... for the support of himself and his family, and the bankrupt shall pay the surplus, if any (or such portion of the surplus as the Court may determine), to the Official Receiver (or trustee) for distribution among the creditors in the bankruptcy. An account shall, on the first day of January in each year or within fourteen days thereafter, be filed in these proceedings by the bankrupt, setting forth a statement of his receipts from earnings, after-acquired property, and income during the year immediately preceding the said date, and the surplus payable under this order shall be paid by the bankrupt to the Official Receiver (or trustee) within fourteen days of the filing of the said account.

And it is further ordered that upon the required consent being given, judgment may be entered up against the bankrupt in the High Court.....for the said sum of £.....together with £.....br Court,Registrar

No. 109

CONSENT OF BANKRUPT TO JUDGMENT BEING ENTERED UNDER SECTION 28 OF THE BANKRUPTCY ACT r. 190

Re.....

I, A.B., of ...... the above-named bankrupt, do hereby consent to judgment being entered against me by the Official Receiver for the sum of  $\pm$ ....., being the balance or part of the balance of the debts provable under my bankruptcy which is not satisfied at the date of my discharge; but this consent is subject to the provision contained in the Bankruptcy Act in regard to the issue of execution on such judgment.

Dated this.....19....

No. 110

JUDGMENT TO BE ENTERED PURSUANT TO CONSENT r. 190

(Title)

In the High Court of Malawi

19....., No.....

Between ....., Plaintiff, and A.B., Defendant.

And the consent mentioned in the said order having been given and filed in the matter of the said bankruptcy.

It is this day adjudged that the plaintiff recover against the said defendant £....., together with £......for costs of judgment.

Dated this.....day of.....19.....

G.F.....

Legal practitioner for

Plaintiff

No. 111

AFFIDAVIT BY BANKRUPT WHOSE DISCHARGE HAS BEEN GRANTED CONDITIONALLY AS TO AFTER-ACQUIRED PROPERTY OR INCOME r. 195

(Title)

I, the above-named debtor, make oath and say as follows-

1. I have since the date of my discharge resided and carried on business at ....., and I now reside and carry on business at .....

2. The statement hereto annexed is a full, true and complete account of all moneys earned by me and of all property and income acquired or received by me since the date of my discharge (or, since the date when I last filed a statement of after-acquired property and income in Court, namely, the ....... day of ....... 19......).

Sworn at, etc.

(Signature).....

Debtor

No. 112

CERTIFICATE FOR REMOVAL OF DISQUALIFICATION

(Title)

Dated this.....day of.....19.....

By the Court,

Registrar

# No. 113

CERTIFICATE OF APPOINTMENT OF TRUSTEE r. 269

(Title)

.....

Judge

No. 114

REPORT OF APPOINTMENT OF TRUSTEE TO FILL A VACANCY CAUSED BY RESIGNATION, ETC.

(Title)

It is reported to the Court as follows—

1. That a meeting of creditors in this bankruptcy was held on the ......day of......day of.......day of.......day of for the purpose of receiving of G.H. his resignation of the office of trustee and of appointing a person to fill such office (or, for the purpose of appointing a trustee in the place of G.H., who is dead, or who has resigned, or who has been removed or, as the case may be).

2. That by resolution at such meeting, N.O., of ..... was appointed to fill the office of trustee of the property of the bankrupt.

Dated this.....day of.....19.....

F.K.....

Chairman

No. 115

APPLICATION BY TRUSTEE FOR COMMITAL OF BANKRUPT OR OTHER PERSON

(Title)

I, the trustee of the property of the said bankrupt (or as the case may be) do apply to this Court for an order of Committal for contempt of this Court against the said bankrupt (or L.M.,.....), on the ground set forth in the annexed affidavit.

Dated this..... day of..... 19.....

G.H....

Trustee

No. 116

# AFFIDAVIT OF A PERSON INTERESTED IN A COMPOSITION FOR COMMITTAL

(Title)

In the matter of a composition made by A.B., of ..... I, F.M., of ..... make oath and say—

2. That a copy of the said order was duly served on the said .....

3. That the said .....has failed to obey such order. Sworn at, etc.

F.M.....

No. 117

AFFIDAVIT IN SUPPORT OF APPLICATION OF COMMITTAL OF DEBTOR FOR CONTEMPT UNDER SECTION 24 OF THE BANKRUPTCY ACT

(Title)

I, G.H., the Official Receiver of the estate of the said debtor (the trustee of the property of the said bankrupt) make oath and say—Where the debtor does not submit to examination 1. That the at....., and wilfully refused to submit to be examined at such meeting in respect of his property 1. That the said (debtor) bankrupt did wilfully (or his creditors), contrary to the Bankruptcy Act. Or fail to attend a meeting of his creditors held on the......day of...... 19......, at ...... Act.Where the debtor fails to attend a meeting other than the firstOr 1. That the said (debtor) bankrupt has wilfully failed to execute (here describe the deed, etc., that he has failed to execute), contrary to the Bankruptcy Act. Where debtor fails to execute a deed 2. That the said (debtor) bankrupt was on the ......day of ......19......, duly served with a notice, a copy of which is hereunto annexed, by leaving the same at his usual place of residence, requiring him to attend the said meeting (or to execute the above-mentioned deed, etc.). When the debtor fails to attend a meeting other than the first, or to execute a deedOr 1. That the said (debtor) bankrupt has wilfully failed to perform the duty imposed on him by the Bankruptcy Act, section 24 (here insert any act he has been required to do by any special order of the Court, stating the day on which the order was made). When the debtor fails to obey any special orders of the Court 2. That the said (debtor) bankrupt was duly served with a copy of such order by leaving the same at his usual place of residence on the .....day of .....1..Or 1. That the said (debtor) bankrupt has failed to deliver up No. 118

AFFIDAVIT OF TRUSTEE UNDER SECTION 50 OF THE BANKRUPTCY ACT

(Title)

I, G.H., the trustee of the property of the said A.B., a bankrupt, make oath and say-

1. That I believe that L.M., of ....., hath in his possession or power as (here set out the capacity in which the person stands to the bankrupt) certain moneys (and securities) belonging to the bankrupt, that is to say (here set out and describe the particular moneys and securities).

3. That I firmly believe that the said L.M. is not entitled by law to retain such moneys (and securites) as against the bankrupt or against me as the trustee of the property of the bankrupt.

Sworn at, etc.

.....

Trustee

No. 119

NOTICE OF APPLICATION FOR COMMITAL UNDER SECTION 18 OR 23 OF THE BANKRUPTCY ACT

(Title)

То.....

 the Court on such day at the hour before stated, to show cause why an order for your committal should not be made.

Dated this ......day of .....19.....

.....

Registrar

No. 120

NOTICE OF APPLICATION FOR COMMITAL UNDER SECTION 24 OF THE BANKRUPTCY ACT

(Title)

To the said A.B., bankrupt.

Dated this......day of ...... 19.....

.....

Registrar

No. 121

NOTICE OF APPLICATION FOR COMMITTAL UNDER SECTION 50 (5) OF THE BANKRUPTCY ACT

(Title)

To (here insert name, address, and description of the person to whom the notice is to be sent).

Dated this..... day of..... 19.....

.....

Registrar

No. 122

#### ORDER OF COMMITTAL UNDER SECTION 18 OR 23 OF THE BANKRUPTCY ACT

(Title)

Whereas bv an order of this Court made on the .....day of and upon hearing A.B. (or as the case may be), (or if he does not appear) reading the affidavit of (here insert name and description of person by whom the order was served on A.B.), and upon reading the affidavit of (enter evidence), the Court being of the opinion that the said A.B. has been guilty of contempt of this Court by his disobedience of the said order, it is ordered that the said A.B. do stand committed to (here insert prison) for his said contempt.

Dated this..... day of..... 19.....

By the Court,

Registrar

No. 123

ORDER FOR COMMITTAL UNDER SECTION 24 OF THE BANKRUPTCY ACT

(Title)

Upon application of the trustee (or Official Receiver) of the property of the bankrupt (or debtor) and upon hearing the bankrupt (or if he does not appear) reading the affidavit of (here insert name and description of person by whom the notice to show cause was served), and upon reading the affidavit of (enter evidence), the Court being of opinion that the bankrupt has been guilty of a contempt of this Court by having failed to (here follow the notice), it is ordered that the said bankrupt do stand committed to (here insert prison) for the said contempt.

Dated this..... day of..... 19.....

By the Court,

Registrar

No. 124

ORDER OF COMMITTAL UNDER SECTION 50 (5) OF THE BANKRUPTCY ACT

(Title)

Upon the application of the trustee of the property of the bankrupt and upon hearing L.M. (or if L.M. does not appear), and reading the affidavit of (here insert name and description of person by whom the notice to show cause was served), and upon reading the affidavit of (enter evidence), the Court being of opinion that L.M. has been guilty of a contempt of this Court by having failed to pay and deliver to the said trustee certain moneys (and securities) (here follows the notice), it is ordered that the said L.M. do stand committed to (here insert prison) for the said contempt.

Dated this..... day of..... 19.....

By the Court,

Registrar

No. 125

AFFIDAVIT OF NON-COMPLIANCE WITH ORDER UNDER SECTION 98 (2) OF THE BANKRUPTCY ACT

(Title)

I, F.M., of ....., make oath and say-

1. That G.H., of ....., was by an order of the ....., made on the......day of ........................, ordered to (here set out order).

2. That (a copy of) the said order was duly served on the said G.H.

3. That the said G.H. has failed to obey the order.

Sworn, etc.

No. 126

#### WARRANT OF COMMITTAL FOR CONTEMPT

(Title)

To X.Y., officer of this Court, and to the Superintendent of the prison at......

These are therefore to require you the said X.Y. to take the said A.B. (or L.M.) and to deliver him to the Superintendent of the prison at ....., and you the said Superintendent to receive the said A.B. and him safely to keep in your custody until such time as this Court shall order; and you the said Superintendent shall, while the said A.B. is in your custody, at all times, when the Court shall so direct produce the said A.B. before the Court.

Dated this.....19.....

By the Court,

Registrar

No. 127

ORDER FOR DISCHARGE FROM CUSTODY ON CONTEMPT

(Title)

Dated this..... day of..... 19.....

By the Court,

Registrar

No. 128

ORDER FOR PRODUCTION OF PERSON IN PRISON FOR EXAMINATION BEFORE THE COURT

(Title)

Dated this..... day of..... 19.....

By the Court,

Registrar

No. 129

SEARCH WARRANT

## (Title)

Whereas by evidence duly taken upon oath it hath been made to appear to the Court that there is reason to suspect and believe that property of the said debtor is concealed in the house (or other place, describing it, as the case may be) of one X.M., of...... such house (or place) not belonging to the said debtor.

These are therefore to require you to enter in the day time into the house (or other place, describing it) of the said X.M., situate at..... aforesaid, and there diligently to search for the said property, and if any property of the said debtor shall be there found by you on such search, that you seize the same, to be disposed of and dealt with according to the provisions of the Bankruptcy Act.

Dated this..... day of..... 19.....

.....

#### Registrar

To X.Y., officer of this Court and his assistants (or Sheriff of this Court).

No. 130

# WARRANT OF SEIZURE

# (Title)

And that which you shall so seize you shall safely detain and keep in your possession until you shall receive other orders in writing for the disposal thereof from the trustee or Official Receiver; and in case of resistance or of not having the key or keys of any door or lock of any premises belonging to the said debtor where any of his goods are or are suspected to be, you shall break open, or cause the same to be broken open, for the better execution of this warrant.

Dated this..... day of..... 19.....

.....

#### Registrar

To X.Y., officer of this Court and to his assistants (or to the Sheriff of this Court).

### No. 131

### WARRANT AGAINST DEBTOR ABOUT TO QUIT MALAWI, ETC.

(Title)

To X.Y., officer of this Court and all peace officers within the jurisdiction of the said Court, and to the Superintendent of the prison at.....

