

**Ordonnance relative à la Renonciation.**  
(Le 30 septembre 1929)

Attendu que d'après l'article XXI. de la loi relative aux Débiteurs et à la Renonciation sanctionnée par Ordre de Sa Majesté en Conseil en date du 5 juillet 1929 enregistré sur les Records de cette Ile le 2 août 1929, la Cour Royale est autorisée à passer toutes et telles Ordonnances qu'elle croira nécessaires pour la mise à exécution de la dite loi, pour régler la procédure, la manière de faire preuve des dettes, les droits respectifs des créanciers, la priorité de dettes et l'admission et rejet de preuves.

LA COUR, ouies les conclusions des Officiers du Roi, a ordonné et ordonne que les règlements rédigés en anglais qui ensuivent auront force de loi en cette Ile.

## DEFINITIONS.

In this Ordinance, unless the context otherwise requires "the law" means the law relating to debtors and renunciation hereinbefore referred to in the preamble to this Ordinance.

"The Committee" means the Committee of creditors appointed by the Court in conformity with Article VII. of the law.

## MEETINGS OF CREDITORS.

1. A person shall not be entitled to vote as a creditor at any meeting of creditors unless before exercising such vote his claim has been included in the debtor's affidavit or he has been recognised by the Committee as being a creditor.

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

3. For the purpose of voting a secured creditor, unless he surrenders his security, shall before exercising a vote, declare in writing to the Commissioner of the Court at the meeting of creditors, 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 the security has arisen from inadvertence.

4. 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 who has not been declared by the Court to be insolvent, as a security in his hand, and to estimate the value thereof, and for the purpose of

voting, but not for the purpose of dividend, to deduct it from his claim.

5. It shall be competent to the Committee within twenty-eight days after a declaration 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 or assign the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereof 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 or assign such security as aforesaid correct such valuation by a new declaration to be delivered to the Committee and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the Committee required the security to be given up or assigned.

6. If one partner of a firm is declared insolvent by the Court, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them shall, provided that his debt be admitted by the Committee, be entitled to vote at any meeting of creditors.

7. The Commissioner of the Court on the application of the Committee shall have power to admit or reject a debt for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the claim of a creditor should be admitted or rejected he shall mark the statement of account 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.

8. A creditor may vote either in person or by proxy or by an Advocate.

9. A meeting shall not be competent to act for any purpose unless there are present or represented thereat, at least three creditors, or all the creditors if their number does not exceed three. 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 for not less than seven nor more than twenty days as the Commissioner may appoint.

## PROOF OF DEBTS.

10. Any time after a declaration by the Court that a debtor is insolvent the Committee may apply to the Court for the appointment of a Commissioner before whom all debts shall be proved.

The Commissioner so appointed shall fix the day hour and place for the proof of claims and the Committee shall give notice thereof by an announcement for two consecutive Saturdays in the official part of the *Gazette* of the Island and on the official notice board in the vestibule of the Court and by three publications in each of two daily newspapers published in English in this Island.

11. Every creditor shall prove his debt on or before the day fixed by the Commissioner provided that the Commissioner may accept proof of a debt after such day if the creditor satisfies him that for good reasons he was unable to do so on the day appointed but the creditor shall not be entitled to disturb the distribution of any dividend declared before the date of the proof of his debt.

12. A debt may be proved by the creditor or his agent either in person, by delivery or by sending through the post in a prepaid letter to the Commissioner a declaration signed by the creditor verifying the debt.

13. The declaration may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised it shall state his authority and means of knowledge.

14. The declaration shall contain 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 Commissioner or the Committee may at any time call for the production of the vouchers.

15. The declaration shall state whether the creditor is or is not secured or whether he claims preference for the whole or any part of his debt.

16. Every creditor who has lodged a proof of his debt shall be entitled to see and examine the proofs of other creditors at all reasonable times.

17. 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.

18. If a secured creditor realises his security, he may prove for the balance due to him, after deducting the net amount realised.

19. If a secured creditor surrenders his security to the Committee for the general benefit of the creditors, he may prove for his whole debt.

20. If a secured creditor does not either realise 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; provided that if the Commissioner is satisfied that the creditor is unable to assess the value of his security until proceedings pending in respect of the "saisie" of the immoveable property of the debtor are terminated he may allow the creditor to prove for the full amount of his debt but he shall be empowered to retain the dividend until such time as the "saisie" proceedings are completed and the creditor has submitted to him a statement of account.

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

(b) If the Committee is dissatisfied with the value at which a security is assessed, it may apply to the Court for an order for the sale of the property which is the subject of the security, eight days' notice at least of such application having been given to the "saisi," and the Court may refuse or grant such order subject to such conditions as it thinks fit.

(c) Provided that the creditor may at any time, by notice in writing, require the Committee to elect whether it will or will not exercise its power of redeeming the security or making an application to the Court for the sale of the property which is the subject of the security, and if the Committee does not, within three months after receiving the notice signify in writing to the creditor its election to exercise its power, it shall not be entitled to exercise it, and the interest in the security shall vest in the creditor and the amount of his debt shall be reduced by the amount at which the security has been valued.

