

Legislative Council.

47<sup>o</sup> VICTORIÆ, 1884.

## A BILL

To regulate and define the Procedure in Bankruptcy  
and for the punishment of Fraudulent Debtors.

[MR. DALLEY ;—24 *January*, 1884.]

**B**E it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

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### *Preliminary.*

1. This Act may be cited as the "Bankruptcy Procedure Act 1884" It shall come into operation on the *first* day of *July* one thousand eight hundred and eighty-four and its sections are arranged as follows :—

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PART I.—*Jurisdiction.*

PART II.—*Voluntary Sequestration.*

PART III.—*Compulsory Sequestration.*

PART IV.—*Procedure.*

PART V.—*Administration of Estate.*

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PART VI.—*Bankrupt.*

PART VII.—*Examination of Bankrupt and other form.*

PART VIII.—*Certificate.*

PART IX.—*Offences against Bankrupt Law.*

PART X.—*Miscellaneous.*

C 40—A

2.



Repeal clause.  
From section 5  
Irish By. Act 1872.  
35 and 36 Vic.  
ch. 58.

2. From and after the commencement of this Act the Acts enumerated in the First Schedule hereto shall to the extent therein specified be repealed except so far as may be necessary for the purpose of supporting and continuing any proceedings taken or to be taken after the commencement of this Act on any petition or order in insolvency presented or filed or made before the commencement of this Act. Provided always that such repeal shall not be construed to lessen or affect any right to which any person may at the time of such repeal be entitled under the said Acts or any of them or to lessen any liability or obligation then existing thereunder or to affect any principle or rule of law derived from any of the said Acts or to affect the course of any legal proceeding pending in insolvency or otherwise under the said Acts before the commencement of this Act nor shall this repeal interfere with the institution or prosecution of any proceeding in respect of any offence committed against or any penalty or forfeiture incurred under any of the said Acts hereby repealed and every person who shall before the commencement of this Act have committed an act of insolvency under the Act Fifth Victoria number seventeen shall be deemed to have committed an act of bankruptcy under this Act.

Construction re-  
enactments.  
From Equity Rules  
4 July 1863.

3. Every section or part of a section which is a re-enactment without variation of a section or part of a section of any Act hereby repealed shall receive the same construction as was put on such repealed section or part of a section. And every section or part of a section which is a re-enactment with variation of any section or part of a section of any Act hereby repealed shall receive the same construction as was put on such repealed section except so far as such variation indicates a contrary intention.

Definition of terms.

4. In the construction of this Act unless the subject or context requires a different construction—

“Governor” means the Governor with the advice of the Executive Council.

“Supreme Court” means the Supreme Court of New South Wales.

“Court” means the Judge assigned to the jurisdiction in Bankruptcy styled Judge in Bankruptcy as hereinafter provided.

“Registrar” or “Accountant” means the Registrar in Bankruptcy or the Accountant in Bankruptcy hereinafter provided.

“Gazette” means the *Government Gazette* of New South Wales.

“Rules” means the general Rules to be made under this Act and includes Forms and “prescribed” means prescribed by the Rules.

“Goods” includes all chattels.

“Ordinary Resolution” means a resolution passed by a majority in value of creditors present personally or by proxy at a meeting of creditors and voting on the resolution.

“Special Resolution” means a resolution decided by a majority in number and three-fourths in value of creditors so present and voting.

“Person” includes a body of persons corporate or unincorporate.

“Property” includes money goods things in action land and every description of property whether real or personal or movable and also obligations easements and every description of Estate interest and profit present or future vested or contingent arising out of or incident to property as above defined.

“Bankrupt Estate” means the property vested in an Official Receiver or Trustee under this Act.



PART I.

*Jurisdiction.*

5. The Court having jurisdiction in Bankruptcy under the Act shall be and continue to be the Court of Bankruptcy under this Act as an integral part of the Supreme Court and as a Superior Court of Record both of Law and Equity And the Judge in Bankruptcy under the said Act shall continue to be the Judge of the said Court under this Act and shall have all the powers jurisdiction and privileges of any other Judge of the Supreme Court and the Orders of such Judge shall be of the same force as if they were judgments at law or decrees in equity of the Supreme Court and the Judge in Bankruptcy may sit in Chambers and when in Chambers shall have the same jurisdiction and exercise the same powers as if sitting in open Court.
6. The Court in Bankruptcy shall for the purposes of such jurisdiction in bankruptcy have full powers to decide all questions of priorities and all other questions whatsoever whether at law or in equity or of fact in any case of insolvency or bankruptcy coming within the cognizance of such Court or which the Court may deem expedient or necessary to decide for the purpose of doing complete justice or making complete distribution of property in any such case subject to appeal in the manner now or hereafter provided for as to appeals in insolvency or bankruptcy and if in any proceeding in insolvency or bankruptcy there arises any question of fact which the parties desire to be tried by a jury or which the Court thinks ought to be tried by a jury then a trial may be directed to be had accordingly before the said Court in the same manner as if it were the trial of an issue at Common Law or in the Supreme Court or Circuit Court or in any District Court and at such time and place as the Order directing the same may provide.
7. No proceedings shall be instituted in the Common Law or Equitable Jurisdiction of the Supreme Court or in any District Court in respect to matters cognizable before the Court of Bankruptcy under the last preceding section or which may be void or voidable under the provisions of this Act and the bankruptcy jurisdiction so comprehending such full powers shall be exercised on a summary application to the Court (unless a petition be directed) by any person interested against any other person sought to be affected by such application and it shall be lawful for the Court by special order to enlarge or abridge the period of time specified in this Act or prescribed by the general rules of Court within which any act or thing is to be done or step taken (except the time after an act of insolvency within which a petition for compulsory sequestration can be entertained or the time limited for any action) as may be just under the circumstances of each case.
8. All Commissioners in Bankruptcy resident in country districts of the Colony shall continue to be the Commissioners in Bankruptcy for districts to which they have been appointed The Governor may remove such Commissioners and may appoint others in their stead or for other districts as occasion may require The District Commissioners shall in their respective districts aid and assist in carrying the provisions of the Act into effect and for that purpose shall do and execute all such matters and things as they may be required to do and execute by any general rules or by order of the Court under this Act Whenever it shall be made to appear to the Court that any District Commissioner may be prevented by illness or any reasonable cause from holding any meeting required to be holden before such Commissioner it shall be lawful for the Court to appoint a District Commissioner

Jurisdiction of Bankruptcy Court.

From sec. 65 of Bankruptcy Act 1869.

General powers of Bankruptcy Court. From sec. 72 of Bankruptcy Act 1869 and from sec. 102 of Chamberlain's Act.

General powers to be exercised in a summary way.

From Equity Rules.

District Commissioner.

From sec. 23 of 5 Vic. No. 17.

Substitute Commissioner.



Commissioner for the special purpose of holding such meeting who shall have for the purposes of such meeting the same powers and authorities as are by this Act given to any such Commissioner in the like case.

Sheriff and his  
Deputies.  
From sec. 24 of 5  
Vic. No. 17.

9. The Sheriff of the Colony either by himself or by his deputies being thereunto required by any general rule or by order of the Court under the Act shall within the districts to which they have respectively been or shall be appointed to act do and execute the duties required by this Act to be done and executed by a messenger and shall receive to their own use for service performed out of the assets of any insolvent estate as to which they may be so employed such reasonable fees as are or shall be allowed by the Supreme Court for such service in an action at law.

Appointment of  
Registrar and clerks

From sec. 8 of 25  
Vic. No. 8.

10. It shall be lawful for the Governor to continue and hereafter from time to time to appoint a Registrar in Bankruptcy and also an Accountant of the Bankruptcy Jurisdiction and also chief and other clerks and ministerial officers and such Registrar and Accountant shall be under the control and direction of the Court and as prescribed by the General Rules of Court And it shall be the duty of such Registrar to preserve the records and keep the books and accounts of the insolvency jurisdiction to tax all costs incurred in bankruptcy proceedings and for the Accountant to audit and report to the Court upon the accounts and plans of distribution of the official receiver or trustee as the case may be and to attend to such other matters relating to bankruptcy as may be required of them by the Court respectively subject in all cases of taxation audit or otherwise to review by the Court upon application for that purpose and the Court may order any meetings of creditors for proof of debts and for election of trustees or committee of inspection and for giving directions or passing resolutions may be held before the Registrar or Accountant subject to review by the Court as aforesaid.

As to records of  
proceedings.

11. The Registrar shall enter of record all proceedings relating to any sequestration or matter in bankruptcy under and by virtue of this Act and the bankrupt or any creditor who has proved or any person claiming to be a creditor shall at all reasonable times have inspection of the same and be permitted to take extracts or copies therefrom at his own expense and extracts of such proceedings certified by the said Registrar in Bankruptcy shall be received as evidence in all Courts of Justice within the Colony and a certificate by the Registrar of the persons who may be the official receiver or the trustee of any estate under sequestration shall be conclusive evidence of their or his being such receiver or trustee at the date of such certificate.

Appeal.