Whereas, by evidence taken upon oath, it has been made to appear to the satisfaction of the Court that there is probable reason to suspect and believe that the said A.B., of ....., has absconded and left Malawi (or quitted his place of residence), or is about to go abroad (or quit his place of residence) with a view of avoiding service of a bankruptcy petition (or of avoiding appearing to a bankruptcy petition, or of avoiding examination in respect of his affairs or otherwise delaying or embarrassing the proceedings in bankruptcy, or of avoiding payment of a judgment debt in respect of which a bankruptcy notice has been issued).

(Or that there is probable cause to suspect and believe that the said A.B. is about to remove his goods or chattels with a view of preventing or delaying such goods or chattels being taken possession of by the trustee of the property of the bankrupt, or that the said A.B. has concealed or is about to conceal or destroy his goods or chattels, or some of them, or his books, documents, or writings, or some or one of them, may be of use to the creditors in the course of the bankruptcy of the said A.B.)

(Or whereas, by evidence taken upon oath, it hath been made to appear to the satisfaction of this Court that the said A.B., has removed certain of his goods and chattels in his possession, above the value of ....., without the leave of the Official Receiver or trustee, that is to say:)

(here describe the goods or chattels).

These are therefore to require you the said ...... to take the said A.B. and to deliver him to the Superintendent of the prison at ....., and you the said Superintendent to receive the said A.B., and him safely to keep until such time as this Court may order.

Dated this..... day of ..... 19.....

By the Court,

Registrar

No. 132

ORDER TO POSTMASTER-GENERAL UNDER SECTION 26 OF THE BANKRUPTCY ACT

### (Title)

Upon the application of G.H., of ....., the Official Receiver (or trustee) of the property of the above debtor, it is ordered that for a period of three months from (here insert date) all post letters, telegrams and postal packets directed or addressed to the said debtor at (here insert the full address or addresses) shall be redirected, sent or delivered by the Postmaster-General, or officers acting under him, to the said Official Receiver (or trustee) at ...... (or otherwise, as the Court may direct), and that a scaled duplicate of this order be forthwith transmitted by the Official Receiver (or trustee) to the Postmaster-General or officers acting under him.

Dated this..... day of ..... 19.....

By the Court,

Registrar

No. 133

**SUBPOENA** 

(Title)

To [the names of three witnesses may be inserted]

Dated this..... day of..... 19.....

.....

Registrar

No. 134

SUBPOENA DUCES TECUM

(Title)

To [the names of three witnesses may be inserted]

Dated this..... day of..... 19.....

••••••

Registrar

No. 135

SUMMONS UNDER SECTION 27 OF THE BANKRUPTCY ACT

(Title)

To.....\*State any particular documents required, e.g., all ledgers and books of account, invoices, statements of account, letters, books, papers, and documents of every kind, in any manner relating to your dealings and transactions with A.B., a bankrupt, touching a debt alleged to be due by you to the said bankrupt's estate amounting to the sum of £.....

RegistrarNOTE.—This summons is issued on the application of the Official Receiver and trustee, and take notice, that if the sum of £....., stated to be due by you to this estate, be paid to....., Official Receiver, at...., on or before the ..... day of ...... 19....., this summons will be discharged.

No. 136

ADMISSION OF DEBT BY DEBTOR TO BANKRUPT

(Title)

In the matter of A.B., of ....., a bankrupt.

I, the undersigned J.K., of ....., do hereby admit that I am indebted to the said bankrupt in the sum of  $\pm$  .....upon the balance of accounts between myself and the said bankrupt.

Dated this..... day of ..... 19.....

J.K.

Witness,

C.D., Registrar or Official Receiver.

No. 137

ORDER TO PAY ADMITTED DEBT

(Title)

Whereas J.K., of ....., in his examination taken this day and signed and subscribed by him, has admitted that he is indebted to the said debtor in the sum of  $\pounds$ ...., on the balance of accounts between him and the debtor; it is ordered that the said J.K. do pay to the trustee of the property of the debtor, in full discharge of the sum so admitted, the sum of  $\pounds$ ...... forthwith (or if otherwise, state the time and manner of payment), and do further pay to the said trustee the sum of  $\pounds$ ...... for costs.

Dated this..... day of..... 19.....

By the Court,

Registrar

No. 138.

WARRANT TO APPREHEND A PERSON SUMMONED UNDER SECTION 27 OF THE BANKRUPTCY ACT

(Title)

To X.Y. and his assistants of this Court and to the Superintendent of the prison at.....

Whereas by summons dated the.....day of.....day of.....19......, and directed to A.B., of.....), the said A.B. (or F.M.) was required personally to be and appear on the......day of......19....., at......o'clock in the .....noon at this Court to be examined (and/or produce such document as hereinafter as hath been proved upon oath duly served upon the said ..... and a reasonable sum was tendered him for his expenses, and whereas the said ..... having no lawful impediment made known to and allowed by this Court at the time of its sitting hath refused to appear before the Court at the time appointed (and/or hath refused to produce a document in his custody or power relating to the debtor, his dealings, or property, which this Court has required him to produce). These are, therefore, to require and authorize you and every one of you, the said X.Y. and your assistants immediately upon receipt hereof to take the said A.B. (or F.M.), and bring him before this Court at such time and place as this Court shall direct, in order to his being examined as aforesaid, and in the meantime him safely to keep or deliver to the Superintendent of the prison, at.....and forthwith, after such taking and delivery, to report the same to this Court, and obtain its direction or order fixing a day, time, and place for the examination of the said A.B. (or F.M.), and you the said Superintendent to receive the said

A.B. (or F.M.), and him safely keep in your custody to await the direction or order of this Court, and to produce him before this Court at such time and place as shall be specified in such direction or order, and for so doing this shall be a sufficient warrant to you and every one of you.

Dated this..... day of..... 19.....

By the Court,

Registrar

No. 139

ORDER FOR PRODUCTION OF PERSON APPREHENDED UNDER WARRANT UNDER SECTION 27 OF THE BANKRUPTCY ACT FOR EXAMINATION BEFORE THE COURT

(Title)

Dated this..... day of..... 19.....

By the Court,

Registrar

No. 140

NOTICE TO BANKRUPT UNDER SECTION 52 OF THE BANKRUPTCY ACT r. 227

(Title)

To A.B.

On the application you are at liberty to show cause against such order being made.

Dated this..... day of..... 19.....

G.H.....

Trustee

No. 141

NOTICE OF APPLICATION TO SET ASIDE INCOME OF SEPARATE PROPERTY OF BANKRUPT MARRIED WOMAN

(Title)

Dated this.....19.....

То.....

Trustee

No. 142

ORDER SETTING ASIDE PAY, SALARY, ETC., UNDER SECTION 52 (1) OF THE BANKRUPTCY ACT

(Title)

Dated this.....19.....

By the Court,

#### Registrar

I consent to the above order:

Dated this.....19.....

F.K. (add title and office)

No. 143

ORDER SETTING ASIDE SALARY OR INCOME, ETC., UNDER SECTION 52 (2) OF THE BANKRUPTCY ACT

(Title)

Dated this.....19.....

By the Court,

Registrar

No. 144

ORDER FOR PAYMENT TO TRUSTEE OF INCOME OF SEPARATE PROPERTY OF BANKRUPT MARRIED WOMAN NOTWITHSTANDING RESTRAINT ON ANTICIPATION

(Title)

 Dated this.....19.....

By the Court,

Registrar

No. 145

NOTICE TO LANDLORD OF INTENTION TO DISCLAIM LEASEHOLD PROPERTY NOT SUBLET OR MORTGAGED r. 231

(Title)

No. 146

NOTICE OF INTENTION TO DISCLAIM LEASEHOLD PROPERTY SUBLET OR MORTGAGED

(Title)

TAKE NOTICE that I intend to disclaim the lease dated ...... whereby (a) ..... was let to (b) ..... at a rent of £..... (a) Here insert particulars of demised property

(b) The abovenamed bankrupt, or as the case may be If you require the matter to be brought before the Court, you must give notice thereof to me in writing within fourteen days of the receipt by you of this notice. Dated this......day of ......

Trustee To MrThe landlord of the above-mentioned premises; andTo MrThe mortgagee or subtenant

No. 147

DISCLAIMER WITHOUT NOTICE r. 231

# (Title)

l,	, the trustee of the pro	operty of the abo	ove-named b	ankrupt, he	ereby disc	claim
the (a)	of the premises (b)	v	which were	let to the	above-na	imed
bankrupt (c)	at a rent of £	per	(a) Lease d	dated the		or as
the case may be						

(b) Description of the property

(c) On a tenancy or for a term of years or as the case may be

(d) Names and addresses of persons to whom notice given			Notice of this disclaimer has been given				
to (d)	Dated	this		day	of		19

Trustee

No. 148

DISCLAIMER OF LEASEHOLD PROPERTY AFTER NOTICE TO LANDLORD, MORTGAGEES, ETC.

(Title)

Pursuant to notice dated the	day o	f	19, addre	essed to (a)
, I,, the trust	ee of the proper	ty of the above	e-named bank	rupt, hereby
disclaim the lease dated the	day of	19	,	whereby (b)
were let to (c)	at a rent of £ .	f	or a term of	(a)
Names and addresses of persons to whom ne	otice of intention	to disclaim has	been given	

(b) Particulars of demised property

(c) The abovenamed bankrupt, or as the case may be

(d) Names and addresses of persons to whom notice of disclaimer has been givenNotice of thisdislcaimer has been given to (d) .....Dated this ......day of ......19

Trustee

No. 149

DISCLAIMER OF LEASE WITH LEAVE OF THE COURT

(Title)

Pursuant to an order	of the Court dated	d the	day of	19
I,	the trustee of the	property of the	above-named	bankrupt, hereby
disclaim all interest in the lease	dated the	day of	19	, whereby

Trustee

No. 150

NOTICE OF DISCLAIMER WITHOUT LEAVE OF THE COURT r. 231

(Title)

(b) Description of property disclaimed

(c) On a tenancy or for a term of years or as the case may be

TrusteeNOTE.—On the back of this notice the provisions of subsections (2) and (6) of section 55 should be printed.

No. 151

NOTICE OF DISCLAIMER OF LEASE WITH LEAVE OF COURT

(Title)

The above-mentioned disclaimer has been filed in Court with the proceedings in bankruptcy.

Dated this ..... day of ..... 19 .....

.....

Trustee

No. 152

NOTICE BY LANDLORD OR OTHER PERSON REQUIRING TRUSTEE TO BRING MATTER OF INTENDED DISCLAIMER OF PROPERTY BURDENED WITH ONEROUS COVENANTS BEFORE THE COURT

(Title)

To Mr .....

Trustee of the property of the above-named bankrupt.

Sir,

I hereby give you notice that the bankrupt was, at the date of the receiving order, interested as lessee (or, as the case may be) in the property described in the schedule to this notice, and that as such lessee (or, as the case may be) the bankrupt was liable in respect of (set out nature of bankrupt's liability) which liability has devolved on you as trustee in bankruptcy of his property, and I hereby require you to bring the matter of your intended disclaimer of the bankrupt's interest in the said property before the Court.

I am, etc.,

(Signed) A.B.

(State how interested in the property)

Schedule to Notice when given by Lessor

Date of leaseNames, addresses, and descriptions of parties to leaseFull description of property leasedTerm and rentDate of assignment to bankrupt (if any)Names and addresses of parties to assignment (if any)Particulars of any notices of mortgage of lease by bankrupt

Schedule to Notice when given by Mortgagee or Assignee

Date of leaseNames and addresses of parties to leaseDescription of property leasedTerm and rentDate of mortgageNames and addresses of parties to mortgageTerm conveyed by mortgageAmount secured by mortgageParticulars of any transfer of mortgage with dates and names, and descriptions

of parties thereto

No. 153

APPLICATION FOR DIRECTIONS BY TRUSTEE

(Title)

I desire to make application to the Court for its directions (here state the particular matter).

