BRITISH COLUMBIA.

V. R.

No. 20. An Ordinance to amend the Law relating to Bankruptcy and Insolvency in British Columbia.

[10th April, 1865.]

Preamble. WHEREAS, it is expedient to amend the laws relating to Bankruptcy and Insolvency in British Columbia;

Be it enacted by the Governor of British Columbia, by and with the advice and consent of the Legislative Council thereof, as follows:

Existing Bankruptcy law still in force, subject hereto. I. The laws of Bankruptcy and Insolvency now existing in this Colony, shall continue in force within the Colony, subject to the provisions of this Ordinance.

As to the Court of Bankruptcy and the Judges thereof.

Jurisdiction of Supreme Court in Bankruptcy. 2. The Supreme Court of Civil Justice acting as a Court of Bankruptcy, shall have and exercise for the purposes of this Ordinance, all the jurisdiction, powers and authorities of the Superior Courts of law and equity in Bankruptcy, and all the jurisdiction, powers and authorities now possessed by the said Supreme Court, acting as the Court for the relief of insolvent debtors.

Jurisdiction of County Courts in Bankruptcy. 3. The Judge of every County Court shall have and exercise within his respective district the like jurisdiction, powers and authorities, and perform the same duties for and in respect of all matters and things coming before such County Court by virtue of this Ordinance, as are hereby vested in the Supreme Court of Civil Justice of British Columbia acting in Bankruptcy, subject nevertheless to the provisions and limitations hereinafer mentioned.

As to the officers of the Court.

Costs in any Court of Bankruptcy taxable by such Court. 4. In every County Court exercising jurisdiction under this Ordinance, all bills of costs, charges, fees and disbursements aforesaid, shall (except when such Court shall otherwise direct) be taxed and settled by the Judge of such Court, subject to the review of the Supreme Court. It shall be lawful for the Judge of any County Court to refer any such bills, or any question thereon, to the Taxing Master.

Review of County Court Costs.

Sittings in Chambers. 5. The Judges of the said Courts shall sit at Chambers for the dispatch of such part of the business of their Courts, as can without detriment to the public advantage arising from the discussion of questions in open Court, be heard in chambers, and when sitting at chambers they shall in all respects have like power and jurisdiction as when sitting in Court.

Powers of County Court in Bankruptcy. 6. The Judge of every County Court shall have power to make adjudication of Bankruptcy, to receive the surrender of any Bankrupt, to grant protection, to pass the last examination of any Bankrupt in cases wherein the Assignees and Creditors do not oppose, to hold and preside at meetings of Creditors, to audit and pass accounts of Assignees, and to sit in chambers and dispatch there such part of the administrative business of the Court, and such uncontested matters as shall be defined in general orders, or as the Judge in the Supreme Court in any particular matter shall direct but nothing herein con-

tained shall empower a Judge of the County Court to commit or to hear a disputed adjudication, or any question of the allowance or suspension of an order of discharge. The County Court Judge may adjourn any matter coming before him, for the consideration of the Judge of the Supreme Court.

Appeal from County Court to Supreme Court.

7. Any party shall, during the proceedings before a County Court Judge, or such County Court Judge himself shall be at liberty to take the opinion of the Judge of the Supreme Court upon any point or matter arising in the course of such proceedings, or upon the result of such proceedings, which shall be stated by the County Court Judge in the shape of a short certificate to the Judge of the Supreme Court, who shall sign the same, if he approve thereof, and such certificate, so signed, shall be binding on all the parties to the proceedings, but every such certificate may be discharged or varied by such Judge of the Supreme Court, at chambers or in open Court.

Attendance of witnesses.

8. Parties and witnesses summoned before the Judges of the said Courts sitting in Bankruptcy shall be bound to attend in pursuance of such summons, and shall be liable to process of contempt in like manner as parties and witnesses are now liable thereto in case of default in attendance under any writ of subpœna; and all persons wilfully and corruptly swearing or affirming falsely before any such Judge shall be liable to all the penalties, punishments, and consequences of perjury.

Examination of witnesses.