12. Any person aggrieved by any decision of a District Commissioner in Bankruptcy may appeal therefrom to the Court and it shall be lawful for such Court to alter reverse or confirm such decision as if originally heard before it Any order or decision made by the Court whether in respect of a matter brought before it on appeal or not shall be subject to an appeal to the Supreme Court on such terms and within such times as may be from time to time prescribed by General Rules of Court And the said Supreme Court shall thereupon exercise the powers vested in it as originally exercisable by law as well as on appeal and shall have all authorities of the Supreme Court relative to the trial of questions of fact issue or otherwise.

Rules of Court.

13. The General Rules of Court as to appeals in bankruptcy to the Supreme Court shall be and are hereby required to be made by the Judges of the Supreme Court or any three of them not being the Judge in Bankruptcy and the other General Rules of Court in Bankruptcy shall be made by any three Judges of the Supreme Court whereof the Judge in Bankruptcy shall be one and all such general rules whether as to appeals or otherwise shall be laid before both Houses



Houses of Parliament within fourteen days if Parliament be then sitting and if not then within fourteen days after the next meeting thereof and if either of the said Houses shall by resolution passed within twenty-eight days after such rules have been laid before the  
5 said Houses respectively resolve that the whole or any part of such rules ought not to continue in force in such case the whole or such part thereof as shall be included in such resolution shall from and after such resolution cease to be binding.

14. The Court may direct the prosecution of any bankrupt or  
10 other person whom it may believe to have committed wilful and corrupt perjury or any of the offences specified in Part IX of this Act and may commit such bankrupt or other person to take his trial for any such offence and may grant or refuse bail to such bankrupt or other person and may require any person to enter into recognizance conditioned to  
15 prosecute or give evidence at such trial Provided always that no such direction shall be given in evidence upon such trial.

Power to commit for trial.  
From sec. 19 of 16 Vic. No. 18.

15. In any bankruptcy or any other proceeding within the jurisdiction of the Court the parties concerned or submitting to such jurisdiction may at any stage of the proceedings by consent state any  
20 question or questions in a Special case for the opinion of the Court and the judgment of the Court thereupon shall be final unless it be agreed and stated in such special case that either party shall be at liberty to appeal from such judgment and the parties may if they think fit agree that upon the decision of such question or questions by the Court a  
25 sum of money fixed by the parties or to be ascertained by the Court or in such manner as the said 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.

Questions raised by consent.

Payment of money or delivery of property by party on judgment being given.

30 16. The Court may at any time subsequent to the granting a debtor's summons as hereinafter provided against any debtor restrain further proceedings in any action suit execution or other legal process against the debtor in respect of any debt provable in bankruptcy or it may allow such proceedings whether in progress at the time of granting  
35 such debtor summons or commenced subsequently to proceed upon such terms as the Court may think just The Court may also at any time after the granting of such debtor's summons appoint a receiver or manager of the property or business of the debtor against whom the debtor's summons is granted or any part thereof and may direct  
40 immediate possession to be taken of such property or business or any part thereof.

Injunction may be granted and receiver appointed—his powers.

From secs. 13 and 20 of Bankruptcy Act 1869 and from secs. 16 and 144 of Scotch Bankruptcy Act 1856.

17. The official receiver or trustee and also the receiver or manager appointed as already provided under the last preceding section shall in relation to and for the purposes of the acquisition or retaining  
45 possession of the property or business of the bankrupt or of the debtor be in the same position in all respects as if he were a receiver and manager of such property or business appointed by the Supreme Court in its Equitable Jurisdiction and the Court may on his application or that of any person interested enforce such acquisition or the retention  
50 of property accordingly The bankrupt or any creditor debtor or other person aggrieved by any act of the official or other receiver or manager or of the trustee or committee of inspection or any member thereof may apply to the Court and the Court may confirm reverse or modify the act complained of and make such order in the premises as it thinks  
55 fit The Court may from time to time during the continuance of a sequestration summon general meetings of creditors for the purpose of ascertaining their wishes.

Conduct of trustee Assignee.  
Appeal to Court.  
From sec. 20 Bankruptcy Act 1869.

18. No directions or resolutions of creditors as to the management and collection of any part of the insolvent estate or the allowance  
of

Ratification of certain directions requisite.  
From 20 Vic. No. 24.



Appeal as to others.  
From sec. 169 of  
Scotch Bankruptcy  
Act 1856.

of any means to the insolvent or as to allowing him to retain for his own use the wearing apparel bedding tools of trade and household furniture of himself and family shall be binding or take effect unless and until the same shall be ratified by the Court after hearing the official or elected assignee or trustee and all parties interested who may desire to be heard and if the Court be of opinion that it is desirable for the general interests of the estate in which such directions are given or fair reasonable and proper that the same should be pursued then and not otherwise the Court shall ratify the same As to all other directions or resolutions of creditors authorized by this Act to be given or passed at any meeting of creditors no ratification shall be required but it shall be competent for the bankrupt or any creditor debtor or person interested to appeal to the Court against such directions or resolutions within fourteen days after the date of the meeting at which the directions or resolutions objected to had been given or passed and thereupon after hearing all persons interested who may desire to be heard the Court may dispose of the matter in a summary way and may confirm reverse or modify such directions or resolutions or may order a new meeting to be held in order to reconsider the directions or resolutions objected to and to give or pass others in lieu thereof and the Court may make such orders in the premises as it thinks just.

Evidence how to be  
taken and witnesses  
summoned.

19. The Court may in all matters within its jurisdiction take the whole or any part of the evidence either *vivâ voce* on oath or by interrogatories in writing or upon affidavits or by commission And the evidence of persons examined before the Court or a District or other Commissioner shall be reduced to writing and signed by such persons except when taken by a shorthand-writer after been duly sworn in the prescribed manner as the Court may direct The Court may order the insolvent and also other persons required as witnesses from time to time to be summoned and examined before the Court or person named in the order and may issue summonses for that purpose on the application of the official receiver or trustee or of any creditor of the bankrupt or without such application and obedience to such summons may be enforced as for contempt of Court Provided that the bankrupt and every other person so summoned shall be entitled to the same conduct money and expenses as a witness in any civil suit.

## PART II.

### *Voluntary Sequestrations.*

Surrender of by person by petition declaring himself insolvent.  
5 Vic. No. 17 s. 3.  
25 Vic. No. 8 s. 4.

20. The Court upon petition in writing of any person setting forth that he is unable to pay his debts and desirous of surrendering his estate in bankruptcy for the benefit of his creditors may upon proof thereof to its satisfaction accept the surrender of such estate and by order place the same under sequestration in the hands of one of the official receivers.

Surrender by persons vested with the administration of the estate of others.  
5 Vic. No. 17 s. 4.  
25 Vic. No. 8 s. 4.

21. The Court may upon the like petition of any person legally vested with the administration of the estate of any person deceased or with the estate of any other person situate in New South Wales in trust for the creditors stating the insolvency of such estate or upon the like petition stating the insolvency of the estate of any firm trading or having any estate or effects within New South Wales made by the greater number of the partners of such firm who at the time of presenting the petition are within New South Wales upon proof thereof to its satisfaction accept the surrender of any such estate and place the same under



under sequestration in bankruptcy in manner aforesaid and after the order for any such sequestration the like proceedings shall and may be had and take place concerning such estates and the persons in whom the administration thereof is legally vested and the partner or partners of such firms as are herein provided concerning other estates and other bankrupts.

### PART III.

#### Compulsory Sequestrations.

22. A single creditor or two or more creditors if the debt due to such single creditor or the aggregate amount of debts due to such several creditors from any debtor amount to a sum not less than *fifty* pounds may present a petition to the Court praying that the estate of the debtor may be sequestrated in bankruptcy for the benefit of his creditors and alleging as the ground for such petition any one or more of the following acts or defaults hereinafter deemed to be and included under the expression "acts of Bankruptcy" :—
- (I.) That the debtor has in New South Wales or elsewhere and subsequently to the commencement of this Act made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally.
- (II.) That the debtor has in New South Wales or elsewhere made a conveyance gift delivery or transfer of his property or of any part thereof with intent to defeat or delay his creditors.
- (III.) That the debtor has with intent to defeat or delay his creditors done any of the following things namely—Departed from his dwelling-house or otherwise absented himself or departed out of New South Wales or being out of New South Wales has continued to absent himself therefrom.
- (IV.) That the debtor has filed in the prescribed manner in the Court a declaration admitting his inability to pay his debts.
- (V.) That execution issued against the debtor on any legal process for the purpose of obtaining payment of not less than fifty pounds has been levied by seizure unless such process be *bonâ fide* satisfied by payment or otherwise within *five* days from the seizure Provided a petition for sequestration be presented within twelve days from the seizure.
- (VI.) That the creditor presenting the petition has served in the prescribed manner on the debtor a debtor's summons requiring the debtor to pay a sum due of an amount of not less than fifty pounds and the debtor has for the space of eight days succeeding the service of such summons neglected to pay such sum or to secure or compound for the same.
- (VII.) That the debtor has been adjudged or declared bankrupt or insolvent by any British Court out of New South Wales having jurisdiction in bankruptcy or insolvency and it shall not be necessary to produce any other evidence of such Act of insolvency than a duly certified copy under the seal of the Court of the order or adjudication by which such person was declared or adjudged bankrupt or insolvent.
- (VIII.) When execution or other process issued on a judgment decree or order obtained in any Court in favour of any creditor at law or in equity in any proceeding instituted by

Acts of insolvency  
and what creditors  
may petition.  
5 Vic. No. 17 s. 5.