.....

Trustee

Dated this ..... day of ..... 19 .....

.....

Registrar

No. 154

ORDER ON APPLICATION OF TRUSTEE FOR DIRECTIONS

(Title)

Dated this .....day of .....19 .....

By the Court,

Registrar

No. 155

ORDER FOR ADMINISTRATION IN BANKRUPTCY OF ESTATE OF DECEASED DEBTOR UPON PETITION

(Title)

Dated this .....day of ..... 19 .....

By the Court,

## Registrar

No. 156

# STATEMENT TO ACCOMPANY NOTICE OF DIVIDEND AND APPLICATION FOR RELEASE r. 279

(Title)

DR.CR.Estimated to produce per debtor's statementReceiptsPayments£s.d.£s.d.To total receipts from date of receiving order, viz.:By court fees (including stamp on petition)—£s.d.(State particulars under the several headings specified in the debtor's Statement of Affairs)Law costs of petitionOther law costsTrustee's remuneration as fixed by (a), viz.—(a) Creditors or committee of inspection or as the case may be£s.d.Assets realizedReceipts per trading account Other receiptsAssets distributed in dividendSpecial manager's chargesTotalAuctioneer's charges as taxedOther taxed costs£s.d.Costs of possessionLess—Costs of notices in Gazette and local papersDeposit returned to petitionerIncidental outlayTotal cost of realization £Payments to redeem securitiesAllowance to debtorCreditors, viz.— £s.d.Costs of executionPreferential (b)(b) Insert number of creditorsUnsecured (c)(c) First, or as the case may bePayments per trading accountdividend now declared of s. d. in the £ on £Dividends previously declared£The debtor's estimate of amount expected to rank for dividend was fNet realizations £Balance££

Section 81 (2) of the Bankruptcy Act provides that "if one-fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the Court that the remuneration is unnecessarily large, the Court shall fix the amount of the remuneration".

Assets not yet realized estimated to produce £.....

(Add here any special remarks the trustee thinks desirable.)

Creditors can obtain further information by inquiry at the office of the trustee.

Dated this ..... day of ..... 19......

Signature .....

Address .....

NOTE.—When this statement accompanies a declaration of a second or subsequent dividend, it shall incorporate the figures of the preceding statement or statements under their respective headings.

No. 157

NOTICE TO CREDITORS OF INTENTION TO DECLARE DIVIDEND r. 223
### (Title)

## No. 158

NOTICE TO PERSONS CLAIMING TO BE CREDITORS OF INTENTION TO DECLARE FINAL DIVIDEND

(Title)

Dated this ..... day of ..... 19.....

G.H., Trustee

To X.Y.

No. 159

NOTICE TO CREDITOR OF INTENTION TO PAY COMPOSITION

(Title)

Notice is hereby given that a composition is intended to be paid in the above matter.

Your name is included in the list of creditors in the debtor's statement of affairs, but you have not yet proved your debt.

The last day for receiving proofs is the..... day of ...... 19......

Dated this ..... day of ..... 19.....

.....

Official Receiver

No. 160

NOTICE OF DIVIDEND

(Title)

(Please bring this Dividend Notice with you.) Dividend of ..... in the £.

Address.....

Dated this ..... day of ..... 19.....

Upon applying for payment this notice must be produced entire, together with any bills of exchange, promissory notes, or other negotiable securities held by you. If you desire the dividend to be paid to some other person you can sign and lodge with the trustee an authority in the prescribed Form No. 161, otherwise, if you do not attend personally you must fill up and sign the subjoined forms of Receipt and Authority, when a cheque or money order, payable to your order, will be delivered in accordance with the authority.

(Signed) G.H., Trustee

То.....

NOTE.—On application for the dividend this notice must be produced entire, and the bills or other securities held by you must be produced.

Receipt

Received of ...... the sum of £....., being the amount payable to ...... in respect of the ...... dividend of ..... in the pound on ...... claim against this estate.

Dated this ..... day of ..... 19....

.....

**Creditor's Signature** 

.....

£

.....

#### Authority

Sir,

Please deliver to...... the cheque ...... (insert the name of the person who is to receive the cheque, or the words "me by post" if you wish the cheque sent to you in that way) for the dividend payable to...... in this matter.

.....

(Creditor's Signature)

No. 161

AUTHORITY TO TRUSTEE TO PAY DIVIDENDS TO ANOTHER PERSON

(Title)

To.....the Trustee.Sir, I/We hereby authorize and request you to pay to M ....., of ....., all dividends as they are declared in the above-named matter, and which may become due and payable to me/us in respect of the proof of debt for the sum of £ ..... against the above estate made by me/us (or by ....., on my/our behalf), (a)(a) Strike out words inapplicable And I/we further request that the cheque or cheques drawn in respect of such dividends may be made payable to the order of the said M..... whose receipt shall be sufficient authority to you for the issue of such cheque or cheques in his name. It is understood that remain this authority is to in force until revoked by me/us in to the signature writing.Signature......Date......Date..... of .....

No. 162

APPLICATION BY CREDITOR FOR ORDER FOR TRUSTEE TO PAY DIVIDEND WITHHELD AND ORDER THEREON r. 223

(Title)

Dated this.....day of .....19.

F.K .....

Order

Upon the reading of this application, and upon hearing ...... it is ordered that the trustee do forthwith pay to the said F.K. the sum of £....., the amount of such dividend.

And it is further ordered that the trustee do pay to the said creditor at the same time the sum of...... for interest on such dividend, being at the rate of £..... per centum per annum for the time that its payment has been withheld, together with a further sum of...... for the costs of this application.

Dated this ..... day of ..... 19.....

By the Court,

Registrar

(If the Court does not order payment, then after the words "it is ordered" insert the order made.)

No. 163

CERTIFICATE BY COMMITTEE OF INSPECTION AS TO AUDIT OF TRUSTEE'S ACCOUNTS r. 297

(Title)

We, the undersigned, members of the committee of inspection in the matter of ....., a bankrupt, hereby certify that we have examined the foregoing account with the vouchers, and that to the best of our knowledge and belief the said account contains a full, true, and complete account of the trustee's receipts and payments on account of the estate.

Dated this..... day of .....19....

A.B. .....

C.D. ....

E.F. ....

Committee of Inspection

No. 164

AFFIDAVIT VERIFYING TRUSTEE'S ACCOUNT r. 298

(Title)

 such period, received or paid any moneys on account of the said estate If no receipt or payment, strike out the words in italics.\*other than and except the items mentioned and specified in the said account.

Sworn at, etc.

No. 165

## TRUSTEE'S TRADING ACCOUNT

(Title)

G.H., ....., the trustee of the property of the bankrupt in account with the estate.

ReceiptsPaymentsDr.Cr.Date fs.d.Date fs.d.

(Date)

G.H., Trustee

We have examined this account with the vouchers, and find the same correct, and we are of opinion that the expenditure has been proper.

Dated this..... day of ..... 19.....

.....

Committee of Inspection

(or Member of the Committee of Inspection)

No. 166

PROFIT AND LOSS ACCOUNT (TRADING ACCOUNT)

(Title)

Profit and Loss Account

Dr.Cr. £ s. d. £s.d.Stock on hand on......day of......19 Sales Purchases Other receipts (if any) Trade expences, viz.Stock on hand on...... day of......19...... Rent and taxes Wages Miscellaneous. Balance being profit

(Date)

G.H., Trustee

NOTE.—This account to be submitted when the committee of inspection require, and in any case at the end of the trading business carried on by the trustee.

No. 167

AFFIDAVIT VERIFYING TRUSTEE'S TRADING ACCOUNT

(Title)

I, G.H., of ....., the trustee of the property of the above-named bankrupt, make oath and say that the account hereto annexed is a full, true, and complete account of all money received and paid by me or by any person on my behalf in respect of the carrying on of the trade or business of the bankrupt, and that the sums paid by me as set out in such account have, as I believe, been necessarily expended in carrying on such trade or business.

G.H., Trustee

Sworn, etc.

No. 168

STATEMENT OF ACCOUNTS UNDER SECTION 84 OF THE BANKRUPTCY ACT AND UNDER RULES 247 (9) AND 254 (7)

(Title)

RECEIPTSPAYMENTSDateOf whom receivedNature of receiptsAmountDateTo whom paidNature of paymentsAmount £s.d. £s.d.

Dated this ..... day of ..... 19.....

Signature.....

No. 169

AFFIDAVIT BY SPECIAL MANAGER

(Title)

I,..... of...... make oath and say as follows-

1. The account hereunto annexed marked with the letter "A", produced and shown to me at the time of swearing this my affidavit, and purporting to be my account as special manager of the estate or business of the above-named debtor, contains a true account of all and every sums and sum of money received by me or by any other person or persons by my order or to my knowledge or belief for my use on account or in respect of the said estate or business.

2. The several sums of money mentioned in the said account hereby verified to have been paid or allowed have been actually and truly so paid and allowed for the several purposes in the said account mentioned. 3. The said account is just and true in all and every the items and particulars therein contained according to the best of my knowledge and belief.

Sworn, etc.

No. 170

NOTICE TO CREDITORS OF INTENTION TO APPLY FOR RELEASE r. 279

(Title)

Take notice that I, the undersigned, trustee (or late trustee) of the property of the bankrupt, intend to apply to the Court for my release, and further take notice that any objection you may have to the granting of my release must be notified to the Registrar within twenty-one days of the date hereof.

A summary of my receipts and payments as trustee is hereto annexed.

Dated this.....day of .....19.....

To K.L., Creditor.

G.H., Trustee

NOTE. — Section 91 (3) of the Bankruptcy Act enacts that "An order of Court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact".

No. 171

APPLICATION FOR RELEASE BY TRUSTEE

(Title)

I, the trustee of the property of the bankrupt, do hereby report to the Court as follows—

1. That the whole of the property of the bankrupt, has been realized for the benefit of his creditors (and a dividend to the amount of...... shillings in the pound has been paid, as shown by the statement hereunto annexed); (or that so much of the property of the bankrupt as can, according to the joint opinion of myself and the committee of inspection hereunto annexed, in writing under our hands, be realized without needlessly protracting the bankruptcy, has been realized as shown by the statement hereunto annexed, and a dividend to the amount of...... has been paid); (or that a composition (or scheme) under section 23 of the Bankruptcy Act has been duly approved by the Court).

2. I therefore request the Court to cause a report on my accounts to be prepared, and to grant me a certificate of release.

Dated this ..... day of ..... 19 .....

G.H., Trustee

No. 172

REGISTER OF BANKRUPTCY NOTICES TO BE KEPT BY THE REGISTRAR

(Title)

No.DebtorCreditorWhere filedLegal practitionerResult of Notice

No. 173

REGISTER OF PETITIONS TO BE KEPT BY REGISTRAR

(Title)

No. of petitionName of debtorResidenceDescriptionDate of petitionPetitioning creditorLegal practitionerAct of bankruptcy allegedDate of receiving order

No. 174

REGISTER OF RECEIVING ORDERS TO BE KEPT BY REGISTRAR

(Title)

No. of receiving orderNo. of petition Date of petitionDate of receiving orderDate of public examinationDate of approval of composition or schemeDate of adjudicationTrusteeDate of hearing application for dischargeDate of order of dischargeResult of application and conditions (if any)Date of trustee's releaseDate of annulling adjudicationProceedings consolidated or transferredDate of order for summary administration (under section 117)

No. 175

NOTICE OF TRANSFER OF SEPARATE ESTATE TO JOINT ESTATE FOR GAZETTE

(Title)

Notice is hereby given that there being in the hands of the trustee in the above bankruptcy a surplus estimated at £.....arising from the separate estate of (name of separate partner) one of the bankrupts, and there being no separate creditors of such bankrupt, it is the intention of such trustee, at the expiration of...... days from the appearance of this notice in the Gazette, to transfer such surplus to the credit of the joint estate in the said bankruptcy.

