(XLIIId YEAR.) THE (No. 2139.)

MARYLAND GAZETTE.

THURSDAY, MAY 29, 1788.

By the HOUSE *of* DELEGATES, *May* 25, 1788.

ORDERED, That the bill respecting insolvent debtors, with the yeas and nays, be published in the Maryland Gazette, and Baltimore news-papers.

By order,

W. HARWOOD, clk.

A bill, entitled, An ACT respecting insolvent debtors.

WHEREAS the confinement of the persons of debtors is inconsistent with the principles of humanity, and it is reasonable, where debtors will, *bonâ fide*, surrender all their property to the use of their creditors, that thereupon they should be discharged from their debts then contracted;

Be it enacted, by the General Assembly of Maryland, That any debtor for any sum above two hundred pounds current money, may apply by petition, in writing, to the chancellor, and offer to deliver up, to the use of his creditors, all his property, real, personal and mixed, and to which he is in any manner entitled, a schedule whereof (on oath or affirmation) together with a list of his creditors, as far as he can ascertain them, shall be exhibited with, and annexed to, such petition; and thereupon the chancellor may direct notice of such application to be published in the Annapolis and Baltimore news-papers for such time as he may think proper, not less than six weeks, and on their appearance, or neglect to appear on notice, at the time or times and place appointed, the chancellor, if no creditor shall appear and allege in writing fraud or deceit in such debtor, may administer the following oath (or affirmation) to the debtor making such application, to wit: "I, A. B. do swear, or solemnly, sincerely, and truly declare and affirm, that I will deliver up, convey and transfer, to my creditors, in such manner as the chancellor shall direct, all my property that I have or claim any title to, or interest in, at this time, in the world, and all debts, rights and claims, which I have at this time, or that I am in any respect entitled to, in possession, remainder or reversion, and that I have not, at any time before (the day of taking the said oath or affirmation) directly or indirectly, in any manner or way, sold, disposed of, conveyed, leased, intrusted, or by any device concealed or lessened, my property of any kind, or the value thereof, or any part of my debts, rights or claims, thereby to defraud or deceive my creditors, or any of them, or to secure any part of my property, debts, rights or claims, with the intention or expectation of receiving, at any time, any profit, benefit or advantage, thereby." And if any creditor shall charge such debtor with fraud or deceit, the chancellor shall delay all further proceedings until such fraud or deceit be inquired into in the manner herein after directed.

And be it enacted, That the chancellor, upon administering the said oath or affirmation, shall proceed to appoint a trustee or trustees on behalf of the creditors, and shall direct such debtor to execute a deed (which shall be laid before the chancellor for his approbation, and shall be recorded in the chancery office before the discharge of the debtor) to such trustee or trustees, for all his property, debts, rights and claims, agreeably to the oath (or affirmation) of such debtor, in trust for all his creditors, and thereupon, and upon the execution of the said deed, and after the delivery of the property, books, bonds, and other evidences of debts, to such trustee or trustees, and his or their certificate of such delivery, the chancellor may order that such debtor shall for ever thereafter be acquitted and discharged from all debts by him owing or contracted at any time before the date of such deed; and in virtue of such order such debtor shall be for ever discharged from all debts due or contracted before the date of such deed; *provided,* That any property thereafter acquired by such debtor by descent, devise, bequest, or in course of distribution, shall be liable to the payment of his debts.

And be it enacted, That every trustee, before he acts as such, shall take the following oath (or affirmation) which any justice of the peace may administer, to wit: "I, A. B. do swear (or solemnly, sincerely, and truly declare and affirm) that I will faithfully, impartially and honestly, according to the best of my skill and knowledge, execute the several powers and trusts reposed in me as trustee for the creditors of C. D. without favour or affection, prejudice or malice." And every trustee, before he acts as such, shall give bond, with security if necessary, in such penalty as the chancellor shall direct, for the faithful and due performance of his trust; and in case of the refusal or delay of any trustee to act, or in case of his death, the chancellor may appoint another, who shall qualify and give bond as aforesaid.