From Victorian Act.



by such creditor is returned unsatisfied in whole or in part  
 Provided that the debtor has been called upon to satisfy  
 such judgment decree or order by the officer or other person  
 charged with the execution thereof and has failed to do so.

- (ix.) If at any meeting of creditors a debtor shall consent to 5  
 present a petition under Part II of this Act for the seques-  
 tration of his estate and such debtor shall not within *forty-*  
*eight hours* from the date of his consenting as aforesaid  
 present such petition he shall be deemed to have committed  
 an act of bankruptcy on the expiration of such time and if 10  
 at any meeting of creditors a debtor shall admit that he is in  
 insolvent circumstances and unable to pay his debts and he  
 shall be then requested by a resolution of the majority of the  
 creditors present at such meeting to surrender his estate  
 under Part II of this Act and such debtor shall refuse he 15  
 shall thereby be deemed to have committed an act of bank-  
 ruptcy.
- (x.) That the debtor has given or made any preference to or in  
 favour of any creditor which would if the estate of such  
 debtor were sequestrated under this Act be a fraudulent pre- 20  
 ference of such creditor—

But no person shall be adjudged a bankrupt on any of the above  
 grounds unless the act of bankruptcy charged has occurred within six  
 months before the presentation of the petition for sequestration or unless 25  
 the debt of the petitioning creditor is a liquidated sum due at law or  
 in equity and is not a secured debt Provided however that if the  
 petitioner state in his petition that he will be ready to give up such  
 security for the benefit of the creditors after sequestration or if such  
 petitioner states in his petition that he is willing to give an estimate  
 of the value of his security he may in such last-mentioned case be 30  
 admitted as a petitioning creditor to the extent of the balance of the  
 debt due to him after deducting the value so estimated but he shall on  
 an application by the trustee within the prescribed time after give up  
 his security to such trustee as aforesaid upon payment of such estimated  
 value Provided also that any person who has given credit to another 35  
 upon valuable consideration for any sum payable at a certain time  
 which time shall not have arrived when the act of bankruptcy was  
 committed may petition or join in petitioning under this section.

Proceedings in rela-  
 tion to a debtor's  
 summons.

23. A debtor's summons may be granted by the Court on a  
 creditor proving to its satisfaction that a debt sufficient to support a 40  
 petition for sequestration is due to him from the person against whom  
 the summons is sought and that the creditor has failed to obtain  
 payment of his debt after using reasonable efforts to do so The  
 summons shall be in substance and to the effect of the form set out  
 in the Second Schedule It shall state that in the event of the debtor 45  
 failing to pay the sum specified in the summons or to compound  
 for the same to the satisfaction of the creditor a petition may be  
 presented against him praying that his estate may be sequestrated  
 The summons shall have an indorsement thereon to the like effect or  
 such other prescribed indorsement as may be best calculated to 50  
 indicate to the debtor the nature of the document served upon him  
 and the consequences of inattention to the requisitions therein made  
 Any debtor served with a debtor's summons may apply to the Court  
 in the prescribed manner and within the prescribed time to dismiss  
 such summons on the ground that he is not indebted to the creditor 55  
 serving such summons or that he is not indebted to such amount as  
 will justify such creditor in presenting petition for sequestration  
 against him and the Court may dismiss the summons with or without  
 costs if satisfied with the allegations made by the debtor or it may  
 upon



upon such security (if any) being given as the Court may require for payment to the creditor of the debt alleged by him to be due and the cost of establishing such debt stay all proceedings on the summons for such time as will be required for the trial of the question relating to such debt.

24. The Court may upon petition against any person having committed any act of bankruptcy under this Act by any creditor or creditors whose debt or debts amount to the value of fifty pounds and setting forth the amount of the debt or debts of such creditor or creditors and the cause thereof and the alleged act of bankruptcy and praying that the estate of such person may be sequestered for the benefit of his creditors upon proof thereof to its satisfaction in bankruptcy by order *nisi* place the estate of such person under sequestration in the hands of one of the Official Receivers until the said order *nisi* shall be made absolute or be discharged in manner hereinafter mentioned and every such order *nisi* shall name a time when cause may be shown before the Court against the same being made absolute and the Court may enlarge such order *nisi* from time to time as it may deem necessary.

Sequestration upon petition of creditor against an insolvent person.

25. The creditor on whose petition any order *nisi* for sequestration shall be made shall at his own cost prosecute all the proceedings in the sequestration until after the close of the single or second meeting and (the same having been first taxed) the Official Receiver or trustee shall after deducting the costs of Court and his own costs charges and expenses reimburse the said creditors out of the first money which shall be received and the costs incurred under any sequestration shall be paid out of the bankrupt estate.

Costs of sequestration.

Sec. 16 of Insolvent Act 5 Vic. No. 17.

26. Any creditor of a firm may in like manner as aforesaid petition against all or any one or more of the partners of such firm to have the estate of such firm placed under sequestration provided any such partner has committed an act of bankruptcy whereby the creditors of such firm may be defeated or delayed in obtaining payment of the debts due by such firm and every order for sequestration issued upon such petition shall be valid although it do not include all the partners of the firm and after the order for sequestration of any such estate is made the like proceedings shall and may be had and take place concerning such estate and such partner or partners as are herein provided to be had and take place concerning other estates and other bankrupts Provided always that nothing herein contained shall extend or be construed to prevent the creditor of any firm from proceeding against any partner or the separate estate of any partner thereof in respect of debts due by such firm in the same way in which it is herein provided that the creditor of any person may proceed against him and his estate in respect of debts due by such person in his individual capacity.

Sequestration of the estate of a firm.

Sec. 17 of Insolvent Act 5 Vic. No. 17.

27. Any creditor of the estate of any person deceased may in like manner as aforesaid petition to have such estate placed under sequestration in bankruptcy provided the person in whom the administration of such estate is legally vested has committed an act of bankruptcy whereby the creditors of such estate may be defeated or delayed in obtaining payment of the debts due by such estate and after the order for any such sequestration is made the like proceedings shall and may be had and take place concerning such estates and the person in whom the administration thereof is legally vested as are herein provided to be had and take place containing other estates in bankruptcy and other bankrupts.

Proceedings against the separate estate of partners.

Sequestration of estates of deceased persons in certain cases.

Sec. 18 of Insolvent Act 5 Vic. No. 17.

28. Every order *nisi* under this Part of this Act and any order enlarging the same shall be served personally on the respondent by delivering to him an office copy thereof unless it be proved to the satisfaction of the Court that the respondent is keeping out of the way

Service of order *nisi*. Victorian Act.



to avoid service or has left New South Wales in which case the Court may order that service of an office copy or the order *nisi* or any order enlarging the same at the usual or last known place of abode or business of the respondent by delivering the same to some adult person resident thereat or if such person will not receive the same or if there be no such person by affixing such copy upon some conspicuous place upon the premises shall be deemed good service upon the respondent and the Court may by such or any other order fix a time within which the respondent may file or post a notice of objections.

Notice of intention  
to oppose petition.  
Victorian Act.

29. Every respondent shall if he intends to oppose the order *nisi* being made absolute within four days after service of the order *nisi* or such further time as the Court may appoint file in the office of the Registrar when the residence of such respondent is within twenty miles of Sydney or when it is at a greater distance shall within the said time put into the nearest post-office addressed to the Registrar a notice in writing signed by him of such his intention and such notice shall state whether he disputes the act of insolvency or the petitioning creditor's debt or both and if he intends to rely on any special defence such notice shall contain the particulars of any such defence and such notice shall be a waiver of all technical objections to the proceedings.

If order not duly  
served.  
Victorian Act.

30. Upon the hearing of any such petition if the respondent appear merely for the purpose of objecting that the order *nisi* has not been duly served and it shall appear to the Court that such order *nisi* has not been duly served the order *nisi* shall not be discharged but the said Court may adjourn the hearing thereof subject to such directions and upon such terms as to costs or otherwise as to the said Court may seem just.

The Court to make  
order absolute or dis-  
charge the same and  
effect thereof.  
Victorian Act sec. 26  
of Insolvent Act  
5 Vic. No. 17.