Dated this.....day of .....19....

.....

Trustee

No. 176

NOTICES FOR GAZETTE r. 145

THE BANKRUPTCY ACT

(1) Receiving Orders

Debtor's nameAddressDescriptionDate of filing petitionNumber of matterDate of orderWhether debtor's or creditor's petitionAct or acts of bankruptcy

(2) Administration Orders in the Case of Deceased Debtors

Name of deceasedAddressDescriptionDate of deathCourtNo. of matterDate of orderDate of petition or application for transferAct or acts of bankruptcy (if any) committed by deceased within 3 months before the date of his deceaseWhether will or other testamentary disposition (with date thereof), or letters of administrationDate when proved or granted

(3) First Meetings and Public Examinations

Debtor's nameAddressDescriptionCourtNumberDate of first meetingHourPlaceDate of public examinationHourPlaceDate of Order (if any) for summary administration

(4) Notice of Day Appointed for Proceeding with Public Examination adjourned sine die

Debtor's nameAddressDescriptionCourtNumber of matterDate fixed for proceeding with examinationHourPlace

(5) Order on Application to Approve Composition or Scheme r. 166

Debtor's nameAddressDescriptionCourtNumberDate of orderNature of scheme or composition sanctioned or order made

(6) Adjudications

Debtor's nameAddressDescriptionCourtNumberDate of orderDate of petition

(7) Adjudication Annulled

Debtor's nameAddressDescriptionCourtNumberDate of adjudicationDate of annulmentGrounds of annulment

(8) Application for Discharge

Debtor's nameAddressDescriptionCourtNumberDay fixed for hearing

(9) Orders made on Application for Discharge

Debtor's nameAddressDescriptionCourtNumberDate of orderNature of order madeGrounds named in order for refusing an absolute order of discharge

(10) Appointment of Trustees

Debtor's nameAddressCourtNumberTrustee's nameAddressDate of certificate of appointment

(11) Notice of Release of Trustee

Debtor's nameDebtor's addressDebtor's descriptionCourtNo. of matterTrustee's nameTrustee's addressTrustee's descriptionDate of release

(12) Notice of Intended Dividend

Debtor's nameAddressDescriptionCourtNumberLast day for receiving proofsName of trusteeAddress

(13) Notice of Dividend

Debtor's nameAddressDescriptionCourtNumberAmount per £First or final or otherwiseWhen payableWhere payable

(14) Order Annulling, Revoking, or Rescinding Order

Debtor's nameAddressDescriptionCourtNumberNotice and date of order annulled, revoked or rescindedDate of annulment, revocation or rescissionGrounds of annulment, revocation or rescission

(15) Notices to Debtors in lieu of Personal Service of Bankruptcy Notices and Petitions, and of Applications to Commit for Contempt of Court

Debtor's nameDebtor's addressDebtor's descriptionCostNumber of proceedingsNature of notice of which substituted service is directedDate thereoflf a petition or application to commit, date of hearingName and description of persons giving Bankruptcy notice, or by whom petition is presented or by whom application to commit is being made

(16) Notices, in lieu of Personal Service, of Applications to Commit Persons other than Debtors, for Contempt of Court

Name of Person against whom application is madeAddressDescriptionIn what matter application madeDate on which application will be heardName of debtorAddressDescriptionCourtNumber of proceedings

(17) Memorandum of Advertisement or Gazetting

(Title)

Name of paperDate of issueDate of filingNature of order, etc.

(Signed) A.B., Registrar

FEES AND PERCENTAGES SCALE

under s. 120

G.N. 179/1928

BANKRUPTCY FEES

TABLE A

FEES OF COURT

No. of feeDescription of proceedingAmount of fee £s.d.1.On filing a declaration by debtor of inability to pay his debts01002.On issuing a bankruptcy notice01003.On presenting a bankruptcy petition— (i) if presented by the debtor500 (ii) if presented by a creditor6004.On filing a petition under section 118 of the Act6005.On sealing a receiving order under section 100 of the Act6006.On sealing an order dismissing a petition or granting leave to withdraw a petition1007.On sealing an order adjourning a petition0508.On sealing an order of adjudication01009.On sealing a vesting order under section 55 of the Act10010.On filing application for discharge1100 and for each creditor to be notified01011.On filing application for annulment of adjudication210012.On application to Court to approve a scheme of arrangement or composition, a fee computed at the following rates on the gross amount of the composition— (i) on every £100 or fraction of £100 up to £5,0001100 (ii) on every £100 or fraction of £100 above £5,000015013.On filing appeal to Court under section 32 (5) of the Act110014.On sealing an order approving a scheme of arrangement or composition10015.On order annulling an adjudication10016.On any application by Trustee to the Court including an application for directions010017.On application by a party other than Trustee or Receiver to Court under section 55 (5) and (6), sections 79, 110, 134 (4), First Schedule (14) and Second Schedule (24) of the Act10018.On any order of the Court not hereinbefore specified05019. Where by the Rules or Act the Registrar is required to gazette or publish in a local newspaper any matter, such sum as the Registrar requires. 20.On administration of any oath, affirmation or declaration by Registrar or Receiver020 for each exhibit010 for authenticating an office copy01021.On any (a) (b) application to Court, not hereinbefore specified010022.On appeal to the Court of Appeal, such fee as is required by the Court of Appeal Rules. 23.On taxation of bills of costs, accounts, etc.010024.On issue of a subpoena02025.On filing any affidavit to include proof of debt under Second Schedule (1) of the Act04026.On inspection of proof of debt under Second Schedule of the Act04027.On inspection of any Court Record04028.For (a) certified copies of petitions, proceedings, affidavits, books, papers, and writings in the possession of the Registrarfor first folio of 100 words040 (i)

(ii) for each subsequent folio020 For (b) uncertified copies of above— (i)

for first four folios or part thereof 0 2 0 (ii) for each subsequent folio00629.On filing any document not elsewhere specified04030.On giving appointment to settle order with Registrar05031.On

approval of memomandum setting forth conditions upon which security is to be furnished05032.On issue of any (including hearing notice) notice, for each notice01033.On witnessing a declaration by a debtor of his inability to pay his debts or attesting a bankruptcy petition02034.For filing report to Court where debtor or trustee dissatisfied with Receiver's account05035.Application by Receiver to Court: no fee payable.

### TABLE B

## PERCENTAGES

On the net assets realized or brought to credit by the Official Receiver, whether acting as Interim Receiver, Receiver or Trustee, after deducting any sums paid to secured creditors in respect of their securities, and not being assets realized by a special manager or moneys received and spent in carrying on the business of the debtor, and on the net assets realized by an Official Receiver when acting as Trustee to administer a debtor's property under a composition or scheme, after deducting any sums paid to secured creditors in respect of their securities, and not being moneys received and spent in carrying on the business of a debtor, a percentage according to the following scale—

Per cent. £s.d.On the first £1,000 or fraction thereof7100On the next £1,500 or fraction thereof600On the next £2,500 or fraction thereof4100On the next £5,000 or fraction thereof300On all further sums200

On the amount distributed to creditors by the Official Receiver when acting as Trustee under a composition—

Per cent. £s.d.On the first £500 or fraction thereof300On the next £500 or fraction thereof250On the next £1000 or fraction thereof1100On all further sums0150

On the amount distributed in dividend or otherwise to unsecured creditors by the Official Receiver when acting otherwise than as Trustee under a composition, a percentage according to the following scale—

Per cent. £s.d.On the first £1,000 or fraction thereof3150On the next £1,500 or fraction thereof300On the next £2,500 or fraction thereof250On the next £5,000 or fraction thereof1100On all further sums100

For the Official Receiver acting as Interim Receiver of the property of a debtor, in addition to the percentage chargeable on realization, on every order £4 10s. 0d.

And in addition, where the order is in force for a longer period than fourteen days, for every seven days after the first fourteen, and for every fraction of seven days £1 10s. 0d.

For each notice by an Official Receiver to a creditor of a first or any other meeting, or sitting of the Court—

Per cent. £s.d.Where the estimated value of the assets exceeds £100, each notice016Where the estimated value of the assets does not exceed £100—016On the first twenty notices, each notice For each notice above twenty009For each notice by an Official Receiver to a creditor of an adjourned meeting or an adjourned sitting of the Court009

Travelling, keeping possession, and other reasonable expenses of the Official Receiver, the amount disbursed.

On every payment of money out of the Bankruptcy Estates Account, 3d. on each pound or fraction of a pound to be charged as follows—

Where the money consists of unclaimed dividends, on each dividend paid out.

Where the money consists of undistributed funds or balances, on the amount paid out.

For the Official Receiver supervising a special manager or the carrying on a debtor's business, where the estimated assets exceed  $\pm 100$ , a fee according to the following scale—

Per week. £s.d.If the gross assets are estimated by the Official Receiver not to exceed £5001100If to exceed £5,000 but not to exceed £5,000300If to exceed £5,000 but not to exceed £10,0004100If to exceed £10,000 but not to exceed £20,000600If to exceed £20,0007100

Room for meeting or adjourned meeting of creditors summoned by Official Receiver, for each creditor to whom notice has been given of such meeting, a proportionate amount of such outlay as has been incurred.

For official stationery, printing, books, forms and postages, each estate-

£s.d.For every ten applications to debtors to an estate,or fraction of ten030For every ten creditors or fraction of ten where the estimated assets exceed £1000150Where the estimated assets do not exceed £100— For every ten creditors or fraction of ten up to twenty0150For every ten creditors or fraction of ten above twenty076

### TABLE C

### SHERIFF'S CHARGES

Such charges as are chargeable for the time being in civil matters.

### NOTE

At 4th August, 1967, Uganda was the only reciprocating territory currently declared under section 148 of the Act and its declaration as a reciprocating territory was about to be revoked. In view of this, the Bankruptcy (Reciprocity) Rules (G.N. 35, 65 and 96/1932, 219/1964 (N), 166/1967), the commencement notice (G.N. 65/1932) of these Rules and the Bankruptcy (Reciprocity Fees) Notice (G.N. 36 and 96/1932) are not published here.

[Chap1102]CHAPTER 11:02

# DEEDS OF ARRANGEMENT

# ARRANGEMENT OF SECTIONS

SECTION

- 1. Short title
- 2. Interpretation

# PART I

## APPLICATION OF ACT

3. Deeds of arrangement to which Act applies

# PART II

# AVOIDANCE OF DEEDS OF ARRANGEMENT WHERE STATUTORY CONDITIONS NOT COMPLIED WITH

- 4. Avoidance of unregistered deeds of arrangement
- 5. Avoidance of deeds of arrangement unless assented to by a majority of the creditors

# PART III

# **REGISTRATION OF DEEDS OF ARRANGEMENT**

- 6. Registrar for registration
- 7. Mode of registration
- 8. Form of register
- 9. Rectification of register
- 10. Time for registration

11. Inspection of register and registered deeds

# PART IV

- 12. Security by trustee
- 13. Penalty on trustee acting when deed of arrangement void
- 14. Transmission of accounts to official receiver
- 15. Transmission of accounts to creditors
- 16. Audit of accounts
- 17. Payment of undistributed moneys into Court
- 18. Preferential payment to creditor an offence
- 19. Power to High Court to appoint new trustee
- 20. Provisions for the protection of trustees under void deeds
- 21. Notice to creditors of avoidance of deed
- 22. Payment of expenses incurred by trustees
- 23. Application of Part IV

### PART V

- 24. Courts in which applications for enforcement of trusts to be made
- 25. Relation to bankruptcy law
- 26. Office copies
- 27. Fees
- 28. Rules

# 9 of 1931

3 of 1932

19 of 1950

1 of 1957

An Act to regulate Deeds of Arrangement

[19TH MAY 1931]

[Ch1102s1]1. Short title

This Act may be cited as the Deeds of Arrangement Act.

