

P A R T III

Insolvency

Chapter 20. VOLUNTARY

ASSIGNMENTS FOR BENEFIT OF CREDITORS ⁴⁷

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47 Previously chapter 31 under the General Business Law, then title 15, as contained in the Liberian Code of Laws of 1956.

§ 217. Records and Reports of Receiver.

§200. Definitions.

Except when otherwise required by the context, in this Chapter:

(a) "Applicant" shall refer to a person who has applied to a court or judge for permission to assign his property for the benefit of creditors under the provisions of sections 202 or 207;

(b) "An insolvent" shall mean any person who is considered insolvent according to section 201 whose application to make a general assignment for the benefit of creditors has been granted; and

(c) "Assignment date" shall mean the date on which a court or judge grants an application of an insolvent person to make a general assignment for the benefit of creditors.

§ 201. When a person is insolvent.

A person shall be considered insolvent if the present saleable value of his non-exempt property is insufficient to pay his debts.⁴⁸

§ 202. Who may file application to make voluntary assignment.

Any person who is arrested on a writ of execution or of arrest in a

48 *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), §1395; and OBB 75, Legal Principles and Rules, t. II, ch. XIX, § 1, 2 Hub. 1574.

Cross reference:

Property exempt from execution, see Civil Procedure L., §§ 44.27, 44.28.

civil action arising out of a claim in debt or contract or for damages (except damages for personal injuries or injuries to the reputation or domestic relations of the claimant) may declare himself insolvent and apply for leave to assign his property for the benefit of his creditors.⁴⁹

§ 203. To whom application is to be made.

The application for leave to assign property for the benefit of creditors must be made to the court before which the writ of arrest is returnable, or to some judge thereof. The sheriff shall take the applicant before the court or judge as soon as he is required to do so.⁵⁰

§ 204. Applicant shall file schedule of property and debts.

The court or judge shall require every applicant to file with the clerk of the court a schedule of all his money and property and of all debts due to or by him as far as he can ascertain them and to verify the same under oath; and he shall swear that he has not, in the expectation of making his application, done any act to diminish his estate, to injure his creditors, or to prevent them, or any of them, from recovering their just proportion of his property. The court or judge shall likewise require such applicant to promise under oath that he will disclose to the receiver, appointed under the provisions of section 209, any property or debts not mentioned in the schedule which he may afterwards discover.⁵¹

49 *Prior legislation:* Rev. Stat. (adopted L. 1929, ch VII), § 1395 (1); and OBB 75, Legal Principles and Rules, t. II, ch. XIX, § 3, 2 Hub. 1574.

50 *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1395 (1); and OBB 75, Legal Principles and Rules, t. II, ch. XIX, § 4, 2 Hub. 1574.

51 *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1395 (2); and OBB 75, Legal Principles and Rules, t. II, ch. XIX, §§ 5, 8, 2 Hub. 1574.

§ 205. Applicant to give security to answer.

The court or judge shall require the applicant to give security that he will appear when called on to answer any allegations or interrogatories which may be filed against him.⁵²

§ 206. Discharge of insolvent from arrest.

When the applicant has filed the schedule and taken the oath prescribed in section 804 and has given the security required by section 205, the court may then discharge him from arrest and from all future arrest for any debt he may then owe or for claims on which he may be liable at that time. But such discharge shall not extend to any writ of execution or arrest issued in a civil action for damages for personal injuries or for injuries to the reputation or domestic relations of any person; provided, however, that when the insolvent has been arrested on a writ issued in an action for damages for personal injuries or for injuries to the reputation or to domestic relations of any person, he shall be discharged only in accordance with the procedure and under the conditions prescribed in section 207.⁵³

§ 207. Insolvent arrested in action of damages for personal injuries.

When an insolvent person is arrested on a writ of execution or arrest in an action for damages for personal injuries or injuries to the reputation or domestic relations of another, he shall proceed in the

⁵² *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1395 (6); and OBB 75, Legal Principles and Rules, t. II, ch. XIX, § 9, 2 Hub. 1575.

⁵³ *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1395 (7); and OBB 75, Legal Principles and Rules, t. II, ch. XIX, § 10, 2 Hub. 1574.

Cross reference: imprisonment for debt abolished, see Civil Procedure L., § 970.

same manner as in sections 203-205 above; but the court or judge shall not discharge him until he has suffered imprisonment for a term to be determined in the discretion of said court or judge, who shall be guided in fixing the term by the amount of the damages awarded, allowing for any imprisonment the insolvent may have already suffered under any writ of arrest or execution issued in the same action.⁵⁴

§ 208. Insolvent may retain certain property.

The insolvent may retain the following property, which shall not be subject to seizure and application by the receiver for the benefit of the creditors:

- (a) all necessary household furniture and utensils to the value of one hundred dollars;
- (b) all wearing apparel;
- (c) provisions necessary for the support of the insolvent's family for a period of thirty days;
- (d) all agricultural tools to the value of two hundred dollars;
- (e) all tools and outfits of artisans to the value of two hundred dollars; and
- (f) all professional instruments, furniture, and library to the value of five hundred dollars; provided that a schedule of articles so retained shall be verified by the oath of the insolvent and filed with the clerk of the court; and provided further that the judge shall have the right to disallow the retention of any

⁵⁴ *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1395 (7); and OBB 75, Legal Principles and Rules, t. II, ch. XIX, § 11, 2 Hub. 1574.

article or articles or to make such modifications and changes in the schedule as the ends of justice may seem to him to require and that he may make any order in connection therewith which he deems just and equitable.⁵⁵

§ 209. Meeting of creditors.