31. Upon the day named in the order *nisi* or on the day to which such order shall have been finally enlarged the Court may adjudge and finally determine thereon or postpone the adjudication and determination for such time as it may think fit and upon the hearing of an order *nisi* if the respondent do not appear or if the respondent appear and no notice of opposition has been given the said order *nisi* may be made absolute and the estate be adjudged to be sequestrated in bankruptcy upon an affidavit of service of the order *nisi* but if the respondent appear and notice of opposition has been given the proceedings upon the hearing shall be conducted in the same manner as nearly as may be as upon a trial at law and the order *nisi* may be made absolute or discharged with or without costs as may be just and whenever any such order *nisi* shall be discharged by the said Court all questions affecting the property of the respondent or the validity of any transaction deed act matter or thing relating thereto shall be determined as if such order *nisi* had never been made.

If petition unfounded  
or malicious.  
Ib. sec. 27.

32. If it shall appear to the Court upon the hearing of the order *nisi* that the petition for sequestration was unfounded and vexatious or malicious the said Court may allow the respondent on his application for the same then or at some other time to be named by the said Court to prove any damage alleged to have been by him sustained thereby and may award to the respondent such damage not exceeding two hundred pounds as the said Court shall deem fit and compel payment thereof by summary process or leave the said party to his action for the said injury.

Sequestration revived  
by other creditor and  
effect of though  
superseded as to  
original petitioning  
creditor.  
Ib. sec. 28.

33. If after any order *nisi* has been made for the sequestration of an estate the debt of the petitioning creditor be found insufficient to entitle such creditor to apply for and obtain such order *nisi* or if such order *nisi* shall be discharged or allowed to lapse in consequence of the consent or default of the petitioning creditor or his collusion with the bankrupt



bankrupt the Court may within six months after such order *nisi* was discharged or allowed to lapse upon the application of any other creditor whose debt amounts to the value hereinbefore provided and has been incurred prior to the said order *nisi* and upon proof thereof to the satisfaction of the said Court order that the said sequestration shall be revived and be proceeded in as if it had been originally obtained on the petition of the last-mentioned creditor and thereafter the said sequestration shall be revived with all the consequences and effects thereof as if the order *nisi* had not been discharged or allowed to lapse.

34. If a person against whom an order *nisi* for sequestration has been made shall pay any money to the person who obtained the same or any one on his behalf or give or deliver to any such person any satisfaction or security for his debt or any part thereof such payment gift delivery satisfaction or security shall be a new act of insolvency upon which a petition for sequestration may be presented and every person so receiving such money gift delivery satisfaction or security shall deliver up such security and shall repay or deliver the said money or gift or the full value thereof to the receiver or trustee of the bankrupt estate for the benefit of the creditors of such bankrupt and shall pay all the costs which shall be incurred by any other creditor in obtaining the revival of the sequestration.

As to payments &c. or security to petitioning creditor after order for sequestration. *Ib.* sec. 29.

#### PART IV.

##### Procedure.

35. Every party obtaining an order of sequestration in bankruptcy whether on voluntary petition or not shall forthwith produce the same to the Sheriff of the Colony at his office in Sydney and the Sheriff shall register the said order and note thereon the day and hour of its production. In like manner every party obtaining a debtor's summons to be granted against any debtor shall forthwith produce such debtor's summons to the Sheriff as aforesaid who shall register the same as any order of sequestration and shall respectively note thereon the day and hour of the production thereof.

Registration of sequestration.

36. The sequestration of any bankrupt estate shall commence and take effect on the day of the date of the order of sequestration made on any voluntary petition for sequestration and of the order *nisi* on a compulsory sequestration if afterwards made absolute. Provided that in the latter case if the act of bankruptcy be the neglect to comply with the requirements of a debtor's summons granted as aforesaid then the sequestration shall be deemed to commence and take effect on the date of the debtor's summons being granted and filed on record.

Commencement of sequestration.

From 42 s. of Scotch Bankruptcy Act 1856.

37. Further execution of any judgment or process against the person or property of a bankrupt shall after an order of sequestration of such estate has been made and registered in the Sheriff's Office be stayed and the person having right to such judgment may prove his debt against the bankrupt estate and where any property has been seized or attached by legal process and has not been sold such property shall be placed under sequestration in the same manner as any other part of the insolvent estate.

Effect of the order of sequestration upon judgments.

Sec. 30 of 5 Vic. No. 17.

38. No action or suit shall be brought against a bankrupt for a debt provable in bankruptcy and all proceedings in any action or suit then pending shall upon an order of sequestration being made be stayed and

Effect of sequestration upon actions or suits against insolvent.

and From 31 s. of 5 Vic. No. 17.



and the plaintiff in such action or suit may prove his debt together with the taxed costs of it then incurred against the bankrupt estate and all actions pending against any bankrupt for damages alleged to have been sustained from any injury or wrong or breach of any contract committed by him (such damages being uncertain) or for recovery of any claim unliquidated as to its amount and all proceedings therein shall upon any order being made for the sequestration of his estate be stayed and the plaintiff in such action after summoning the Official receiver or trustee to take up and defend the said action may proceed to obtain the judgment of the Court thereon and the said judgment when recovered together with the taxed costs of suit shall be a debt provable against the said estate.

Effect of order of sequestration on insolvent in custody under legal process.  
From s. 32 of 5 Vic. No. 17.

39. A bankrupt who shall be in custody of the Sheriff or of any gaoler or officer either under *mesne* process or in execution on any judgment decree or order for any debt or demand provable in bankruptcy shall be entitled to apply for an order of the Court and be discharged out of custody in respect thereof or on such conditions as the Court shall think fit to impose under the Act thirty-seven Victoria number eleven.

Effect of the order of sequestration upon action commenced by insolvent.  
From s. 33 of 5 Vic. No. 17.

40. All actions or suits commenced by a bankrupt before sequestrating for any debt or demand and all proceedings therein shall upon the order of sequestration being made be stayed until the Official Receiver or trustee shall make election to prosecute or discontinue the same and he shall make such election within six weeks after notice shall be served upon him by any defendant in any such action or otherwise shall be deemed to have abandoned the same. Provided however that a bankrupt may continue in his own name and for his own benefit any action commenced by him before sequestration for any personal injury or wrong done to himself or to any of his family.

Actions by or against trustees.  
Sec. 56 of 5 Vic. No. 17.

41. The Official Receiver or the trustee may upon entering on therecord a suggestion of the sequestration take up and continue in his own name the process in any suit or action to which the bankrupt may be a party or discontinue the same as he or they shall see fit and also on entering a like suggestion defend any suit or action pending against the bankrupt relating to or affecting the insolvent estate. Whenever any Official Receiver or trustee shall resign be removed or die or a new receiver or trustee shall be appointed or elected and confirmed no suit or action relative to the bankrupt estate shall be thereby abated but the Court in which any such suit or action is depending or any Judge thereof may upon the suggestion of such resignation death or removal and that a new receiver or trustee has been appointed or elected and confirmed allow the name of the new receiver or trustee to be substituted in the place of the former and the said suit or action shall proceed as if such new receiver or trustee had originally commenced or defended the same. The Official Receiver or trustee may take advice on any legal question affecting the Bankrupt estate or the administration thereof and may employ an attorney or solicitor to commence conduct or defend actions and suits or any other proceedings for or against the bankrupt estate and may charge against such estate all fees allowed upon taxation by the proper officer.

Court to appoint first and second meeting and single meeting if assets below £100 for distribution.  
From sec. 34 of 5 Vic. No. 17.

42. The Court shall cause notice of every sequestration in Bankruptcy whether voluntary or compulsory to be published in the *Gazette* and direct a copy of the order of sequestration to be sent to the Registrar-General of the Colony who shall forthwith register the same. By such notice or by another in a subsequent *Gazette* the Court shall appoint two public meetings of the creditors of such estate at such times and places as it shall deem most convenient for all the parties concerned the first for receiving proof of debts against the said estate and the second