[Ch1102s2]2. Interpretation

(1) In this Act, unless the context otherwise requires—

"creditors generally" includes all creditors who may assent to, or take the benefit of, a deed of arrangement.

"property" has the same meaning as in the Bankruptcy Act. Cap. 11:01

(2) For the purpose of determining the number of creditors for whose benefit a deed is made, any two or more joint creditors shall be treated as a single creditor.

PART I

APPLICATION OF ACT

[Ch1102s3]3. Deeds of arrangement to which Act applies

(1) A deed of arrangement to which this Act applies shall include any instrument of the classes hereinafter mentioned whether under seal or not—

(a) made by, for or in respect of the affairs of a debtor for the benefit of his creditors generally; or

(b) made by, for or in respect of the affairs of a debtor who was insolvent at the date of the execution of the instrument for the benefit of any three or more of his creditors,

otherwise than in pursuance of the law for the time being in force relating to bankruptcy.

(2) The classes of instrument hereinbefore referred to are—

(a) an assignment of property;

(b) a deed of or agreement for a composition, and in cases where creditors of the debtor obtain any control over his property or business—

(c) a deed of inspectorship entered into for the purpose of carrying on or winding up a business;

(d) a letter of licence authorizing the debtor or any other person to manage, carry on, realize or dispose of a business with a view to the payment of debts; and

(e) any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorizing the debtor or any other person to manage, carry on, realize or dispose of the debtor's business with a view to the payment of his debts.

## PART II

## AVOIDANCE OF DEEDS OF ARRANGEMENT WHERE STATUTORY CONDITIONS NOT COMPLIED WITH

## [Ch1102s4]4. Avoidance of unregistered deeds of arrangement

A deed of arrangement shall be void unless it is registered with the Registrar under this Act within seven clear days after the first execution thereof by the debtor or any creditor, or if it is executed in any place out of the City of Blantyre, then within seven clear days after the time at which it would, in the ordinary course of post, arrive in Blantyre, if posted within one week after the execution thereof, and unless it bears such ordinary and ad valorem stamp as is provided by this Act.

[Ch1102s5]5. Avoidance of deeds of arrangement unless assented to by a majority of the creditors

(1) A deed of arrangement, which either is expressed to be or is in fact for the benefit of a debtor's creditors generally, shall be void unless, before or within twenty-one days after the registration thereof, or within such extended time as the High Court may allow, it has received the assent of a majority in number and value of the creditors of the debtor.

(2) The list of creditors annexed to the affidavit of the debtor filed on the registration of the deed of arrangement shall be prima facie evidence of the names of the creditors and the amounts of their claims.

(3) The assent of the creditor for the purposes of subsection (1) shall be established by his executing the deed of arrangement or sending to the trustee his assent in writing attested by a witness, but not otherwise.

(4) The trustee shall file with the Registrar at the time of the registration of a deed of arrangement, or, in the case of a deed of arrangement assented to after registration, within twentyeight days after registration or within such extended time as the High Court may allow, a statutory declaration by the trustee that the requisite majority of the creditors of the debtor have assented to the deed of arrangement, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and in other cases be prima facie evidence, of the fact declared.

(5) In calculating a majority of creditors for the purposes of this section, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if

any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding £10 shall be reckoned in the majority in value but not in the majority in number.

PART III

**REGISTRATION OF DEEDS OF ARRANGEMENT** 

[Ch1102s6]6. Registrar for registration

The Registrar General shall be the Registrar for the purposes of this Act.

[Ch1102s7]7. Mode of registration

(1) The registration of a deed of arrangement under this Act shall be effected in the following manner—

A true copy of the deed, and of every schedule or inventory thereto annexed, or therein referred to, shall be presented to and filed with the Registrar within seven clear days after the execution of the deed (in like manner as a bill of sale given by way of security for the payment of money is required to be filed), together with an affidavit verifying the time of execution, and containing a description of the residence and occupation of the debtor, and of the place or places where his business is carried on, and an affidavit by the debtor stating the total estimated amount of property and liabilities included under the deed, the total amount of the composition (if any) payable thereunder, and the names and addresses of his creditors.

(2) No deed shall be registered under this Act unless the original of the deed, duly stamped with proper stamp duty, and in addition to such duty a stamp denoting a duty computed at the rate of one shilling for every £100 or fraction of £100 of the sworn value of the property passing, or (where no property passes under the deed) the amount of composition payable under the deed, is produced to the Registrar at the time of such registration.

(3) Upon the registration of a deed the Registrar shall cause to be inserted in the Gazette and a local newspaper a notice containing the dates of the execution and registration of the deed, the names, addresses and descriptions of the debtor and the trustee, if any, of the deed and a short statement of the nature and effect of the deed, and the Registrar shall for this purpose, require the payment of such expenses of publication as shall be necessary.

# [Ch1102s8]8. Form of register

The Registrar shall keep a register wherein shall be entered, as soon as conveniently may be after the presentation of a deed for registration, an abstract of the contents of every deed of arrangement registered under this Act, containing the following and any other prescribed particulars—

(a) the date of the deed;

(b) the name, address and description of the debtor and the place or places where his business was carried on at the date of the execution of the deed, and the title of the firm or firms under which the debtor carried on business, and the name and address of the trustee (if any) under the deed;

(c) a short statement of the nature and effect of the deed, and of the composition in the pound payable thereunder;

(d) the date of registration; and

(e) the amount of property and liabilities included under the deed, as estimated by the debtor.

## [Ch1102s9]9. Rectification of register

The High Court upon being satisfied that the omission to register a deed of arrangement within the time required by this Act or that the omission or misstatement of the name, residence or description of any person was accidental or due to inadvertence, or to some cause beyond the control of the debtor and not imputable to any negligence on his part, may, on the application of any party interested, and on such terms and conditions as are just and expedient, extend the time for registration, or order the omission or misstatement to be supplied or rectified by the insertion in the register of the true name, residence or description.

### [Ch1102s10]10. Time for registration

Where the time for registering a deed of arrangement expires on a Sunday, or other day on which the registration office is closed, the registration shall be valid if made on the next following day on which the office is open.

# [Ch1102s11]11. Inspection of register and registered deeds

Any person shall be entitled, at all reasonable times, to search the register on payment of one shilling, or such other fee as may be prescribed, and, subject to such Regulations as may be prescribed, shall be entitled, at all reasonable times to inspect, examine and make extracts from any registered deed of arrangement, without being required to make a written application or to specify any particulars in reference thereto, upon payment of one shilling, or such other fee as may be prescribed, for each deed of arrangement inspected:

Provided that the extracts shall be limited to the dates of execution and of registration, the names, addresses and descriptions of the debtor and of the parties to the deed, a short statement of the nature and effect of the deed, and any other prescribed particulars.

PART IV

**PROVISIONS AS TO TRUSTEES** 

[Ch1102s12]12. Security by trustee

(1) The trustee under a deed of arrangement shall, within fourteen days from the date on which the statutory declaration certifying the assent of the creditors is filed, give security in the prescribed manner to the judge or Registrar in a sum equal to the estimated assets available for distribution amongst the unsecured creditors as shown by the affidavit filed on registration to administer the deed properly and account fully for the assets which come to his hands unless a majority in number and value of the debtor's creditors, either by resolution passed at a meeting convened by notice to all the creditors, or by writing addressed to the trustee, dispense with his giving such security:

Provided that, when such a dispensation has been so given, the trustee shall forthwith make and file with the Registrar a statutory declaration to that effect, which declaration shall, in favour of a purchaser for value, be conclusive evidence, and, in other cases, be prima facie evidence, of the facts declared.

(2) If a trustee under a deed of arrangement fails to comply with the requirements of this section, the High Court, on the application of any creditor and after hearing such persons as it may think fit, may declare the deed of arrangement to be void or may make an order appointing another trustee in the place of the trustee appointed by the deed of arrangement.

(3) A certificate that the security required by this section has been given by a trustee, signed by and filed with the Registrar, shall be conclusive evidence of the fact.

(4) All moneys received by a trustee under a deed of arrangement shall be banked by him to an account to be opened in the name of the debtor's estate.

(5) In calculating a majority of creditors for the purposes of this section, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of such security, and creditors whose debts amount to sums not exceeding £10 shall be reckoned in the majority in value but not the majority in number.

[Ch1102s13]13. Penalty on trustee acting when deed of arrangement void

If a trustee acts under a deed of arrangement-

(a) after it has to his knowledge become void by reason of non-compliance with any of the requirements of this Act or any enactment repealed by this Act; or

(b) after he has failed to give security within the time and in the manner provided for by this Act or any enactment repealed by this Act,

he shall be liable to a fine of £5 for every day between the date on which the deed becomes void or the expiration of the time within which security should have been given, as the case may be, and the last day on which he is proved to have acted as trustee, unless he satisfies the Court that his contravention of the law was due to inadvertence, or that his action has been confined to taking such steps as were necessary for the protection of the estate.

### [Ch1102s14]14. Transmission of accounts to official receiver

(1) Every trustee under a deed of arrangement shall, at such times as may be prescribed, transmit to the official receiver in bankruptcy for Malawi, or as he directs, an account of his receipts and payments as trustee, in the prescribed form and verified in the prescribed manner.

(2) If any trustee fails to transmit such account, he shall be liable on conviction by a Resident Magistrate or a magistrate of the first grade to a fine of £5 for each day during which the default continues, and the High Court, for the purpose of enforcing the last preceding subsection, shall exercise, on the application of the official receiver, all the powers conferred on the Court by section 98 (2) of the Bankruptcy Act in cases of bankruptcy. Cap. 11:01

(3) The accounts transmitted to the official receiver in pursuance of this section shall be open to inspection by the debtor or any creditor or other person interested on payment of the prescribed fee, and copies of or extracts from the accounts shall on payment of the prescribed fee be furnished to the debtor, the creditors or any other persons interested.

(4) In this section the expression "trustee" shall include any person appointed to distribute a composition or to act in any fiduciary capacity under any deed of arrangement, and the expression "prescribed" means prescribed by Rules under the Bankruptcy Act.

## [Ch1102s15]15. Transmission of accounts to creditors

Every trustee under a deed of arrangement shall, at the expiration of six months from the date of the registration of the deed, and thereafter at the expiration of every subsequent period of six months until the estate has been finally wound up, send to each creditor who has assented to the deed a statement in the prescribed form of the trustee's accounts and of the proceedings under the deed down to the date of the statement, and shall, in his affidavit verifying his accounts transmitted to the official receiver, state whether or not he has duly sent such statements, and the dates on which the statements were sent; and, if a trustee fails to comply with any of the provisions of this section, the High Court may, for the purpose of enforcing those provisions, exercise on the application of the official receiver, all the powers conferred on the court by section 98 (2) of the Bankruptcy Act in cases of bankruptcy. Cap. 11:01

### [Ch1102s16]16. Audit of accounts

(1) Where, in the course of administration of the estate of a debtor who has executed a deed of arrangement, or within twelve months from the date when the final accounts of the estate were rendered to the official receiver, an application in writing is made to the official receiver by a majority in number and value of the creditors who have assented to the deed for an official audit of the trustee's accounts, the official receiver may cause the trustee's accounts to be audited, and in such case all the provisions of the Bankruptcy Act relating to the institution and enforcement of an audit of the accounts of a trustee in bankruptcy (including the provisions as to fees) shall, with necessary modifications apply to the audit of the trustee's accounts, and the official receiver shall have power on the audit to require

production of a certificate for the taxed costs of any advocate whose costs have been paid or charged by the trustee, and to disallow the whole or any part of any costs in respect of which no certificate is produced. Cap. 11:01

(2) The official receiver may determine how and by what parties the costs, charges and expenses of and incidental to the audit (including any prescribed fees chargeable in respect thereof) are to be borne, whether by the applicants or by the trustee or out of the estate, and may, before granting an application for an audit require the applicants to give security for the costs of the audit.