9. If any person examined before a Judge or Court sitting in Bankruptcy shall refuse or decline to answer or to swear to, or sign his examination when taken, such Judge or Court shall have power to order the person so acting to pay the costs thereby occasioned, if such person shall be compellable by law to answer such question or to sign such examination.

Reference by special case from County Court to Supreme Court.

10. In any Bankruptcy or other proceeding within the jurisdiction of a County Court the parties concerned or submitting to such jurisdiction may at any stage of the proceedings, by consent, state any question or questions in special case for the opinion of the Supreme Court of Civil Justice, and the judgment of such Court shall be final, unless it be agreed and stated in such special case, that either party may appeal.

Effect thereof.

11. The parties may, if they think fit, agree that upon the question or questions raised by such special case being finally decided, a sum of money fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, or any property or the amount of any disputed debt or claim, shall be paid, delivered or transferred by one of such parties to the other of them, either with or without costs.

Power to summon Jury.

12. It shall be lawful for the Judge of the Supreme Court of Civil Justice, to direct any question of fact to be tried and determined before himself, by the verdict of a special or common jury, to be summoned in the usual manner.

Appeals.

Appeal.

13. Every decision or order of any County Court Judge, acting under this Ordinance, shall be subject to appeal to the Supreme Court.

Mode of bringing forward.

14. Such appeal shall be brought on by way of petition, motion, or special case. On the hearing thereof no new evidence shall be received without leave of the Judge of the said Supreme Court; and if such appeal shall not be presented within twenty-eight days from the date of the decision or order complained of, or within such further time as the Court below shall in any case allow, then such decision or order shall be final. The order made on such appeal shall be final, except in those cases where an amount of £300 or more is involved, in which case an appeal shall lie to the Privy Council.

Power of Supreme Court Judge on appeal.

15. On the hearing of any appeal, the Judge of the Supreme Court may exercise any part of his original jurisdiction, and may, if he think fit, direct that the case or matter in which the order appealed from was made be removed from the County Court of that district, either wholly or in part, and be thenceforth prosecuted in the Supreme Court, or in such County Court as he shall think fit.

The persons subject to this Ordinance.

Abolishes the difference between Bankruptcy and Insolvency.

16. All debtors, whether traders or not, ahall be subject to the provisions of this Ordinance, but no debtor who is not a trader shall be adjudged bankrupt, except in respect of one of the Acts of Bankruptcy hereinafter described as applicable to a non-trader, and proof of assets to the amount of £150 shall no longer be required from any debtor.

Acts of Bankruptcy.

Acts of Bankruptcy.

17. If any person, not being a trader, shall, with intent to defeat or delay his creditors, depart this Colony, or being out of this Colony shall with such intent remain abroad, or shall with such intent make any fraudulent conveyance, gift, delivery, or transfer of his real or personal estate, or any part thereof, respectively, such person shall be deemed to have thereby committed an act of Bankruptcy: Provided always, that before any adjudication in Bankruptcy shall be made against the debtor under this section, the following rules shall be observed:

a. A copy of the petition for adjudication shall be served personally on the debtor, either within the jurisdiction or in such place or country or within such limits abroad, as the Court shall upon application for that purpose direct:

b. Such copy of petition shall have endorsed thereon, a memorandum, in a form to be settled by a general order, specifying the time within which the debtor is to appear on such petition; and such time shall, when the service is to be made abroad, be the time which the Court shall think reasonable, having regard to the place or country where the service is to be made:

c. In no case shall the time for appearance be less than thirty days after service:

d. If such personal service has not been effected, the Court must be satisfied that every reasonable effort was made to effect the same, and that the attempts to serve such petition came to the knowledge of the debtor and were defeated by his conduct:

e. If at the expiration of the time limited for appearance the Court shall on the hearing of such petition be satisfied that an act of Bankruptcy has been committed, within the meaning of this section, it may adjudge such debtor to be a Bankrupt.

f. A declaration in writing of Insolvency by a non-trader in the same manner as by a trader, shall be deemed to be an act of Bankruptcy on the part of such non-trader.

Filing declaration of Insolvency act of Bankruptcy.

18 The filing of a declaration of Insolvency by any person in the County Court, shall have the same effect as in like cases filed in the Supreme Court.

Execution for judgment over £50 an act of Bankruptcy.