second for the same purpose and for the bankrupt to attend and account by public examination for his bankruptcy and for deciding the matters hereinafter provided by section sixty-one in respect to bankrupt estates wherein the property exceeds three hundred pounds  
5 and such publication of the times and places shall be deemed notice thereof to all persons and the times and places so fixed for the holding of any of the meetings aforesaid may on cause shown to the Court by any party dissatisfied with the appointment so made be altered of which alteration notice shall be forthwith given in the  
10 *Gazette* Provided always that if it shall appear to the Court before causing notice to be given as aforesaid that the goods and effects of the insolvent available for the payment of his debts are not above the value of three hundred pounds the notice shall specify the same in the said advertisement and shall therein also state that unless it shall be shown  
15 at the first or single meeting appointed as aforesaid that the goods and effects of the insolvent exceed the value of three hundred pounds the Court or Commissioner at such first or single meeting will summarily proceed to rank the debts which shall be proved at such meeting according to their respective preferences and to direct the proceeds of the bankrupt  
20 estate to be forthwith distributed accordingly by the official receiver and in such case the said bankrupt shall at such first or single meeting attend before the creditors to account by public examination for his bankruptcy and shall being thereunto required do and perform thereat all such other matters and things as are hereinafter required to be done or performed  
25 by him at any meeting of the creditors under the provision of this Act and if at the said first meeting it shall still appear to the Court or to the Commissioner that the available assets of the said estate do not exceed the amount of three hundred pounds it shall and may be lawful for the said Court or Commissioner to rank the creditors who  
30 shall prove their debts at such meeting according to the legal order of their preference and for the creditors to direct the said Official Receiver forthwith to collect administer and distribute the same accordingly and further at the said first or single meeting the Court or Commissioner shall execute all the powers and authority which may be  
35 executed by it or him at any meeting of creditors under the provisions of this Act and shall also do and perform thereat all matters and things required to be done for the final settlement of the said estate and the majority of the creditors present at the said meeting shall then determine what part of the wearing apparel bedding household furniture  
40 and tools of trade of the insolvent shall be excepted from the sale of his movable property and shall be allowed to him and shall also give to the said Official Receiver such directions as to the management of the said estate as to them shall seem fit And no other meeting shall thereafter be holden unless upon cause shown the Court shall  
45 think fit to order or sanction the same but thereupon and at least within *three* months after sequestration the Official Receiver shall frame an exact account of the estate and plan of distribution for audit by the Accountant and when the same has been approved or varied by the Court the assets of the estate shall forthwith be distributed accordingly.  
50 43. In all cases where the first or single meeting or the first or second meeting of creditors for the proof of debts or for the election of a trustee shall be appointed to be holden in Sydney the same shall take place before the Court and if in any part of the colony other than Sydney then before the Commissioner of such district and the said  
55 Commissioners shall respectively take the votes of the creditors and declare the party or parties elected assignee or trustee of the said estate and in all cases where such meeting shall be holden before any District Commissioner he shall forthwith certify to the Court the proceedings thereat.

The holdings of first and second meetings.



Proof of debts at  
meetings.

44. Every creditor shall prove his debt against the bankrupt estate by affidavit or otherwise to the satisfaction of the Court or of the Commissioner or trustee and the same shall be admitted or rejected as not proved subject to appeal as already provided. In all questions under this Act every person to whom the bankrupt was at the time of the sequestration under legal liability to pay money at a certain future time shall be accounted a creditor *de presenti* and entitled to prove his debt for the amount of money specified in the obligation but subject to a rebate of ten per centum per annum in respect of such creditor voting or on receiving any dividend until the time when such debt would have been payable according to the terms on which it was contracted. The Court may subsequent to sequestration allow any action suit or other legal process which has been stayed by its order after the granting of a debtor summons or by the order of sequestration itself being made as already provided to be continued upon due notice to the Official Receiver or trustee as the case may be to appear and defend it as advised and to be prosecuted to final judgment on such terms as to the Court may seem just and the person obtaining such final judgment may prove as a creditor and be ranked for the amount of such judgment. The Court may also allow after such notice to the Official Receiver or trustee as aforesaid any person claiming to be a creditor for a debt not otherwise provable in bankruptcy to commence and prosecute though subsequent to sequestration any proceedings by action suit or other legal process against the bankrupt on such terms as to the Court may seem just and such person obtaining final judgment may prove as a creditor and be ranked for the amount of such judgment.

Attendance at  
meetings by insol-  
vent or legal  
administrator.  
From sec. 65 of 5  
Vic. No. 17.

45. At the second meeting where more than a first or single meeting is required at any adjournment thereof the bankrupt or the legal administrator of any bankrupt estate shall attend before the Court or Commissioner for public examination and to account for his or the bankruptcy and he shall being thereunto required by the Court or Commissioner or by Official Receiver or trustee or by the creditors lodge and verify or amend if already lodged a true schedule or inventory of the whole of such estate and effects real and personal wheresoever the same may be situated and of all estates and effects in expectancy or contingency or to which the insolvent may have any eventual right and all debts due to any by him to the best of his knowledge and belief and he shall produce and deliver if not already delivered all books of accounts papers writings documents bills and vouchers relating to the said estate which are in his custody or power and the said bankrupt or administrator shall upon being thereunto required surrender the said books papers writings documents bills and vouchers to the Official Receiver or to the trustee when confirmed.

Wearing apparel and  
furniture.  
Sec. 80 of 5 Vic.  
No. 17.

46. It shall and may be lawful for the Official Receiver or trustee with the consent of the greater part in number and value of the creditors who shall have proved their debts present at any meeting whereof and of the purpose of which twenty-eight days notice shall have been given in the *Gazette* to permit the said insolvent to retain for his own use the whole or such part of his wearing apparel bedding household furniture and tools of trade excepted from the sale of his personal property as the said creditors shall agree to allow to the said insolvent.

Third meeting.  
Sec. 77 of 5 Vic.  
No. 17.

47. As soon as the second meeting is terminated the Court shall forthwith appoint the third meeting of the creditors of the insolvent to be holden before the Court or any District Commissioner at such time not less than twenty-eight days or more than fifty-six days thereafter and at such place as he shall deem most expedient for all



all parties concerned for the purpose of receiving proof of debts and for receiving the report of the Official Receiver or trustee as to the condition of the bankrupt estate and for giving directions as to the management thereof and the Court shall cause notice to be given of the time and place at which and of the purposes for which such meeting is to be held in the *Gazette* and such daily newspapers as may be directed.

48. The duly authorized agent of any creditor whether a corporation or not shall have authority to do all acts matters and things authorised or required to be done by any creditor under or by virtue of this Act as fully and effectually as such creditor could or might do But where any creditor or person who by this Act is entitled to petition for the sequestration of the estate of any person who may have committed or shall hereafter commit an act of bankruptcy shall be absent from the Colony the agent or attorney of such creditor or person who shall be authorised to receive and recover the debts property or effects of such absent creditor or person in this Colony may sign and present the petition and make the affidavit of the truth of the debt and the cause thereof required by the said Acts in lieu of such creditor or person Provided always that the person whose estate is sought to be sequestrated shall have the same rights and remedies against any such agent attorney or person as he has under or by virtue of this Act against the creditor or person in whose name or on whose behalf such proceeding shall be taken and every such agent attorney or person shall be liable for the like costs damages and expenses as his principal would have been if acting personally in the matter and all notices summonses orders and other documents for the service of which upon the creditor provision is made by this Act or any general rule or order made in pursuance thereof may be served upon such agent attorney or person and such service shall have the same force and effect in all respects with regard to such absent creditor on whose behalf such proceedings may have been taken as if the same had been duly served upon such creditor.

Agent of creditor may act for creditor.

Agent of absent creditor may petition for sequestration and make affidavit.

Sec. 3 of 31 Vic. No. 9.

49. Any petition for sequestration of the estate of any debtor to a firm signed with the name or style of such firm by any partner thereof shall be held to be duly signed for the purpose of any such petition and any acceptance of any offer of composition or security for composition or any release and any authority to vote or to do any act matter or thing under this Act shall be deemed duly signed if signed with the name or style of the firm by any partner thereof and any proof of debt may be made by one partner on behalf of the others.

Signature by firm.

50. In reckoning the votes at any meeting of creditors the partners or any firm and any persons in whom the joint administration of any estate is vested as aforesaid shall be entitled to one vote only and shall be considered as one person.

Votes of partners or administrators.

51. In all suits or actions and in all informations under this Act where it shall be necessary to allege or prove that any party became or was bankrupt or that his estate was sequestrated or adjudged to be sequestrated in bankruptcy it shall be sufficient merely to allege that such party being bankrupt within the meaning of this Act his estate was sequestrated without setting forth any order for sequestration or setting forth or proving any petition or any petitioning creditor's debt or act of bankruptcy and proof of such allegation may be made by the production of an office copy of the order of sequestration or adjudication of sequestration and (on proof of the identity of the party therein named) such proof shall be sufficient for the purposes of such allegation.

Proof of insolvency in any action or other proceeding.  
5 Vic. No. 17 sec. 107.

52. When the votes of creditors are to be counted in number no creditor whose debt is below *twenty-five* pounds sterling shall be reckoned in number but the debt due to such creditors shall be computed

What creditors entitled to vote in number and what in value.

Ib. sec. 46.



computed in value and in all cases in which any deduction is directed by this Act to be made from the amount of the debt of any creditor the vote of such creditor shall still be counted in value to the extent of the balance remaining after such deduction and such creditor shall also be reckoned in number provided such balance amounts to *twenty-five* 5 pounds and upwards.

## Affidavits.

53. Any affidavit or declaration required to be sworn or made in relation to any matter under this Act may be lawfully sworn—

(I.) In New South Wales before any Commissioner of the Supreme Court for taking Affidavits or a Commissioner in Bankruptcy. 10

(II.) In any other place under the dominion of Her Majesty before any Court Judge or person lawfully authorized to take affidavits.

(III.) In any foreign parts out of Her Majesty's dominions before a Magistrate the oath being attested by a Notary or before a 15 British Consul or Vice-consul.

(IV.) Any affidavit of any prisoner in any prison or gaol to be used in any matter under this Act may be sworn before a Commissioner of the Supreme Court for taking Affidavits or before the keeper of such prison or gaol and every such 20 keeper is hereby required and authorized to administer the oath upon any such affidavit without fee or reward—

And all Courts Judges Justices Commissioners and persons acting judicially shall take judicial notice of the seal or signature (as the case may be) of any such Court Judge Magistrate Commissioner keeper or 25 other person attached appended or subscribed to any such affidavit.