22. 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 Commissioner, 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 Commissioner shall allow the amendment without application to the Court.

23. Where a valuation has been amended in accordance with the foregoing regulation, the creditor shall forthwith repay any surplus dividend he may have recovered 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 the money, for the time being available for dividend, any dividend or share of dividend which he may have failed to received 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.

24. If a creditor after having valued his security subsequently realises it, or if it is realised under the provisions of regulation 21 hereof, the net amount realised 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.

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

26. Subject to the provisions of regulation 21 hereof a creditor shall in no case receive more than twenty shillings in the pound and interest as provided by the security, provided that such interest does not exceed six per centum per annum.

#### DEBT PAYABLE AT A FUTURE TIME.

27. A creditor may prove for a debt not payable when the debtor was declared insolvent 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 five pounds 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.

28. The Commissioner 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.

29. If a creditor is dissatisfied with the decision of the Commissioner in respect of a proof, the Court may,

on the application of the creditor, reverse or vary the decision.

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

31. For the purpose of regulations 29 and 30 the Court shall mean the Court sitting as the Ordinary Court and whose decision, in cases where the debt does not exceed £50, shall be final.

### PREFERENCES.

32. Every preference obtained by a creditor on the immoveable property of a debtor by means of the registration of an Act of Court shall be null and void if obtained within three months immediately preceding the application by such debtor to the Court for a declaration of insolvency.

### PROCEEDINGS.

33. An application to the Court for a declaration of insolvency if not made by a debtor in response to an action against him by a creditor for payment of a debt or in pursuance of Article XVI. of the law shall be made by the debtor by means of a petition setting out that the debtor applies for a declaration of insolvency owing to his being unable to pay his debts. The debtor shall be present in Court when such application is made.

34. An application to the Court for the benefit of renunciation shall be made by an action on the part of the debtor against the Committee to see the Court grant him the benefit of renunciation. Notice of the day appointed for the hearing of the application for the benefit of renunciation shall be given by the debtor by an announcement in the official part of the *Gazette* of the Island and in at least one daily newspaper published in English in this Island at least ten days before the date of

the application and by a notice published on the official notice board in the vestibule of the Court. The debtor shall also when possible give eight days' previous notice in writing to all his creditors of the day appointed for the hearing.

35. Where the Court grants the benefit of renunciation conditionally upon the debtor consenting to a judgment being entered against him in favour of the Committee for the balance or any part of the balance of the debts proveable which is not satisfied at the date of the order and the debtor does not give the required consent within one month of the conditional order the Court may on the application of the Committee revoke the order or make such other order as the Court may think fit.

36. Where a debtor is granted the benefit of renunciation 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 Committee such information as it may require with respect to his earnings and after acquired property and income, and not less than once a year to file with the Greffier a statement showing the particulars of any property or income he may have acquired subsequent to his being granted the benefit of renunciation.

37. Any statement of after acquired property or income filed by a debtor shall be verified by affidavit before the Court, and the Committee may require the debtor to attend before the Court to be examined on oath with reference to the statement contained in such affidavit, or as to his earnings, income, after acquired property, or dealings. Where a debtor neglects to file such a statement 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 Committee rescind the order granting him the benefit of renunciation.

38. Where after the expiration of two years from the date of any order made upon a debtor's application for the benefit of renunciation the debtor 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 in writing of the day fixed for hearing the application to the Committee and to all his creditors.

#### APPROPRIATION OF PAY, SALARY, PENSIONS.

39. Where the Committee intends to apply to the Court for an appropriation order under Section (1) of Article XIX. of the law, the Committee shall give to the debtor notice of its intention so to do. Such notice shall specify the time fixed for hearing the application, and shall state that the debtor is at liberty to show cause against such order being made.

40. Where an order is made under section (1) of Article XIX. of the law the Greffier shall give an extract of the order to the Committee who shall communicate the same to the person under whom the pay, salary, income, emolument, pension or compensation is enjoyed.

#### COSTS.

41. When a debtor applies to the Court for a declaration of insolvency the Court on the application of the Committee may require the debtor to find security for costs in a sum not exceeding £10 and the Court may refuse to proceed with the application until such security be found.

#### PROPERTY WHICH IS DIVISIBLE AMONGST CREDITORS.

42. The property of the debtor divisible amongst his creditors shall not comprise the following particulars:—

- (1) property held by the debtor in trust for any other person;
- (2) the necessary wearing apparel and bedding of himself, his wife and children and such household articles of furniture and effects as may be necessary for the house at the discretion of the Prévôt;
- (3) the tools (if any) of his trade to a value not exceeding £20 at the discretion of the Prévôt:

But it shall comprise the following particulars:—

- (a) all such property as may belong to or be vested in the debtor at the time he applies for the declaration of insolvency or may be acquired by or devolve on him before he be granted the benefit of renunciation; and
- (b) 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 debtor for his own benefit at the time of his application for a declaration of insolvency or before being granted the benefit of renunciation; and
- (c) all goods being at the time of the debtor's application for a declaration of insolvency, in the possession, order or disposition of the debtor, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof.