

Chapter 23.
Debtor and Creditor.

Article 1.

Assignments for Benefit of Creditors.

§ 23-1. Debts mature on execution of assignment; no preferences.

Upon the execution of any voluntary deed of trust or deed of assignment for the benefit of creditors, all debts of the maker thereof shall become due and payable at once, and no such deed of trust or deed of assignment shall contain any preferences of one creditor over another, except as hereinafter stated. (1893, c. 453; Rev., s. 967; 1909, c. 918, s. 1; C.S., s. 1609.)

§ 23-2. Trustee to file schedule of property.

Upon the execution of such deed of trust, the trustee, whether named therein or appointed as hereafter provided for, shall file with the clerk of the superior court of the county in which said deed of trust is registered, within ten days after the registration thereof, an inventory under oath, giving a complete, full and perfect account of all property that has come into his hands or to the hands of any person for him, by virtue of such deed of trust, and when further property of any kind not included in any previous return comes to the hands or knowledge of such trustee he shall return the same as hereinbefore prescribed within ten days after the possession or discovery thereof. (1893, c. 453, s. 2; Rev., s. 968; C.S., s. 1610.)

§ 23-3. Trustee to recover property conveyed fraudulently or in preference.

It is the duty of the trustee to recover, for the benefit of the estate, property which was conveyed by the grantor or assignor in fraud of his creditors, or which was conveyed or transferred by the grantor or assignor for the purpose of giving a preference. A preference, under this section, shall be deemed to have been given when property has been transferred or conveyed within four months next preceding the registration of the deed of trust or deed of assignment in consideration of the payment of a pre-existing debt, when the grantee or transferee of such property knows or has reasonable ground to believe that the grantor or assignor was insolvent at the time of making such conveyance or transfer. (1909, c. 918, s. 2; C.S., s. 1611.)

§ 23-4. Substitute for incompetent trustee appointed in special proceeding.

When a trustee named in a deed of assignment for the benefit of creditors has died or resigned or has in any way become incompetent to execute the trust, the clerk of the superior court of the county wherein said deed of assignment has been registered is authorized and empowered, in a special proceeding in which all persons interested have been made parties, to appoint some discreet and competent person to act as such trustee and to execute all the trusts created in the original deed of assignment, according to its true intent and as fully as if originally appointed trustee therein. (1915, c. 176, s. 1; C.S., s. 1612.)

§ 23-5. Insolvent trustee removed unless bond given; substitute appointed.

Upon the complaint of any creditor of the assignor or trustee in such deed of trust, alleging under oath that the trustee named therein is insolvent, and asking that he be required to give bond or be removed, it is the duty of the clerk of the superior court of the county in which such deed of trust is registered, upon a notice of not more than ten days to such trustee, to hear the complaint. If upon such hearing the clerk is satisfied that such trustee is insolvent, he shall remove such trustee and appoint some competent person to execute the provisions of such deed of trust, unless such insolvent trustee shall file with the clerk a good and sufficient bond, to be approved by him, in a sum double the value of the property in the deed of trust, payable to the State of North Carolina, and conditioned that such trustee shall faithfully execute and carry into effect the provisions of said deed of trust. (1893, c. 453, s. 3; Rev., s. 969; C.S., s. 1613.)

§ 23-6. Trustee removed on petition of creditors; substitute appointed.

Upon the written petition of one-fourth of the number of the creditors of the grantor or assignor whose claims aggregate more than fifty per cent of the total indebtedness of said grantor or assignor, the clerk of the superior court of the county in which said deed of trust or deed of assignment is registered, upon a notice of not more than ten days to said trustee of said petition, shall remove said trustee and appoint some competent person to execute the provisions of such deed of trust or deed of assignment. (1909, c. 918, s. 3; C.S., s. 1614.)

§ 23-7. Substituted trustee to give bond.

Upon the removal or resignation of any trustee it is the duty of the clerk to require the person appointed to execute the provisions of such deed of trust, before entering upon his duties, to file with the clerk a good and sufficient bond, to be approved by him in a sum double the value of the property in said deed of trust, payable to the State of North Carolina, and conditioned that such person shall faithfully execute and carry into effect the provisions of said deed of trust. (1893, c. 453, s. 3; Rev., s. 970; 1909, c. 918, s. 4; 1915, c. 176, s. 2; C.S., s. 1615.)

§ 23-8. Only perishable property sold within ten days of registration.

It is unlawful for any trustee, whether named in such deed of trust or appointed by a clerk of the superior court, to sell any part of the property described in such deed of trust within ten days from the registration thereof, unless such property or some part thereof be perishable, in which case he may sell such property as is perishable, according to the powers conferred upon him in said deed of trust. (1893, c. 453, s. 4; Rev., s. 971; C.S., s. 1616.)

§ 23-9. Creditors to file verified claims with clerk; false swearing misdemeanor.

All creditors of the maker of such deed of trust shall, before receiving payment of any amount from the said trustee, file with the clerk of the superior court a statement under oath that the amount claimed by him is justly due, after allowing all credits and offsets, to the best of his knowledge and belief. Any creditor who shall knowingly swear falsely in such statement shall be guilty of a Class 1 misdemeanor. (1893, c. 453, ss. 6, 7; Rev., ss. 972, 3617; C.S., s. 1617; 1993, c. 539, s. 397; 1994, Ex. Sess., c. 14, s. 34, c. 24, s. 14(c).)

§ 23-10. Priority of payments by trustee.

The trustee, after paying the necessary costs of the administration of the trust, shall pay as speedily as possible

- (1) All debts which are a lien upon any of the trust property in his hands, to the extent of the net proceeds of the property upon which such debt is a lien;
- (2) Wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before registration of said deed of trust or deed of assignment, and
- (3) All other debts equally ratable. (1909, c. 918, s. 5; C.S., s. 1618.)

§ 23-11. Trustee to account quarterly; final account in twelve months.

The trustee, whether named in the deed of trust or appointed by a clerk of a superior court, shall within three months from the registration of such deed of trust, and at each succeeding period of three months, file with the clerk of the superior court of the county in which the same is registered an account under oath, stating in detail his receipts and disbursements and his action as trustee, and within twelve months he shall file his final account of his administration of his trust. The clerk may upon good cause shown extend the time within which the quarterly

and final accounts herein provided for are to be filed. (1893, c. 453, s. 5; Rev., s. 973; C.S., s. 1619.)

§ 23-12. Trustee violating duties guilty of misdemeanor.

If any trustee in a deed of trust for the benefit of creditors shall fail to file his inventory as required by law, or shall knowingly make any false statement in such inventory, or shall knowingly fail to include any property therein, or shall sell any part of the property described in the deed of trust within ten days unless such property so sold be perishable, or shall fail to file either of the quarterly accounts or the final accounts as required by law, or shall knowingly make any false statement in such quarterly or final account, or shall knowingly fail to include any property, money or disbursement in such quarterly or final account, he shall, in either case, be guilty of a Class 1 misdemeanor. (1893, c. 453, s. 8; Rev., s. 3689; C.S., s. 1620; 1993, c. 539, s. 398; 1994, Ex. Sess., c. 24, s. 14(c).)