Judicial notice to be taken of signature of Judge and of the seal of the Court.

54. All Courts Judges Justices and persons acting judicially shall take judicial notice of the signature of the Judge or the Commissioner or Registrar or Accountant appointed under this Act and of the seal of the Court subscribed or attached to any judicial or official 30 proceeding or document to be made or signed under this Act.

How Commissions to be taken.

55. No Commission to take evidence shall be necessary under this Act but an order under the hand of the Judge and the seal of the Court shall be sufficient if the witness reside within the jurisdiction of the Court but if the witness reside beyond the jurisdiction a Com- 35 mission shall issue to such person as the Court may think fit.

Court may rectify and amend proceedings.

From 47 sec. of 17 Vic. No. 7 Equity Practice Act 1853.

56. In case any of the requirements herein contained or as prescribed in respect to the practice or procedure in the bankruptcy jurisdiction shall by mistake of parties fail to be followed in any sequestration matter or proceeding it shall be lawful for the Supreme 40 Court or Court if it shall think fit upon such terms or payment of such costs as such Court shall direct to make order amending and giving effect and rectifying the same as may be justified by the merits of the case And no proceeding in the bankruptcy jurisdiction shall be invalidated by any formal defect or by any irregularity unless the 45 Supreme Court or Court or Commissioner before which or whom an objection is made to such proceeding shall be of opinion that substantial injustice has been caused by such defect or irregularity and that such injustice cannot be remedied by any order of such Court or by any terms imposed by such Commissioner. 50

Formal defect not to invalidate proceedings.

From 82 sec. of Bankruptcy Act 1869.

Commitment to prison.

57. When the Court has power under this Act to sentence apprehend or commit any person to prison the commitment may be by warrant directed to such person as the Court may think fit and to such convenient prison as the Court thinks expedient and every such warrant shall be sufficient authority to such person to act as therein 55 directed and to the keeper of such prison to detain the person sentenced apprehended or committed for the period named in such warrant.



58. Any person to whom anything in action belonging to the bankrupt is assigned in pursuance of this Act may bring or defend any action or suit relating to such thing in his own name.

Power to sue.  
Sec. 111 of Bankruptcy Act 1869.

59. Where a bankrupt is a contractor in respect of any contract jointly with any other person or persons such person or persons may sue or be sued in respect of such contract without the joinder of the insolvent.

Saving as to joint contracts.  
Sec. 112 of Bankruptcy Act 1869.

## PART V.

### ADMINISTRATION OF ESTATES.

#### 10 (1.) *Official Receivers and Trustees their Appointment and Election.*

60. The present Official Receivers shall continue the first Official Receivers. Receivers under this Act and the Governor may appoint such number of fit persons to be Official Receivers as may be from time to time required And such Official Receivers shall give such security as the Governor may from time to time direct and shall be officers of the Supreme Court in its bankruptcy jurisdiction and subject to the orders of the Court and the Court may at all times at the instance of any bankrupt or creditor or of its own motion in any estate summons the Official Receiver and examine him on oath and may require him to produce all books papers deeds and documents relating to such estate in his possession and such Official Receiver shall be liable at any time to audit by the Accountant or by the Inspector of Public Accounts as may be ordered by the Court or may be directed by the Colonial Treasurer with the concurrence of the Court.

61. At the second meeting or at the first meeting if so directed by a special order under section seven abridging the period of time and sanctioning thereat proceedings in accordance with this section or any adjournment thereof in any bankrupt estate wherein the property exceeds *three hundred pounds* in value the creditors may by special resolution resolve to entertain a proposal for a composition in satisfaction of the debts to them from the bankrupt or a proposal for a scheme of arrangement of the bankrupt's affairs—

Composition or scheme of arrangement.

From sec. 18 of Chamberlain's Bankruptcy Act.

(I.) The composition or scheme shall not be binding on the creditors unless it is accepted by a special resolution passed at a subsequent meeting of the creditors and is approved by the Court.

(II.) The subsequent meeting shall be summoned by the Official Receiver by not less than seven days' notice and shall not be held until after the public examination of the bankrupt is concluded The notice shall state generally the terms of the proposal and shall be accompanied by a report of the Official Receiver thereon.

(III.) The bankrupt may either before or after the composition or scheme is accepted by the creditors apply to the Court to approve it and shall give notice of the time appointed for hearing the application to each creditor who has proved.

(IV.) The Court shall before approving a composition or scheme hear a report of the Official Receiver as to the terms of the composition or scheme and as to the conduct of the bankrupt and any observations which may be made by or on behalf of any creditor.

c 40—C

(v.)



- (v.) If the composition or scheme does not provide for payment to the creditors of five shillings in the pound the Court shall not approve it unless in the opinion of the Court the bankruptcy has been caused by misfortune without any misconduct on the part of the debtor. Provided that if at any subsequent time facts are brought to the knowledge of the Court which satisfy it that the opinion as to the cause of the bankruptcy on which its approval was obtained was erroneous the Court may if it thinks fit declare the creditors released from the terms of the composition or scheme but in such case no payment which may in the meantime have been made under the composition or scheme shall be disturbed or questioned. 5 10
- (vi.) If the Court is of opinion that the terms of the composition or scheme are not reasonable or are not calculated to benefit the general body of creditors or if any such facts are proved as would under this Act justify the Court in refusing qualifying or suspending the bankrupt's certificate the Court may in its discretion refuse to approve the composition or scheme. 15
- (vii.) If the Court approves the composition or scheme the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the composition or scheme or by the terms being embodied in an order of the Court and may order that the sequestration be superseded or only suspended. 20
- (viii.) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy. 25
- (ix.) A certificate of the Official Receiver that a composition or scheme has been duly accepted and approved shall in the absence of fraud be conclusive as to its validity. 30
- (x.) The creditors may by ordinary resolution add to or vary the provisions of any composition or scheme previously accepted by them without prejudice to any persons taking interests under those provisions who do not assent to the addition or variation but the resolution shall not take effect unless and until it is approved by the Court and the approval of the Court may be obtained in the same manner and on the same conditions as in the case of the original composition or scheme. 35 40
- (xi.) The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested and any disobedience of an order of the Court made on the application shall be deemed a contempt of Court. 45
- (xii.) If default is made in payment of any instalment due in pursuance of the composition or scheme or if it appears to the Court on satisfactory evidence that the composition or scheme cannot in consequence of legal difficulties or of any sufficient cause proceed without injustice or undue delay to the creditors or to the bankrupt or that the approval of the Court was obtained by fraud the Court may if it thinks fit on application by any person interested discharge such approval and order that the sequestration be continued and prosecuted. 50
- (xiii.) If under or in pursuance of a composition or scheme so approved a trustee is appointed to administer the debtor's property or manage his business Part V of this Act shall apply to such trustee as if he were a duly confirmed trustee in bankruptcy. 55



62. On or at the time of the second meeting or any adjournment thereof in any bankruptcy estate wherein the property exceeds *three hundred* pounds in value but not otherwise the creditors may instead of accepting any such composition or scheme under the last preceding section and instead of retaining the Official Receiver alone by resolution appoint some fit person or persons not exceeding two whether creditors or not to fill the office of trustee of the bankrupt estate at such remuneration (if any) as the creditors may from time to time determine or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned.

Election of trustee.

(I.) They may when they appoint a trustee by resolution declare what security is to be given and to whom by the person so appointed before he enters on the office of trustee.

32 and 33 Vic. 71 s. 14.

(II.) They may by resolution appoint some other fit persons not exceeding five in number and being creditors qualified to vote personally or otherwise at a general meeting of creditors under the provisions of this Act to form a committee of inspection for the purpose of superintending the administration by the trustee of the bankrupt estate.

Committee of inspection.

(III.) They may by resolution give directions as to the manner in which the estate is to be administered by the trustee and it shall be the duty of the trustee to conform to such directions unless the Court upon the application of the trustee or a creditor or the bankrupt for some just cause otherwise orders.

63. The Official Receiver shall be remunerated in manner following (that is to say)—

Official Receiver's remuneration.

(I.) If a trustee be elected by the creditors or appointed by the committee of inspection such trustee shall pay to such Official Receiver for his own use and benefit in addition to such costs charges and expenses as may be allowed by the Court or Judge for the interim management of the estate a sum not exceeding *five* pounds when the gross assets do not amount to *two hundred* pounds in value and not exceeding *ten* pounds when the assets amount to or exceed *two hundred* pounds as in either case the Court may direct on or after the confirmation of the trustee.

(II.) If no trustee be elected or appointed the Official Receiver shall receive such remuneration as the Court shall award.

64. The Court may upon the acceptance in writing of office by the person elected as trustee and upon being satisfied that the requisite security (if any) has been given make an order confirming his election or appointment respectively. And every trustee on being confirmed shall forthwith cause notice thereof to be given in the *Gazette* and the Registrar shall cause notice of every order made for the removal of any assignee whether official or elected or of any trustee to be given by advertisement in the *Gazette*.