# [Ch1102s17]17. Payment of undistributed moneys into Court

At any time after the expiration of two years from the date of the registration of a deed of arrangement, the High Court may, on the application of the trustee or a creditor, or on the application of the debtor, order that all moneys representing unclaimed dividends and undistributed funds then in the hands of the trustee or under his control be paid into Court or to the official receiver for the credit of the Bankruptcy Estates account as the Court shall deem fit.

# [Ch1102s18]18. Preferential payment to creditor an offence

If a trustee under a deed of arrangement pays to any creditor out of a debtor's property a sum larger in proportion to the creditor's claim than that paid to other creditors entitled to the benefit of the deed, then, unless the deed authorizes him to do so, or unless such payments are either made to a creditor entitled to enforce his claim by distress or are such as would be lawful in a bankruptcy, he shall be guilty of a misdemeanour.

# [Ch1102s19]19. Power to High Court to appoint new trustee

(1) The High Court may whenever it is expedient to appoint a new trustee under a deed of arrangement and it is found inexpedient, difficult or impracticable so to do without the assistance of the Court, make an order for the appointment of such new trustee. In particular and without prejudice to the generality of the foregoing provision, the Court may make an order for the appointment of a new trustee in substitution for a trustee who is convicted of felony, or is a bankrupt.

(2) An order under this section, and any consequential vesting order or conveyance, shall not operate further or otherwise as a discharge to any former trustee than an appointment of a new trustee under any power for that purpose contained in any deed of arrangement would have operated.

# [Ch1102s20]20. Provisions for the protection of trustees under void deeds

(1) Where a deed of arrangement is void by reason that the requisite majority of creditors have not assented thereto or, in the case of a deed for the benefit of three or more creditors by reason that the debtor was insolvent at the time of the execution of the deed and that the deed was not registered as required by this Act, but is not void for any other reason, and a receiving order is made against the debtor upon a petition presented after a lapse of three months from the execution of the deed, the trustee under the deed shall not be liable to account to the trustee in the bankruptcy for any dealings with or payments made out of the debtor's property which would have been proper if the deed had been valid, if he proves that at the time of such dealings or payments he did not know, and had no reason to suspect, that the deed was void.

(2) Where a receiving order is made against a debtor under section 100 of the Bankruptcy Act this section shall apply if the receiving order was made after the lapse of three months from the execution of the deed. Cap. 11:01

# [Ch1102s21]21. Notice to creditors of avoidance of deed

When a deed of arrangement is void by virtue of this Act for any reason other than that, being for the benefit of creditors generally, it has not been registered within the time allowed for the purpose by this Act, the trustee shall, as soon as practicable after he has become aware that the deed is void, give notice in writing thereof to each creditor whose name and address he knows, and file a copy of the notice with the Registrar, and, if he fails so to do, he shall be liable on conviction by a Resident Magistrate or a magistrate of the first grade to a fine of £20.

# [Ch1102s22]22. Payment of expenses incurred by trustees

Where a deed of arrangement is avoided by reason of the bankruptcy of the debtor any expenses properly incurred by the trustee under the deed in the performance of any of the duties imposed on him by this Act shall be allowed or paid him by the trustee in the bankruptcy as a first charge on the estate.

# [Ch1102s23]23. Application of Part IV

The provisions of this Part of this Act, except such of those provisions-

(a) as relate to the transmission of accounts to the official receiver of debtor's estate for Malawi;

- (b) as provide for the protection of trustees under void deeds;
- (c) as require a notice to be given to creditors of avoidance of deeds; or
- (d) as provide for the payment of expenses incurred by trustees,

shall not apply to a deed of arrangement made for the benefit of any three or more of the debtor's creditors unless it is in fact for the benefit of the debtor's creditors generally.

# PART V

# GENERAL

[Ch1102s24]24. Courts in which applications for enforcement of trusts to be made

Any application by the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, or by the debtor or by any creditor entitled to the benefit of such a deed of arrangement, for the enforcement of the trusts or the determination of questions under it, shall be made to the High Court.

### [Ch1102s25]25. Relation to bankruptcy law

(1) If the trustee under a deed of arrangement which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, serves in the prescribed manner on any creditor of the debtor notice in writing of the execution of the deed and of the filing of the statutory declaration certifying the creditor's assents with an intimation that the creditor will not after the expiration of one month from the service of the notice be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed or on any other act committed by him in the course or for the purpose of the proceedings preliminary to the execution of the deed as an act of bankruptcy, that the creditor shall not, after the expiration of that period, unless the deed becomes void, be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed or any act so committed by him as an act of bankruptcy.

(2) Where such a deed of arrangement as aforesaid has become void by virtue of this Act or any enactment repealed by this Act, the fact that a creditor has assented to the deed shall not disentitle him to present a bankruptcy petition founded on the execution of the deed of arrangement as an act of bankruptcy.

(3) Save as otherwise expressly provided by this Act, nothing in this Act shall be construed as repealing or shall affect any provision of the law for the time being in force in relation to bankruptcy or shall give validity to any deed or instrument which by law is an act of bankruptcy or void or voidable.

# [Ch1102s26]26. Office copies

Subject to this Act, and to any Rules made thereunder, any person shall be entitled to have an office copy of, or extract from, any deed registered under this Act upon paying the prescribed fees and any such copy or extract shall, in all courts and before all arbitrators or other persons, be admitted as prima facie evidence thereof, and of the fact and date of registration as shown thereon.

# [Ch1102s27]27. Fees

There shall be taken, in respect of the registration of deeds of arrangement, and in respect of any copies or extracts, or official searches made by the Registrar, such fees as may be from time to time prescribed; and nothing in this Act contained shall make it obligatory on the Registrar to do, or permit to be done, any act in respect of which any fee is specified or prescribed, except on payment of such fee.

# [Ch1102s28]28. Rules

The Chief Justice may make general Rules for carrying into effect the objects of this Act.

#### SUBSIDIARY LEGISLATION

DEEDS OF ARRANGEMENT RULES

under ss. 27 and 28

G.N. 4/1932

PART I

1. Citation and application

These Rules may be cited as the Deeds of Arrangement Rules. They shall apply, as far as practicable, and unless otherwise expressly provided, to all matters arising and to all proceedings taken on any matters under the Act, or any Act amending the same.

#### 2. Interpretation

In these Rules unless the context or subject matter otherwise requires-

"debtor" means any person by or for whom or in respect of whose affairs a deed of arrangement as defined by the Act shall be made or entered into and includes a firm or persons in copartnership;

"deed" means any deed of arrangement as defined by the Act;

"Registrar" means Registrar of the High Court and includes an assistant registrar;

"receiver" means the official receiver in bankruptcy.

### 3. Forms and Fees

(1) The forms in the First Schedule when applicable and, when they are not applicable, forms of a like character (with such variations as circumstances may require) shall be used. When such forms are applicable any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same unless the Court shall otherwise direct.

(2) The receiver may from time to time alter any forms which relate to matters of an administrative and not of a judicial character, or substitute new forms in lieu thereof. When the receiver alters any form or substitutes a new form in lieu of one prescribed by these Rules, such altered or substituted form shall be published in the Gazette.

(3) The fees specified in the Second Schedule shall be paid in respect of the several matters to which they are applicable.

PART II

#### **REGISTRATION OF DEEDS**

# 4. Affidavits

The affidavits to be made pursuant to section 7 of the Act shall be filed with the Registrar. Forms 4, 5, 6

# 5. Endorsement on copy of deed for filing

Upon every copy of a deed which is presented for filing there shall be endorsed, by the person who presents it, the name of the debtor, the date of the deed and of the filing thereof, the total amount of duty with which the deed is stamped, and a certificate signed by the legal practitioner of the debtor or the person who presents the copy for filing certifying that the copy is a correct copy of the deed.

# 6. Execution of deed by trustee prior to registration

An assignment of property by a debtor to a trustee or assignee for the benefit of his creditors shall not be registered under the Act unless it appears from the assignment that it has been or purports to have been executed, or (if not made by deed) signed by the trustee or assignee; and it shall be the duty of the Registrar before registering such an assignment, to satisfy himself that the assignment purports to have been duly executed or signed as the case may be by the trustee or assignee thereunder.

# 7. Certificate of registration on original deed

When a deed is registered under the Act there shall be written on the original deed a certificate stating that the deed has been duly registered as prescribed by the Act, and the date of registration. Such certificate shall be sealed with the seal of the High Court.

# SEARCHES AND EXTRACTS

# 8. Extracts from filed copy of deed

Extracts from the filed copy of a deed shall be limited to the date of execution and registration, the names, addresses and descriptions of the debtor and the parties to the deed, and a short statement of the nature and effect of the deed.

# 9. Search and inspection in Registry

The Registrar shall allow any person to search the index kept by him at any time during office hours, and to make the same extracts as are permitted by the last preceding rule upon payment by such person of the prescribed fee.

The Registrar shall also, if required, cause an office copy to be made of any copy of a deed filed in his office and shall mark and seal the same upon payment of the prescribed fee.

PART III

PROCEDURE

## 10. Applications how to be made

All applications other than applications under section 9 of the Act which by the Act or these Rules are directed or allowed to be made to the High Court shall be deemed to be proceedings in bankruptcy and subject to the Act and these Rules shall be made in accordance with and in the manner prescribed for proceedings under the Bankruptcy Act and the Bankruptcy Rules for the time being in force, with such variations as the circumstances may require and shall be supported by affidavit: Cap 11:01

Provided that applications for extension of time for procuring the assent of creditors to a deed under section 5 (1) of the Act or for filing the statutory declaration required by section 5 (4) of the Act may be made ex parte and without affidavit unless the Court shall in any case otherwise order.

## 11. Applications, to whom to be made

The application shall be made to the Registrar who shall cause the same, together with the affidavits in support, to be filed, and shall appoint a day for the hearing not earlier than fourteen days from the filing of the application. The Registrar may direct notice of the application to be served on such person or persons as he thinks fit, but in the absence of any special direction by him, the notice, together with copies of the affidavits in support, shall be served, when the application is made by the trustee, on the debtor and any creditor or other person to be affected thereby, and, when made by the debtor, on the trustee and on any creditor or other person to be affected thereby, and, when made by a creditor, on the trustee and the debtor.

### 12. Evidence

The evidence to be used on the application shall, unless the Court otherwise orders, be given by affidavit, but any opposite party may require, by notice in writing addressed to any deponent or his legal practitioner, the attendance of such deponent for cross-examination.

# 13. Affidavits by parties other than applicant

All affidavits intended to be used by any party to such application other than the applicant, shall be filed in Court, and copies served on the applicant not less than four days before the day appointed for the hearing of the application.

# 14. Chambers and adjournment to Court

All applications shall be heard and determined by the judge in chambers but in any case the application may be adjourned to be heard and determined in Court.