As soon as leave has been granted to assign the insolvent's property for the benefit of creditors, the court or judge shall appoint a temporary receiver to take temporary charge of the insolvent's property. Such person shall immediately call a meeting of all the creditors, who shall elect a receiver on their own behalf. In such election each creditor shall be allowed one vote for every twenty dollars the insolvent owes him; and every creditor who is owed less than twenty dollars shall be entitled to one vote.⁵⁶

§ 210. Powers and duties of receiver.

As soon as the elected receiver gives adequate security in accordance with the provisions of section 468 of the Civil Procedure Law before the court or judge, all the property of the insolvent (except exempt property as provided in section 208 above) shall be vested in him. The receiver shall hold and administer the property as if the insolvent were dead and he were the administrator of his estate, except that he shall make no distinction between real and personal property; he shall account to the Circuit Court in the same manner as the administrator of a decedent's estate accounts to the Probate Court; he shall have the same rights, remedies, duties, obligations, and liabilities; and he may sue and be sued in court in the same manner and for the same

⁵⁵ *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1395 (9); and OBB 75, Legal Principles and Rules, t. II, ch. XIX, § 19, 20, 2 Hub. 1574.

⁵⁶ *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1395 (3), (4); and OBB, Legal Principles and Rules, t. II, ch. XIX, § 6, 2 Hub. 1574.

causes.⁵⁷

**§ 211. Presumption of insolvency prior to assignment date;
Effect.**

It shall be presumed that every insolvent has been insolvent during the ninety days immediately preceding the assignment date; and all conveyances, transfers, assignments, and deliveries of his property made during such ninety day period shall be void and of no effect. Subject to the provisions of section 212 below, every conveyance, transfer, assignment, or delivery of his property made by the insolvent more than ninety days before the assignment date shall be valid if

(a) he was not insolvent at the time of making such conveyance, transfer, assignment, or delivery, or

(b) he was then insolvent, but the person to whom such conveyance, transfer, assignment, or delivery was made was ignorant of his insolvency.⁵⁸

§ 212. Fraudulent transactions: effect.

It shall be a fraudulent transaction for an insolvent:

(a) To conceal money or other property or debts due to him;

(b) To convey, transfer, assign, or deliver any money or other property to any person without receiving consideration therefor;

⁵⁷ *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1395 (5); and OBB 75, Legal Principles and Rules, t. II, ch. XIX, § 7, 2 Hub. 1574.

⁵⁸ *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1395 (8); and OBB 75, Legal Principles and Rules, t. II, ch. XIX, § 2, 2 Hub. 1574.

or

(c) To convey, transfer, assign or deliver any money or other property to a creditor in payment or diminution of his debt

(1) During the ninety days immediately preceding the assignment date, or

(2) More than ninety days before the assignment date if the insolvent knew he was then insolvent or if he made such conveyance, transfer, assignment, or delivery with a view to making an application as provided in sections 202 or 207.

Every transaction listed in this section which a jury finds to be fraudulent shall be void as against the receiver.⁵⁹

§ 213. Creditor may allege fraud within one year of discharge.

Any creditor of an insolvent may, at any time before his discharge or within one year thereafter, file in the court which granted such discharge allegations of fraud committed either in contracting the debt due to such creditor or in the application for permission to assign.⁶⁰

§ 214. Examination of insolvent: evidence.

The receiver or any creditor may examine the insolvent on interrogatories as to all transactions and other matters connected with

⁵⁹ *Prior legislation:* OBB 75, Legal Principles and Rules, t. II, ch. XIX, §§ 13-15, 2 Hub. 1574; and Acts 1846, Act to amend the Judiciary Act, § 14, 2 Hub. 1652.

⁶⁰ *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), §1395 (8); and OBB 75, Legal Principles and Rules, t. II, ch. XIX, § 12, 2 Hub. 1574.

his insolvency. His answers, reduced to writing and verified by oath, shall be evidence against him and against all persons claiming under him or interested in any transaction which is found to be fraudulent under the provisions of section 212.⁶¹

§ 215. Fraudulent transaction as crime.

It shall be a crime for an insolvent to engage in any fraudulent transaction as defined in section 812 above. Upon conviction before a jury he shall be imprisoned for not more than one year at the discretion of the court.⁶²

§ 216. Papers to be filed with clerk of the court.

Every appraisalment, petition, schedule, and other paper or instrument produced before a judge sitting alone in an insolvency proceeding or made by the order of such a judge shall be filed with the clerk of said court.⁶³

§ 217. Records and reports of receiver.

Whenever in a proceeding under this Chapter a receiver has been elected and has given bond, the court or judge who approved such bond shall direct the clerk of the court to record all papers and documents relating to the proceeding and to the election and bond of the receiver in a special book kept for that purpose; and the court or judge shall require the receiver as often as may be deemed proper to

61 *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1395 (8); and OBB 75, Legal Principles and Rules, t. 11, ch. XIX, § 16, 2 Hub. 1574.

62 *Prior legislation:* Rev. Stat. (adopted L. 1929, ch. VII), § 1395 (8); and OBB 75, Legal Principles and Rules, t. II, ch. XIX, § 17, 2 Hub. 1574.

63 *Prior legislation:* OBB 75, Legal Principles and Rules, t. II, ch. XIX, § 21, 2 Hub. 1574.

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make reports on his activities in connection with the estate of the insolvent. The clerk of the court shall keep a docket or list of all such cases, containing the names of every insolvent and of every receiver and records of the security given by each receiver and shall note therein the dates of accounts rendered by every party and the balance due by each receiver; he shall keep an index to the docket in the names of both the insolvent and the receiver.⁶⁴