Confirmation of trustee.

Notice on appointment.

65. The Court may remove the Official Receiver or the trustee from any particular estate for insolvency or bankruptcy or absence from New South Wales or for any misconduct in his office as Receiver or trustee and upon the death resignation refusal to act or removal of any such receiver or trustee shall appoint another Official Receiver or order the election of a new trustee and the same proceedings shall be respectively had thereon as on the original election.

Removal of Receiver or trustee.

66. If an Official Receiver or trustee desire to resign his office he may apply to the Court for leave and if no valid objection be stated and if the Court be satisfied that he has complied with the provisions of this Act and with the rules his application may be granted by the Court but if any objection be stated thereto the Court shall proceed to determine the same and shall make such order thereon as it shall

As to resignation and discharge of receiver or trustee.



shall deem fit and if the application of any Official Receiver or trustee for leave to resign be granted the Court may make such orders as may be necessary for the preservation and administration of the estate until a new Official Receiver or a new trustee be appointed or elected and confirmed and for the discharge and acquittance of such receiver or trustee and for the security and payment of any unclaimed dividends to the parties entitled to the same. Provided always that no order of the Court allowing an Official Receiver or trustee to resign shall prevent the Official Receiver or trustee thereafter appointed or elected and confirmed in his stead from calling upon him to account as Official Receiver or trustee prior to his resignation.

(2.) *Vesting and Realization of Estates.*

Order of sequestration shall vest in receiver the property of bankrupt.

67. Every order placing an estate under sequestration in the hands of an Official Receiver shall vest in such receiver absolutely the property of the insolvent of or to which he is then seized possessed or entitled in his own right or of or to which he may become so seized possessed or entitled before he obtains his certificate under this Act.

Where estate vested in trustees sequestrated.

68. Where an estate is sequestrated which has been assigned to a trustee or trustees for the benefit of creditors generally such trustees may be appointed by the order or order *nisi* for sequestration instead of Official Receiver and the property of the debtor both present and future shall vest in such person or persons named in such order as trustee or trustees in the same manner as in Official Receiver appointed under this Act and such person or persons so named as aforesaid shall have all the duties powers rights and liabilities of a trustee or trustees duly confirmed.

Order of Court confirming election of trustee shall divest Official Receiver.

69. The order of the Court confirming the election or appointment of a trustee shall divest the bankrupt estate from Official Receiver and shall vest the same in such trustee and the order confirming the election or appointment of any trustee or a copy thereof signed by the Registrar or Accountant shall be received and taken by all Courts of Justice in New South Wales as conclusive evidence that such trustee has been duly elected or appointed and confirmed.

Effect of order for confirmation of new trustee.

70. Whenever on the death resignation or removal of any Official Receiver or trustee any receiver or new trustee shall be appointed or elected and confirmed in manner hereinbefore provided the order appointing the new official receiver or confirming the election of such new trustee shall vest in the new receiver or trustee as the case may be the whole bankrupt estate and every power right title privilege and remedy vested in the former receiver or trustee as such receiver or trustee before his death resignation or removal as fully and to the same extent as the same was vested in the former receiver or trustee by the order appointing him or confirming his election or appointment and the death resignation or removal of any receiver or trustee shall not affect the validity of any lawful act done by him as assignee or trustee prior to his death resignation or removal.

Regulations as to trustees &c.

71. The following regulations shall be applied with respect to the trustees and committee of inspection :—

- (1.) The creditors may when two trustees are appointed declare whether any act required or authorized to be done by the trustee is to be done by both or one of such persons but both such persons are in this Act included under the term "Trustee" and shall be joint tenants of the insolvent estate. No person dealing with any trustee or trustees under this Act shall be bound to inquire whether such trustee or trustees has or have been required or authorized to do any particular act or whether the sanction of a meeting of creditors or of the committee



- committee of inspection has been obtained as required by this Act but the trustee shall not be exonerated if he omit to comply with any of the provisions of the Act. The creditors may also elect persons to act as trustees in succession in the event of one or more of the persons first-named declining to accept the office of trustee.
- (II.) If through any cause whatever there should be no trustee the Court may appoint an Official Receiver to act as such trustee.
- (III.) If any vacancy occur in the office of trustee by death resignation or otherwise the creditors in general meeting may fill up such vacancy and a general meeting for the purpose of filling up such vacancy may be convened by the continuing Trustee if there be more than one or by the Court on the requisition of any creditor or the bankrupt.
- (IV.) If the estate of a trustee be sequestrated he shall cease to be trustee and if there be no other trustee the Court on the representation of any creditor or of the bankrupt may direct a meeting of creditors to be called for the election of another trustee in his place.
- (V.) The trustees of a bankrupt estate may sue and be sued by the official name of the "trustee of the bankrupt estate of" inserting the name of the bankrupt and by such official name may hold property of every description make contracts sue and be sued enter into any engagements binding upon himself and his successors in office and do all other acts necessary or expedient to be done in the execution of his office.
- (VI.) Any member of the committee of inspection may resign his office by notice in writing signed by him and delivered to the trustee. 32 and 33 Vic. c. 71 s. 83.
- (VII.) The creditors may by resolution fix the quorum required to be present at a meeting of the committee of inspection.
- (VIII.) Any member of the committee of inspection may be removed by an ordinary resolution at any meeting of creditors of which two clear days notice as prescribed has been given stating the object of the meeting.
- (IX.) On any vacancy occurring in the office of a member of the committee of inspection by removal death resignation or otherwise the trustee shall convene a meeting of creditors for the purpose of filling up such vacancy.
- (X.) The continuing members of the committee of inspection may act notwithstanding any vacancy in their body and where the number of members of the committee of inspection is for the time being less than *five* the creditors may increase that number so that it do not exceed *five*.
- (XI.) No defect or irregularity in the election of a trustee or of a member of the committee of inspection shall vitiate any act *bonâ fide* done by him and no act or proceeding of the trustee or of the creditors shall be invalid by reason of any failure of the creditors to elect all or any members of the committee of inspection.
- (XII.) If a member of the committee of inspection shall have his estate sequestrated his office shall thereupon become vacant.
- (XIII.) Where there is no committee of inspection any act or thing or any direction or consent by this Act authorized or required to be done or given by such committee may be done or given by the Court on the application of the trustee or of a creditor or the bankrupt.
72. The Court may by the Sheriff or by its messenger authorized Attachment of estate. by warrant under the seal of the Court seize and attach property of the bankrupt



bankrupt estate and cause to be made an inventory thereof and the messenger making such attachment shall leave with the person in whose possession any such property is attached a copy of the warrant under the seal of the Court together with a copy of the said inventory having subjoined thereto a notice that the property of the bankrupt has been attached by the said messenger and that any person who knowing the same to have been so attached shall dispose of remove retain embezzle conceal or receive the same or any part thereof with intent to defeat the said attachment is liable on conviction of such offence to be imprisoned with or without hard labor for any period not exceeding *three* years And such messenger may secure on the premises by sealing up any repository room or closet any article which in the discharge of his duty it shall seem to him expedient so to secure or may leave some person on the premises in custody thereof.

Seizure of property  
of insolvent.

32 and 33 Vic. c. 71  
s. 99.

73. Any person acting under warrant of the Court may seize any property of the bankrupt divisible amongst his creditors under this Act and in the bankrupt's custody or possession or in that of any other person and with a view to such seizure may break open any house building or room of the bankrupt where the bankrupt is supposed to be or any building or receptacle of the bankrupt where any of his property is supposed to be and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him the Court may grant a search warrant to any constable or prescribed officer of the Court who may execute the same according to the tenor thereof.

Regulations as to  
meetings of creditors.

74. General meetings of creditors other than those in Court or before a Commissioner shall be held in the prescribed manner and subject to the prescribed regulations as to the quorum adjournment of meeting and all other matters relating to the conduct of the meeting or the proceedings thereat Provided that—

- (I.) The meeting shall be presided over by the Registrar or Accountant or by such Chairman as the meeting may elect.
- (II.) A person shall not be entitled to vote as a creditor unless at or previously to the meeting he has in the prescribed manner proved a debt provable under the bankruptcy to be due to him.
- (III.) A creditor shall not vote at the said meeting in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained.
- (IV.) A secured creditor shall for the purpose of voting be deemed to be a creditor only in respect of the balance (if any) due to him after deducting the value of his security and the amount of such balance shall until the security be realized be determined in the prescribed manner He may however at or previously to the meeting of creditors give up the security to the trustee and thereupon he shall rank as a creditor in respect of the whole sum due to him.
- (V.) A "secured creditor" shall in this Act mean any creditor holding any mortgage charge or lien on the bankrupt estate or any part thereof as security for a debt due to him.
- (VI.) Votes may be given either personally or by proxy.
- (VII.) The official receiver or trustee may at any time call a general meeting of the creditors and shall call such meeting when required by *one fourth* in value of the creditors who have proved their debts The minutes of general meetings of creditors upon proof of the signature of the person presiding at such meeting shall be *prima facie* evidence in all Courts of Justice of the truth of the matter contained in such minutes.