# 15. Service of application under section 12 (2)

Notice of any application under section 12 (2) of the Act to declare a deed void, or appoint another trustee, shall be served on the trustee named in the deed not less than eight days before the day appointed for the hearing. Form (of order) 11

### 16. Application to determine liability on bond

If a trustee fails to pay to a guarantee society, party to a bond under rule 17, the annual premium payable by him within fourteen days of the date when such premium becomes payable, or if the society refuses to accept such premium, the society may apply to the judge, to determine its liability under the bond and the judge, if satisfied by affidavit that default in payment of the premium has been made by the trustee, or that the refusal of the society to accept the premium in order that its liability may be determined is reasonable, may order that, as from the date of expiration of the year for which the last premium was paid, or as from the date of the order, whichever may be the later date, all further liability of the society shall cease and determine, save and except in respect of any loss or damage occasioned by any act or default of the said trustee in relation to his duties as such trustee as aforesaid previously to such cesser and determination of liability. Notice of any application under this rule shall be served on the three largest creditors named in the affidavit filed on registration of the deed not less than eight days before the day appointed for hearing the application, and any of such creditors may appear and be heard thereon, and rules 10 to 14 inclusive shall, so far as applicable, be observed. Procedure on application under section 12 (2)

PART IV

### TRUSTEES

### 17. Security by trustee

The security to be given by the trustee under a deed of arrangement pursuant to section 12 (1) of the Act shall be by bond of a guarantee society. The guarantee society named in such bond shall be a society whose bonds are accepted by the Registrar to whom security is given. Pending the preparation of the bond a cover note shall be accepted by the Registrar. Form 9, Form 10

### 18. Copy of affidavit of debtor to be filed on giving security

Every trustee on giving security for the due administration of the deed and for accounting fully for the assets pursuant to section 12 (1) of the Act shall produce and hand to the Registrar an office copy of the affidavit of the debtor filed on the registration of the deed and the Registrar shall file such office copy.

### 19. Notice by new trustee of appointment

Where a new trustee of a deed has been appointed, he shall forthwith send to the Registrar a notice of his appointment, giving his full name and address, and showing how and when the appointment has been made, and the Registrar shall forthwith file the same.

20. Notice to creditor of execution of deed, etc.

Notice under section 25 (1) of the Act to a creditor of the execution of a deed and of the filing of the certificate of the assent of creditors thereto shall be sent by prepaid registered post addressed to

such creditor at the address mentioned in the affidavit of the debtor filed on the registration of the deed, and service shall be deemed to have been made on the day on which the notice would in the ordinary course of post reach its destination. Form 13

# 21. Audit of trustee's accounts

Where the receiver causes the trustee's accounts to be audited, the trustee shall within seven days of service upon him by registered post of an order made by the receiver directing him to do so, deliver to the receiver copies of all the accounts transmitted by him to the receiver pursuant to section 14 of the Act together with an account in similar form from the date to which the last account extended to the date of the order. Such copies and account shall be sent together with an affidavit verifying the same.

## 22. Certificate of audit

The account as audited and the auditor's certificate or observations thereon shall be filed and kept by the receiver, and shall be open to the inspection of any creditor or of the trustee, who shall be at liberty to take a copy of such certificate or observations. A certified copy of the certificate or observations shall be supplied to the trustee or to any creditor on application on payment of the prescribed fee.

PART V

## ACCOUNTS

# 23. Transmission of accounts

(1) The accounts of receipts and payments to be transmitted to the receiver by every trustee under a deed shall be on sheets of a size to be prescribed by the receiver and shall be transmitted with the prescribed fee to the receiver. Form 14

(2) The first account shall commence at the date of the execution of the deed and be brought down to the end of twelve months from the date of registration thereof, and shall be transmitted within thirty days from the expiration of such twelve months and the subsequent accounts shall be transmitted at intervals of twelve months. Each account shall be brought down to the end of the period of twelve months for which it is sent, and shall be verified by affidavit. Form 15

### 24. Receipts and payments

In the account each receipt and payment must be entered in such a manner as sufficiently to explain its nature.

### 25. Trading account

When the trustee carries on a business, a trading account must be forwarded as a distinct account, and the total of receipts and payments on the trading account must alone be set out in the

yearly account. The trading account shall be on sheets of such size as the receiver may prescribe. Form 16

### 26. Petty expenses

Petty expenses must be entered in the accounts in sufficient detail to show that no estimated charges are made.

## 27. Realizations

Where property has been realized, the gross proceeds of sale must be entered under receipts in the account, and the necessary disbursements and charges incidental to sales must be entered as payments.

## 28. Dividends

Where dividends or instalments of composition are distributed under the deed, the total amount of each dividend or instalment of composition must be entered in the trustee's accounts as one sum, and the trustee shall forward to the receiver (a) with each account in which a charge in respect of dividend or composition appears, a statement showing the amount of the claim of each creditor, and the amount of dividend or composition payable to each creditor, distinguishing in such statement the dividends or instalments of composition paid and those remaining unpaid; and (b) with his final account a complete statement in similar form showing the amount of the claim and the full amount of dividend or composition paid to or reserved for each creditor. Such statements shall be on sheets of such size as the receiver may prescribe. Form 17

# 29. Partnership accounts

Where the deed has been made by a firm of debtors in partnership, distinct accounts shall be transmitted of the joint estate and of each of the separate estates.

# 30. Imperfect accounts

Where it appears to the receiver that the account transmitted by a trustee under a deed of arrangement is incomplete, or requires amendment or explanation, the receiver may require such account to be completed or amended or require the trustee to furnish explanations with reference to any of the entries appearing therein; and any such requirement by the receiver may be enforced in the same manner as the transmission of accounts under section 15 of the Act.

# 31. Affidavit of no receipts or payments

Where a trustee has not since the date of his becoming trustee, or since the last time that his accounts have been transmitted, as the case may be, received or paid any money on account of the debtor's estate he shall at the period when he is required to transmit his accounts to the receiver, forward to the receiver an affidavit of no receipts or payments.

# 32. Affidavit verifying final account

As soon as a trustee has realized all the property included in any deed of arrangement, or so much thereof as can probably be realized, and has distributed a final dividend, or final instalment of composition or in any other case as soon as the trusts of the deed and the obligations of the trustee have been completely fulfilled the trustee shall forthwith transmit his final account together with an affidavit verifying the same. Form 18

# 33. Summary of accounts or modified forms of account in particular cases

In any particular case in which it shall appear to the receiver that an account of receipts and payments in the form and containing the particulars specified in these Rules may for special reasons be dispensed with, the receiver may permit the trustee to transmit, instead of accounts in the form therein specified, such a summary of his accounts or modified statement of accounts as to the receiver shall appear sufficient.

# 34. Swearing affidavits respecting accounts

All affidavits required by or made in pursuance of section 14 of the Act or these Rules shall if sworn in any place in Malawi be sworn before a commissioner for oaths, a magistrate for that place, or the Registrar; and may if sworn in any place out of Malawi be sworn before any person having authority to administer an oath in that place.

# FIRST SCHEDULE r. 3

# LIST OF FORMS

No. 1.General title2.Assent of creditors to deed3.Statutory declaration by trustees as to assents of creditors4.Affidavit of execution by debtor5.Affidavit of execution where deed is first executed by a creditor6.Debtor's affidavit with schedule of creditors7.Form of register to be kept by Registrar8.Statutory declaration by trustee that creditors have dispensed with security9.Security by trustee: form of bond10.Security by trustee: cover note11.Order declaring deed void or appointing new trustee12.Statement of accounts to be sent to creditors pursuant to section 1513.Notice to creditors by trustee under section 25 (1)14.Trustee's account of receipts and payments15.Affidavit verifying trustee's account16.Trustee's trading account17.List of dividends or compositions18.Affidavit verifying trustee's final account

# FORMS

No. 1

# GENERAL TITLE

In the ma	atter of a Deed of	Arrangem	ient betweer	۱		of		., (1) a	and his
creditors, dated	the	day of		19, (2	2) [and	registered	under t	he De	eds of

No. 2

ASSENT OF CREDITOR TO DEED

(Title)

I (or we), being a creditor (or creditors) of ......for  $\pm$  .....for  $\pm$  ...., hereby assent to the above-mentioned Deed of Arrangement.

Dated this ..... day of ..... 19......

(C.D.).....

Name, address, and description of witness to creditor's signature.

No. 3

STATUTORY DECLARATION BY TRUSTEE TO BE FILED WITH REGISTRAR AS TO ASSENTS OF CREDITORS

(Title)

I, ....., of ....., being the trustee under the above-mentioned Deed of Arrangement, do solemnly and sincerely declare that the requisite majority in number and value of the creditors of the said ....., so far as the same are known to me, have assented to the said Deed of Arrangement, and I make this solemn declaration conscientiously believing the same to be true.

Declared at.....,

this..... day of .....,

19.....

Before me,

A Commissioner for Oaths

No. 4

AFFIDAVIT OF EXECUTION BY DEBTOR

(Section 7, and rule 4)

In the High Court of Malawi

I,....., of ....., make oath and say as follows -1. The document hereto annexed marked "A" is a true copy of a Deed of (a)..... and of every Schedule or Inventory

Oaths

No. 5

### AFFIDAVIT OF EXECUTION WHERE DEED IS FIRST EXECUTED BY A CREDITOR

### In the High Court of Malawi

	Sworn, etc.(d) State also in what other names (if any) debtor carries or
business	

No. 6

DEBTOR'S AFFIDAVIT

In the High Court of Malawi

(Section 7 and rule 4)

I, ....., of ....., make oath and say as follows—(a) State whether deed of assignment of property; deed of or agreement for a composition; deed of inspectorship; a letter of licence or an agreement to carry on or wind up debtor's business 1. That on the.....

### Schedule

Names of creditorsFull postal addressAmount of debt due to or claimed by each creditor after deduction of value of securities held by the creditor

No. 7

FORM OF REGISTER

No.Name of debtorAddressPlace or places where business carried onDescrip-

tionTitle of firm or firms under which debtor carried on business.Name and address of trustee (if any)Nature and effect of deed and amount of compo-

sition in the KAmount of property as estimated by debtorAmount of liabilities as estimated by debtorDate of deedDate of registra-

tionDate of declara-

tion of assent by majority of creditorsSecurityAvoidance of DeedAppointment of new trusteeRemarksGross amount of propertyValue of securities given excluding any estimated surplusNet value of propertyGross amount of liabili-

tiesAmount of debts cover-

ed by securi-

tiesNet amount of liabilitiesDate of certi-

ficateDate of decla-

ration of dispen-

sationDate of order of court under section 12 (2) of the Deeds of Arrange-

ment ActDate of notice by trustee under section 21 of the Deeds of Arrange-

ment ActName and add-

ress of new trusteeBy whom appoint-

edDate of appoint-

mentKKKKKK

No. 8

STATUTORY DECLARATION BY TRUSTEE TO BE FILED WITH REGISTRAR THAT CREDITORS HAVE DISPENSED WITH HIS GIVING SECURITY

(Title)

Declared at.....

this.....day of.....

19.....

Before me,

A Commissioner for Oaths

No. 9

SECURITY BY TRUSTEE UNDER SECTION 12 (1) OF THE ACT AND RULE 17

No.....

Amount of guarantee, K..... Annual premium, K.....

KNOW ALL MEN by these presents, that we (trustee), ....., and the (a guarantee society) ....., (hereinafter called the said society), are jointly and severally held and firmly bound to the Registrar in the sum of K...... to be paid to the said Registrar his successors and

assigns, for which payment to be made I, the said ...... for myself, my heirs, executors and administrators, and we, the said society for ourselves and our successors, jointly and severally bind ourselves by these presents. Sealed with our seals and dated this ...... day of ...... 19......

And whereas the said ...... (hereinafter called the said trustee) is the trustee under the aforesaid Deed of Arrangement. And whereas the estimated assets available for distribution among the unsecured creditors, as shown by the affidavit filed on registration of the Deed, amount to the sum of K...... Now, therefore, the condition of this bond or obligation is such that if the said trustee shall administer the trust deed properly and account fully for the assets which come to his hands, and shall and do from time to time well and sufficiently perform and execute all and singular the duties required of him under the Deed of Arrangement of which he is trustee, and by any statutes and rules relating to such trusteeship, or if the said trustee shall fail therein and the said society shall make good any loss or damage occasioned by any such default made on or after the date hereof to the estate of the said debtor to the extent of £......this obligation shall be void or otherwise shall remain in full force and virtue:

Provided always, and it is hereby agreed and declared, that this bond is entered into by the said society on the condition that the capital, stock and funds for the time being of the said society shall alone be liable to answer and make good all claims or demands in respect of this bond and that no director or other proprietor or holder of shares of the said society shall in any manner be personally liable or subject to any claims or demands by reason of such bond, beyond his or her particular share or shares of such capital stock and funds:

Provided always, and it is further agreed between the said trustee and the said society, that the said trustee on ceasing to act as such trustee as aforesaid shall forthwith give notice thereof in writing to the said society:

Provided always that the said trustee, his heirs, executors or administrators shall and will from time to time and at all times save, defend and keep harmless the said society and their successors and the capital, stock, funds or property of the said society from and against all loss or damage, costs and expenses which the said society or the capital, stock, funds or property thereof shall or may or otherwise might at any time sustain or be put unto for or by reason or in consequence of the said society having entered into the abovewritten bond for him and at his request.