And be it enacted, That the chancellor may allow any such debtor to retain the necessary wearing apparel of himself and family, and if a mechanic or manufacturer, his tools, not exceeding in value the sum of ten pounds current money; and the trustee or trustees of such debtor shall make a reasonable allowance to such debtor and his family (if any) for his and their necessary support between the time of the petition and the discharge of such debtor.

And be it enacted, That the chancellor may direct the trustee or trustees appointed on behalf of such creditors, to sell and convey the property of such debtor, at such time and on such terms and conditions, as may be most advantageous to the creditors, and after satisfying all incumbrances by mortgages (in which case the mortgaged premises shall be sold and the mortgagee first satisfied) or by rents due not more than a year, if not due to be apportioned, and by other liens, and after paying all public taxes, prison fees, and expences of the trust, the net produce to divide among all the creditors of the debtor, agreeably to their several and respective debts and claims, not allowing any interest on any debt after the execution of the deed by such debtor, unless a surplus after payment of the debts, in which case subsequent interest shall be allowed; but no judgement rendered after the twenty-fifth day of May, one thousand seven hundred and eighty-seven, shall be a lien on the lands of the debtor, so as to be preferred in such distribution, nor shall any process against goods or lands be preferred on such distribution, except writs of *fieri facias* actually and *bonâ fide* executed before the debtor's application for relief as aforesaid; and the chancellor may, from time to time, make such orders respecting the conduct of such trustee or trustees, and may remove any trustee for misbehaviour and appoint another in his place, as justice may require; and every creditor, upon a contingency, shall be entitled to a dividend made after the contingency happens.

And be it enacted, That any trustee or trustees may (if necessary) sue in his or their own name or names for the recovery of any property or debts belonging to such debtor, and conveyed, transferred or assigned, to such trustee or trustees, agreeably to this act.

And be it enacted, That any suits commenced by any debtor before his discharge, may be continued in his name, or the trustee may make himself the plaintiff, and carry on such suit in his own name, or that of the debtor, at his election, for the benefit of the creditors of such debtor; and if any debtor shall be taken in execution, or if *fieri facias* shall be executed on his property, after his application for relief, and such debtor shall obtain an order of acquittal from his debts, agreeably to this act, the court out of which such *capias ad satisfaciendum* or *fieri facias* issued, shall, on motion, quash the same.

And, to prevent collusion between debtors and their creditors, and expedite the adjustment and distribution of insolvents estates, *Be it enacted,* That the chancellor may, by order, limit and appoint the time for creditors to bring in and declare their claims, and may examine such creditor, and also the debtor, on oath or affirmation, touching the same, and on any contested claim may (if he thinks proper) order the same, or any fact concerning the same, to be tried on an issue framed for that purpose; and the chancellor may, in his discretion, perceiving the debtor is not likely to be entitled to a surplus, order that he be allowed and received as a witness on the trial of any such issue as aforesaid; and the chancellor may order any of the produce of the insolvent's estate to be set apart and retained for the eventual satisfaction of any contested claim, or to be brought again into distribution; and if any creditor, to whom a real debt is due and owing, shall collude and contrive with the debtor to gain an undue preference in the satisfaction of his debt, or for concealment of any part of the debtor's estate or effects, or shall contrive or concert any acknowledgment of the debtor, by parole or in writing, or any kind of security to give false colour to his claim for more than is *bonâ fide* due, such creditor shall lose his debt truly due, and shall be totally excluded in the distribution.