19. If any execution shall be levied by seizure and sale of any goods and chattels of any trader debtor, upon any judgment recovered in any action personal for the recovery of any debt or money demand exceeding fifty pounds, every such debtor shall be deemed to have committed an act of Bankruptcy from the date of the seizure of such goods and chattels: Provided always that unless in the meantime a petition for adjudication of Bankruptcy against the debtor be presented the sheriff or other officer making the levy shall proceed with the execution, and shall at the end of seven days after the sale pay over the proceeds, or so much as ought to be paid, to the execution creditor who shall be entitled thereto notwithstanding such an act of Bankruptcy, unless the debtor be adjudged a Bankrupt within fourteen days from the date of the seizure, in which case the money so received by the creditor shall be paid by him to the assignee under the Bankruptcy, but the sheriff or other officer shall not incur any liability by reason of anything done by him as aforesaid: Provided also that in case of Bankruptcy, the costs and expenses of such action and execution shall be retained and paid out of the proceeds of the sale, and the balance only after such payment be paid to the assignee.

Sale under every such execution only by public auction.

20. Whenever the goods and chattels of a debtor are sold under an execution upon any judgment recovered in any action or suit brought for the recovery of a debt, money, demand, or damages against any debtor exceeding fifty pounds, such goods and chattels shall in all cases unless the Court shall otherwise direct be sold by the sheriff by public auction, and not by bill of sale or private contract, and such sale shall be publicly advertised by the sheriff on and during three days next preceding the day of sale.

Adjudication in any British possession an act of Bankruptcy.

21. The filing of a petition by or against a debtor, whether a trader or not in any Court having jurisdiction for the relief of Insolvent Debtors in Insolvency or Bankruptcy in any of Her Majesty's Dominions, Colonies, or Dependencies and the adjudication of an act of Insolvency or Bankruptcy on such petition shall for the purposes of this Ordinance be accounted and adjudged conclusive evidence of an act of Bankruptcy, committed by such debtor at the time of filing such petition or of the filing the petition on which the adjudication of an act of Insolvency or Bankruptcy shall have been made; and any creditor or creditors of such debtor, whose debt or debts shall be of sufficient amount to enable

him or them to petition for adjudication of Bankruptcy under this Ordinance may, at any time within two months after notice of such adjudication shall have been given in the *Government Gazette*, petition for adjudication of Bankruptcy under this Ordinance against such debtor, and under such petition all such proceedings may be had and taken as are authorized and directed by this Ordinance.

As to an Act of Bankruptcy by non-payment after Judgment Debtor Summons, and the proceedings thereupon.

Judgment debtor summons.

22. Every Judgment Creditor in respect of any debt amounting to fifty pounds or upwards, exclusive of costs, shall be entitled, at the end of one week from the signing of judgment, to sue out against the debtor if a trader, or not being a trader at the end of one calendar month, and whether he be in custody or not, a summons to be called a judgment debtor summons, requiring him to appear and be examined respecting his ability to satisfy the debt.

Unsatisfied decree or order in equity &c. may be followed by Judgment Debtor Summons.

23. Where after the commencement of this Ordinance, a decree or order of a Court of equity, or an order in Bankruptcy or Insolvency or Lunacy, directing the payment of money is disobeyed by the debtor, the same having been duly served on him, and the person entitled to receive the money or interested in enforcing payment of it has obtained a peremptory order of the competent jurisdiction, fixing a day for payment, and the debtor does not, being a trader within seven days, or not being a trader, within two calendar months after service on him of the peremptory order, or such order having been duly served, within seven days after the day fixed by the peremptory order for payment, (which shall last happen) pay the money, or secure, or tender, or compound for it, to the satisfaction of the creditor, the creditor shall be entitled at the end of those seven days to sue out against the debtor a judgment debtor summons.

Rules regulating issue thereof.

24. The judgment debtor summons shall, unless the Court shall in any case otherwise direct, issue according to the following rules:

a. Where the debtor is in British Columbia or its dependencies, then out of the Supreme Court or the County Court acting in Bankruptcy for the district in which the debtor usually lives, or at the time of the issuing of the summons happens to be;

b. Where the debtor is not in British Columbia, then out of the Supreme Court or the County Court acting in Bankruptcy for the district in which is situated the debtor's usual or last known place of abode in British Columbia;

c. Where the debtor is in British Columbia or its dependencies, the summons shall be served personally, unless the Court issuing the same shall in any case direct that service in some other manner shall be good service.

d. Where the debtor is not in British Columbia, the Court upon such evidence as shall satisfy it that the service will be effectual to give notice to the debtor, may order service to be made in such manner and form as it shall deem fit, and shall appoint a time by such order for the appearance of the debtor.

e. Where the debtor is in custody a duplicate of the summons shall be delivered to the Sheriff or other person in whose custody he is, who shall bring him up according to the summons, at the cost of the summoning creditor.

f. If service of the summons be not effected, and the Court is satisfied that the debtor is keeping out of the way to avoid service, it may order that one or more notices be inserted in the *Government Gazette*, and in one or more newspapers published in the Colony, requiring him to appear on a day named, being not less than fourteen days after the publication of the first notice.

Examination of debtor.

25. Upon the appearance of the debtor he may be examined upon oath, by or on behalf of the creditor, and by the Court respecting his ability to satisfy the debt, and for the discovery of property applicable in that behalf, and shall be bound to produce, on oath or otherwise, such books, papers and documents in his possession or power relating to property applicable or alledged to be applicable to the satisfaction of the debt, as the Court shall think fit, and to sign his examination when reduced into writing, and any debtor refusing to be sworn, or who shall upon examination refuse or wilfully fail to discover fully and truly to the best of his knowledge and belief, all his property real and personal, inclusive of his rights and credits, and to produce all books, papers and documents in his possession or power relating thereto, shall be liable to be committed by the Court as in the case of a bankrupt.

Adjudication *nisi* of the judgment debtor summons.

26. If after service of such summons, or due notice thereof, as aforesaid, the debtor shall not pay the debt and costs, or secure or compound for the same to the satisfaction of the creditor, the Court may, on the appearance of the debtor, or if he shall not appear, having no lawful impediment allowed by the Court, adjudge him bankrupt without the presentation of a petition for adjudication or other proceeding, and where the debtor has not appeared, notice of such adjudication shall be served upon him in like manner as herein provided with respect to service of the summons.

Adjudication when made absolute.

27. The debtor shall be allowed seven days from such notice, or such further time as the Court shall think fit, for appearing to show cause against the adjudication; and if he appear within the time allowed and show sufficient cause, the adjudication may be annulled, otherwise at the end of the time allowed, or on the judgment of the Court against the sufficiency of the cause shown, the adjudication shall become absolute, aud notice thereof shall be forthwith given in the *Government Gazette*, and the adjudication shall have relation back to the service of the summons, or the insertion of the first notice in the *Government Gazette*, as the case may be, and the fee payable upon the presentation of a petition for adjudication of Baukruptcy shall be paid in respect of adjudication under this section or under the last preceding section, by the official assignee or the creditor's assignee as the case may be, out of the first moneys that shall be received under the estate of the Bankrupt.

Power to commit.

28. The provisions contained in section two hundred and sixty of the "Bankrupt Law Consolidation Act, 1849," relating to the committal of a person refusing to be sworn, or doing or omitting the other acts or things therein mentioned, shall apply to a debtor appearing on a judgment debtor summons.

Filing petition without declaration an act of Bankruptcy.

29. Any debtor may petition for adjudication of Bankruptcy against himself, and the filing of such petition shall be an act of Bankruptcy, without any previous declaration of Insolvency by such debtor.

Petitioner must file full accounts.

30. Every debtor petitioning against himself shall file in Court, a full, true, and accurate statement of his debts and liabilities of every kind, and of the names and residences of his creditors, and of the causes of his inability to meet his engagements, within such time after filing his petition and in such form as general orders shall direct.

Petition by prisoner.

31. Every debtor who shall present a petition for adjudication whilst a prisoner in any prison gaol shall by writing give notice to the keeper of such gaol or prison of his intention so to do, and shall in his petition state that such notice has been given.

As to adjudication of Bankruptcy against pauper and other prisoners for debt.

Petition *in forma pauperis* by prisoner.

32. If any debtor whether a trader or not now being or who shall be imprisoned for any debt or demand shall through poverty be unable to petition the proper Court for an adjudication of Bankruptcy against himself, he shall be at liberty to petition *in forma pauperis*, upon making an affidavit that he has not the means of paying the fees and expenses usually payable in respect of a petition by a debtor for an adjudication of Bankruptcy. Such affidavit may be sworn before the gaoler of the prison where such debtor is confined, and such gaoler is hereby empowered and required to take such affidavit and swear the deponent thereto without fee or reward.

Examination before County Court.

33. Every person so petitioning *in forma pauperis* as aforesaid, shall be brought up to the County Court of the district at its next sitting after the presentation of such petition, and shall be examined by the Court touching his estate and effects, debts, dealings, and

transactions; and if the Court shall be satisfied with such examination it shall make an order of adjudication of Bankruptcy against the petitioner, and if it think fit, grant an order of protection to the petitioner.

Monthly Returns by Gaoler.

34. The gaoler of every prison in British Columbia, within the walls, rules and liberties, whereof any person shall be in custody upon any process whatsoever, for or by reason of any debt, claim or demand whatsoever, shall on the first day of every month, or if such day shall happen to be Sunday, then on the day next following, make a return under his hand of the name of every such person, and the date of his or her imprisonment, and the nature and amount of the debt or demand, debts or demands, for which he or she is imprisoned or in custody, and whether he or she is willing or refuses to petition the Court of Bankruptcy, or is unable to do so by reason of poverty or in such other form and manner and with such particulars as any general orders shall direct. Such return shall also include the names and addresses of every creditor at whose suit each such prisoner is imprisoned or detained, and shall be made by gaolers of prisons to the Supreme Court or County Court having jurisdiction in Bankruptcy within the jurisdiction of which the gaol is situated.

Attendance of County Court Judge at Prison.

35. The County Court Judge shall in every case, on receiving such return, attend at the gaol on a day to be named, being at least seven and not more than twenty-one days from the date of such return. Notice of such order shall be forthwith given to the gaoler and also to the execution and detaining creditors of every prisoner included in such return. On the day named in the order such County Court Judge shall attend at the prison, and examine every prisoner included in such return who shall have been in prison for fourteen days, touching his estate and effects, debts, dealings and transactions. The County Court Judge shall also ascertain the last or longest place of abode and business of each such prisoner within the six months next prior to his inprisonment. The County Court Judge shall have power to make an order of adjudication in Bankruptcy against every such prisoner, and to grant him protection, and shall also direct in what Court such adjudication shall be prosecuted, having regard to the amount of debts and the place of trade or residence of the prisoner within the six months next preceding his imprisonment.

Power to compel evidence.

36. If the prisoner shall refuse to appear, or to be sworn, or to answer all lawful questions of the County Court Judge or of the execution or detaining creditor, or of any other creditor who shall be present respecting his debts, liabilities, dealings and transactions, or to make a full discovery of his estate and effects, and of all his books of account, or to produce the same, or to sign his examination when taken, the Court may by warrant under the hand and seal of the Judge, commit him to the common gaol of the District, there to be kept with or without hard labour for any time not exceeding one month, and the Court may at the same time adjudge such prisoner Bankrupt, provided that if after such adjudication the Bankrupt shall, before the period of such commitment has expired, submit to be examined, and in all things conform to the jurisdiction of the Court, he shall in all respects have the same benefit as if he had submitted to the Court in the first instance.

Date of adjudication.

37. Every adjudication against any prisoner for debt so brought up as aforesaid, shall, unless the Court shall otherwise direct, have relation back to the date of his commitment or detention, as the case may be, and shall be as valid and effectual for all purposes as if it had been made under any other of the provisions of this Ordinance.

38. This Ordinance shall be cited as the "Bankruptcy Ordinance, 1865." Short Title.

Passed the Legislative Council the 6th day of April, A. D. 1865.

CHARLES GOOD,
Clerk.

ARTHUR N. BIRCH,
Presiding Member.

Assented to, in Her Majesty's name, this tenth day of April, 1865.

FREDERICK SEYMOUR,
Governor.