In witness whereof the said trustee hath hereunto set his hand and seal and the said society have hereunto caused their seal to be affixed the day and year first above-written.

Signed, sealed and delivered

by the said .....

in the presence of .....

The seal of the said society was hereunto affixed in the presence of-

.....

.....Directors

.....Secretary

No. 10

COVER NOTE

(Rule 17)

Bond No....., 19.....

Mr. ....., of ....., having this day effected a guarantee for £..... in favour of the Registrar as trustee under a Deed of Arrangement executed by ...... on the terms and conditions contained in the society's bonds (according to the form prescribed under the Deeds of Arrangements Rules), a bond will be prepared and delivered to the Registrar within fourteen days of this date.

.....

Manager of the said Society

No. 11

ORDER DECLARING DEED VOID OR APPOINTING NEW TRUSTEE

(Title)

Whereas ......is the trustee under the above-mentioned Deed of Arrangement and whereas it has been proved to the satisfaction of the Court that the said......has failed to comply with the requirements of section 12 (1) of the Deeds of Arrangement Act. Now on the application of ......, a creditor, and upon hearing ....., and upon reading ....., this Court doth declare the said Deed of Arrangement to be void (or doth order that ..... be appointed trustee under the said Deed in place of the

By the Court,

Registrar

No. 12

DEEDS OF ARRANGEMENT ACT

Statement pursuant to section 15

In the matter of a Deed of Arrangement, dated the ......day of ...... 19......, and registered on the ...... day of ...... 19......, between ...... as debtor and ...... as trustee.

Statement of Trustee's Accounts and of Proceedings under the Deed from the ...... day of ...... 19......, to the ......

day of..... 19.....

RECEIPTS£s.d.PAYMENTS£s.d.£s.d.Cash deposited by debtor with legal practitioner for costs of deedLaw costs of preparation and registration of deedCash at bank at date of deedLaw costs of legal practitioner to trusteeCash in hand at date of deedOther law costs Insert particulars or annex schedule.(3)Book debtsAccountant's chargesStock-in-trade realized from sale by Insert gross proceeds of sale, and state how goods were sold, e.g., by auction, by valuation or as the case may be.(1)Machinery realized from sale by Insert gross proceeds of sale, and state how goods were sold, e.g., by auction, by valuation or as the case may be.(1)Auctioneer's and valuer's chargesTrade fixtures fittings, etc., realized from sale by Insert gross proceeds of sale, and state how goods were sold, e.g., by auction, by valuation or as the case may be.(1)Trustee's remunerationPossessionFurniture realized from sale by Insert gross proceeds of sale, and state how goods were sold, e.g., by auction, by valuation or as the case may be.(1)Incidental expensesSurplus from securities in hands of creditorsOther costs and charges Insert particulars or annex schedule.(3)Trading receiptsTotal costs and chargesOther property realized from sale by Insert gross proceeds of sale, and state how goods were sold, e.g., by auction, by valuation or as the case may be.(1)Allowance to debtorPayments to creditors-GROSS RECEIPTSRent from the......day f s of......19.......to the .......day of ......19......£s.d.Less: Trading payments. Payments to redeem securities Here insert to whom payments made, nature of security redeemed, and amount of each payment or annex schedule giving these particulars.(2)£s.d.Rates and taxesSalaries and wages£s.d.Other preferential payments Insert particulars or annex schedule.(3)Dividends of.....in the £.....PaidUnpaid Net realizations. Other payments (if any) Balance due to trustee (if any)Balance in hand (if any)££

The total payments into the (4) .....Bank to the .....day of......day of......

the.....,were £.....(4) Insert name of bank The amounts of the assets and liabilities at the time the deed was executed as estimated by the debtor were— Assets after deducting £....., the value of the securities held by creditors and required to cover debts due to them, £..... Liabilities after deducting £....., the amount covered by securities, £..... The nature and value of the assets unrealized are The causes which delay the determination of the winding up of the estate are (5).... The following special circumstance affects the costs of realization The (5)..... estate will probably be completely wound up within ..... and the administration of the (5)....(5) Insert particulars or annex estate, .....

No. 13

NOTICE TO CREDITORS OF DEED OF ARRANGEMENT

(Rule 20)

(Title)

Take notice that a Deed of Arrangement by, for, or in respect of the affairs of....., of....., has been duly executed and registered, and a certificate of the assets of creditors thereto duly filed, and that after the expiration of one month from (insert date of posting) you will not be entitled to present a bankruptcy petition against.....founded on the execution of the Deed, or on any other act committed by him (or them) in the course of or for the purpose of proceedings preliminary to the execution of the Deed, as an act of bankruptcy, unless the Deed becomes void.

Dated this.....19.....

(Signed).....

Trustee under the said Deed of Arrangement

To. A.B.

(a creditor of the said debtor)

No. 14

TRUSTEE'S ACCOUNTS OF RECEIPTS AND PAYMENTS

(Rule 23)

The Deeds of Arrangement Act

In the Matter of a Deed of Arrangement

Between .....and his creditors.

Dated the.....day of.....19....

Registered the.....day of.....19....

.....

Trustee

Account of Receipts and Payments pursuant to section 14 of the Deeds of Arrangement Act

ReceiptsPaymentsDateOf whom receivedNature of receiptAmountDateTo whom paidNature of paymentAmount

NOTE.—The outstanding estate consists of (here set out particulars of any outstanding estate and the estimated value thereof).

No. 15

### AFFIDAVIT VERIFYING TRUSTEE'S ACCOUNT

(Rule 23)

I, G.H., of ....., the trustee for the purposes of the above-mentioned Deed (or the person distributing the composition herein), make oath and say—

Sworn at, etc.

No. 16

TRUSTEE'S TRADING ACCOUNT

(Title as in No. 14)

Account of receipts and payments in connexion with the debtor's business, pursuant to rule 25-

ReceiptsPaymentsDate fs.d.Date fs.d.

(Date) G.H., Trustee \*We have examined this account with the vouchers and find the same correct, and we are of opinion the expenditure has been proper. Dated this......day of......day of......1..\*To be inserted if the accounts have been audited by a committee of inspection

.....

Committee of Inspection

(or Member of the Committee of Inspection)

No. 17

LIST OF DIVIDENDS OR COMPOSITIONS

(Rule 28)

In the Matter of a Deed of Arrangement, dated the...... day of......19......, and registered the......day of ........as debtor, and ......as trustee.

I hereby certify that a dividend (or composition) of..... in the flas been paid in the above matter, and that the creditors whose names are set forth below are entitled to the amounts set opposite their repective names in the colums headed "Amount of Dividend (or Composition)," and I further certify that the column headed "Unpaid" contains a true and complete list of all unpaid dividends or compositions.

Dated the.....19.....

.....

Trustee

To the Receiver.

SurnameChristian nameAmount of claimAmount of dividend (or composition) PaidUnpaid

No. 18

AFFIDAVIT VERIFYING TRUSTEE'S FINAL ACCOUNT

(Rule 32)

(Title as in No. 15)

I, ....., of....., the trustee for the purposes of the above-mentioned Deed (or the person distributing the composition herein), make oath and say—

2. Strike out paragraph not applicable, or if neither paragraph is applicable strike out both and add a special paragraph setting out the facts.<sup>+</sup>That all the property assigned under the Deed, or so much thereof as can probably be realized, has been realized and distributed according to the terms of the Deed, and that a dividend (or dividends) of.....in the £ has been paid as shown in the list hereunto annexed, marked "C".

Or

2. Strike out paragraph not applicable, or if neither paragraph is applicable strike out both and add a special paragraph setting out the facts.<sup>+</sup>That the composition proposed under the Deed has been fully received and distributed as far as possible, as shown in the list hereunto annexed marked "C".

Sworn at, etc.

SECOND SCHEDULE

PART I

#### SCALE OF FEES

Filing£s.d.1. When the total estimated amount of property included under or the total amount of<br/>composition payable under a deed shall appear from the affidavit of the debtor not to exceed the<br/>following amounts, the fee on filing such deed shall be as under—When the property<br/>property<br/>Exceeds £1,000 but does not exceed £2,000200Exceeds<br/>£2,000 but does not exceed £3,000300Exceeds £3,000 but does not exceed £4,000400Exceeds £4,000500In every case to which the above fees do not apply2002.Onevery

certificate, endorsed on an original deed, of the registration thereof040 3. On every statutory declaration or notice filed in the office for the registration of deeds of arrangement, pursuant to the Deeds of Arrangement Act, or these Rules040Searches 4. On searching the register (for every name inspected) and on inspecting the filed copy, including the limited extract to be taken pursuant to the Act and Rules040Copies 5. On office copies and extracts of or from the filed copy of a deed—

for first folio of 100 words040for each subsequent folio of 100 words0206.Onexamining a copy brought in to be marked as an office copy—for first folio of 100 words020

for each subsequent folio of 100 words010Security7. On applying to give security under a deed of arrangement, pursuant to section 12 (1) of the Act, for taking security and giving certificates—

where the estimated assets available for distribution amongst the unsecured creditors, as shown by the affidavit filed on registration are less than £1000100 in all other cases100 8. On any proceedings under sections 5 (1), 5 (4), 12 (2), 17, 19 or 24 or under rule 16 of the Deeds of Arrangement Rules, the like fee as is payable on a similar proceeding under the Bankruptcy Act and Rules. Cap. 11:01 9. On all other documents and proceedings not otherwise provided for, the same fees as are payable in respect of the like documents and proceedings under the Courts Act, or any amendment thereof, or when not provided for under the Courts Act, the same fee as is payable under the Scale of Fees under the Deeds of Arrangement Act, 1914, of the United Kingdom. Cap. 3:02

#### PART II

## FEES PAYABLE TO RECEIVER

On each account transmitted by a trustee under a deed of arrangement in pursuance of section 14 of the Deeds of Arrangement Act, a fee upon the gross amount of the assets realized and brought to credit, or in the case of a composition distributed, during the period comprised in the account, according to the following scale—

£s.d. 1. On every £100 or fraction of £100 up to £500050 On every £100 or fraction of £100 above £500026 2. On every application in pursuance of section 14 (3) of the Deeds of Arrangement Act to inspect accounts of a trustee under a deed of arrangement010 3. For every copy or extract from such accounts, furnished by the official receiver in bankruptcy, the first folio of 100 words or figures, or part thereof030 For each subsequent folio010 4. On every application to the official receiver in bankruptcy under section 16 (1) of the Deeds of Arrangement Act for an official audit of a trustee's accounts100 5. On the audit of a trustee's accounts by the receiver in pursuance of section 16 (1) of the Deeds of Arrangement Act— a fee not being less than £5 according to the following scale on the amount brought to credit after deducting (a) the amount received and spent in carrying on the business and (b) the amount paid to secured creditors out of the proceeds of their securities—

on every £100 or fraction of £100 up to £5,000100 on every £100 or fraction of £100 beyond £5,000100

Provided that there shall be deducted from this fee the amount of any fees taken on accounts transmitted in pursuance of section 14 of the Deeds of Arrangement Act.