And be it enacted, That if any creditor, on the application of any such debtor to the chancellor as aforesaid, or at any time within two years thereafter, shall allege in writing that such debtor hath, at any time before the day appointed for such debtor to meet to take the oath or affirmation aforesaid, directly or indirectly, in any manner or way, sold, disposed of, conveyed, leased, intrusted, or by any device concealed or lessened, his property of any kind, or the value thereof, or any part of his debts, rights or claims, thereby to defraud or deceive his creditors, or any of them, or to secure the same, or any part thereof, with the intention or expectation of receiving at any time any profit, benefit or advantage, thereby, or that such debtor, at the time of obtaining particular credit, had a knowledge of his circumstances, and of his inability to pay his debts contracted before such credit, or that he obtained particular credit by any trick, misrepresentation, deceit or fraud, the chancellor shall thereupon stay all proceedings, and may examine such debtor on interrogatories, on oath or affirmation, for the discovery of his property, or any concealment thereof, and respecting his conduct in any manner touching the same, or the manner of procuring particular credit; or the chancellor may, in his discretion, appoint any number of persons, not less than three, to examine such debtor, and any evidences (not being creditors) on interrogatories, on oath or affirmation, for the discovery of such debtor's property, or any concealment thereof, or his conduct in any manner touching the same, or manner of procuring particular credit, or he may direct an issue, in a summary way, to be tried in the general court, or the county court where such debtor resides, to determine the truth of any allegation made by such creditor; and if such debtor shall be found guilty of any wilful fraud, covin, collusion or deceit, of his creditors, he shall for ever be precluded from having any benefit of this act; and any property by him conveyed in trust for his creditors, shall remain and belong to them, and he shall be liable to them for any balance; and if any debtor who shall take the oath or affirmation by this act directed shall, upon indictment, be convict of wilfully, falsely and corruptly, swearing or affirming to any matter or thing in such oath or affirmation contained, such person shall suffer as in case of wilful and corrupt perjury, and likewise be liable to his creditors, and shall have no relief by, or benefit of, this act, and if any debtor shall be found guilty of fraud or deceit (if present) the chancellor, or the court or commissioners before whom the trial is had, shall immediately require him to give security for his appearance at the next general or county court, and in case of neglect, may commit him for trial for perjury, and every person appointed a commissioner to examine into the fraud, deceit or misconduct, of any debtor, shall, before he proceeds to trial, make oath, that he will well and truly examine the allegations made against such debtor, and truly determine the same according to the evidence without fear, favour, affection, partiality or prejudice, and the debtor or creditor may appeal to the chancellor or county court, as the case may be, and the chancellor may direct a new trial, if justice shall require.

And, whereas it is reasonable that securities, who *bonâ fide* became such before the twenty-fifth day of May, seventeen hundred and eighty-seven, for any insolvent debtor, should be preferred before other creditors of such debtor, *Be it enacted,* That the trustee or trustees of such debtor shall prefer such security, after satisfying all incumbrances or liens, either by paying the money due to such security, or his creditor, or by obtaining his discharge to such security, and the trustee or trustees shall prefer such security as the debtor shall direct, before or at the time of his application for relief, and the trustee or trustees are hereby directed to satisfy or indemnify such security before he is obliged to pay the money for which he is security.

And be it enacted, That if any debtor, whose property shall have been assigned according to this act, shall have satisfied all claims brought in and allowed against him, the chancellor may order his estate and effects not sold, to be restored to him, and he shall thereupon be seised and possessed thereof as of his former estate.

And be it enacted, That if on final settlement of all debts and claims against such debtor there should be any surplus, the chancellor shall direct the same to be paid by the trustee or trustees to such debtor, his executor or administrator.

And be it enacted, That the chancellor may allow the trustee or trustees appointed by him, in virtue of this act, such salary or commission, not exceeding seven and an half per cent. for his or their trouble, as the chancellor shall think just and reasonable.

And be it enacted, That if any debtor shall be imprisoned, and in actual custody, he may apply to the chancellor in the manner before directed, and the chancellor may thereupon direct notice to his creditors, and may order the sheriff, or other officer in whose custody such debtor may be, to bring him before the chancellor, and may administer to such debtor the oath or affirmation aforesaid, and similar proceedings may be had as herein before directed.

And, whereas many people, greatly indebted, have wasted, misspent and misconducted, their property, so that their creditors have lost their debts, or great part thereof, notwithstanding such debt might have been