Duties of assignee.

75. The Official Receiver until the election and confirmation of an elected assignee or of a trustee shall as nearly as may be preserve the



the estate in the same condition as it is at the date of the order for sequestration. Provided that with the sanction of the Court or the creditors at a meeting the Official Receiver may realize or take proceedings to recover any portion of the bankrupt estate. If no trustee  
5 be elected and confirmed the duties powers rights and liabilities of the Official Receiver of a bankrupt estate shall be the same (except as to deciding on proof of debts or as by this Act otherwise expressly provided) as those of a trustee confirmed by the Court and whenever in this Act any powers rights duties or liabilities are conferred or imposed  
10 upon a trustee such powers rights duties and liabilities shall be deemed to be conferred and imposed upon the Official Receiver if no trustee be elected and confirmed.

General duties of official receiver.

76. The trustee shall after the order confirming his election or appointment has been made collect get in sell and dispose of the whole  
15 of the bankrupt estate in such manner and at such times as he may think proper subject nevertheless to the provisions of this Act and the directions of the creditors at a general meeting or of the committee of inspection but the directions of such committee shall be subject to the directions of the creditors at a general meeting.

General duties of trustee.

20 77. The property of the bankrupt divisible amongst his creditors shall not comprise property held by the insolvent in trust for any other person.

Description of insolvent's property divisible amongst creditors.

But shall comprise the following:—

25 (I.) All property otherwise than as aforesaid as may belong to or be vested in the bankrupt at the date of the order of sequestration or may be acquired by or devolve on him before he obtains his certificate.

32 and 33 Vic. c. 71 s. 20.

30 (II.) 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 bankrupt for his own benefit.

35 (III.) All goods and chattels being at the date of the sequestration in the possession order or disposition of the bankrupt by the consent and permission of the true owner of which goods and chattels the bankrupt is reputed owner or of which he has taken upon himself the sale alteration or disposition as owner. Provided that things in action other than debts due to him in the course of his trade or business shall not be deemed goods and chattels within the meaning of this section.

From sec. 55 of 5 Vic. No. 17.

40 78. Every conveyance assignment gift delivery or transfer of any property which would under this Act be deemed to be an act of bankruptcy shall be and is hereby declared to be absolutely void against the Official Receiver or trustee appointed or elected under this Act but  
45 in the case of a conveyance or assignment of all the debtor's property for the benefit of all his creditors all dealings with such property and all acts and things *bonâ fide* made or done by the trustee of such conveyance or assignment shall be valid and not affected by the sequestration unless the trustee had before or at the time of any such dealings acts or things notice that proceedings had been or were about to be  
50 taken to sequester the estate of the debtor.

All conveyances &c. which are acts of insolvency void against trustee.

Assignments for benefit of creditors protected.

55 79. Any settlement of property not being a settlement made before and in consideration of marriage or *bonâ fide* in pursuance of an ante nuptial contract or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife shall if the settlor becomes bankrupt within two years by sequestration after the date of such settlement be void as against the Receiver or trustee of the insolvent estate under this Act and shall if the settlor becomes  
bankrupt

Avoidance of voluntary settlements.

32 and 33 Vic. c. 71 s. 91 and Chamberlain's Act sec. 47.



bankrupt as aforesaid at any subsequent time within *ten* years after the date of such settlement unless the parties claiming under such settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement be void against such assignee or trustee 5  
 And any covenant or contract made by any person in consideration of marriage for the future settlement upon or for his wife or children of any money or property wherein he had not at the date of his marriage any estate or interest whether vested or contingent in possession or remainder and not being money or property of or in right of his wife 10  
 shall upon his becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant be void against his Official Receiver or trustee appointed under this Act And the word "Settlement" shall for the purposes of this section include any conveyance or transfer of property. 15

Avoidance of fraudulent preferences.

From 32 and 33 Vic. c. 71 s. 92 and Chamberlain's Act sec. 48.

From sec. 8 of 5 Vic. No. 17.

80. Every conveyance or transfer of property or charge thereon made every payment made every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own moneys in favour of any creditor or any person in trust for any creditor with a view of or having the effect of 20 giving such creditor a preference over the other creditors shall if the person making taking paying or suffering the same become insolvent by sequestration or by presenting a petition for liquidation by arrangement within *sixty* days after the date of making taking paying or suffering the same be deemed a fraudulent preference and fraudulent 25 and void as against the assignee or trustee of the insolvent appointed or elected under this Act but this section shall not affect the rights of a purchaser payee or incumbrancer in good faith and for valuable consideration.

Protection of certain transactions with insolvent.

32 and 33 Vic. c. 71 s. 94.

81. Nothing in this Act contained shall render invalid— 30  
 (I.) Any payment made in good faith and for value received to any insolvent before the date of the order of sequestration.  
 (II.) Any payment or delivery of money or goods belonging to a bankrupt made in good faith to such insolvent by a depository of such money or goods before the date of the order of 35 sequestration.  
 (III.) Any contract or dealing with any bankrupt made in good faith and for valuable consideration before the date of the order of sequestration.

What alienations &c. having the effect to prefer one creditor to another absolutely void.  
 From sec. 8 of 5 Vic. No. 17.

82. All alienations transfers gifts surrenders deliveries mortgages 40 or pledges of any estate goods or effects real or personal warrants of Attorney *cognovits actionem* and judgments entered up thereon made by any person being insolvent or in contemplation of surrendering his estate as insolvent or bankrupt or knowing that legal proceedings for obtaining an order for the sequestration of his estate as insolvent or 45 bankrupt have been commenced or within sixty days preceding the making of any order for sequestration of his estate as insolvent or bankrupt and having the effect of preferring any then existing creditor to another shall be and are hereby declared to be absolutely void  
 Provided that every payment heretofore or hereafter made by any 50 person before the sequestration of his estate under the Act fifth Victoria number seventeen or this Act to any creditor for or on account of any just debt due at the time of payment shall except only in the cases hereinafter mentioned be and be deemed to have been a valid payment that is to say:—

Certain payments protected.  
 From sec. 1 and 2 of 25 Vic. No. 8.

Exceptions.

- (I.) That such creditor or the person receiving payment on his behalf shall not at the time of payment have known that the debtor was then insolvent.  
 (II.) Or was by such payment rendered insolvent.

(III.)



- (III.) Or that he then contemplated the surrender of his estate as insolvent or bankrupt.  
 (IV.) Or that proceedings for causing his estate to be sequestrated as insolvent or bankrupt had been commenced  
 5 (v.) Or that the payment was a voluntary preference of such creditor to other creditors.

And notice to the creditor or person so receiving payment of any such matter by whomsoever given if in accordance with the fact shall be equivalent to and be deemed knowledge in such creditor or person.

- 10 83. Where any portion of the property of the bankrupt consists of stock shares in ships shares or any other property transferable in the books of any company office or person the right to transfer such property shall be absolutely vested in the assignee or trustee to the same extent as the insolvent might have exercised the same if he had  
 15 not become bankrupt.

Possession of property by trustee.  
 32 and 33 Vic. c. 71 s. 22.

84. Every Official Receiver or trustee shall keep in the prescribed manner proper books in which he shall from time to time make or cause to be made entries or minutes of proceedings at meetings and of such other matters as the rules shall direct and any creditor of the  
 20 Bankrupt may subject to the control of the Court personally or by his agent inspect such books.

Trustee to keep books.

85. Every Official Receiver or trustee may apply to the Court upon a statement in writing verified by affidavit for the opinion advice or direction of the Court on any question respecting the management  
 25 of the bankrupt estate and notice of such application shall be served upon or the hearing thereof be attended by all persons interested or such of them as the said Court shall think expedient and every Official Receiver or trustee acting upon the opinion advice or direction of the Court shall be deemed to have discharged his duty in the  
 30 subject matter of the application unless such Official Receiver or trustee shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion advice or direction and the costs of such application shall be in the discretion of the Court.

Assignee or trustee may apply for advice &c. to the Court.

22 and 23 Vic. c. 66 s. 30.

86. When any part of the bankrupt estate consists of land of  
 35 any tenure burdened with onerous covenants or consists of unmarketable shares in companies or of unprofitable contracts or of any other property unsaleable or not readily saleable by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money the Official Receiver or trustee notwithstanding that he has endeavoured to sell or has taken possession of such  
 40 property or exercised any act of ownership in relation thereto may by writing under his hand disclaim such property and upon the execution of such disclaimer the property disclaimed shall if the same is a contract be deemed to be determined from the date of the order of sequestration and if the same is a lease be deemed to have been surrendered  
 45 on the same date and if the same be shares in any company be deemed to be forfeited from that date and if any other species of property it shall revert to the person entitled on the determination of the estate or interest of the Bankrupt but if there shall be no person  
 50 in existence so entitled then in no case shall any estate or interest therein remain in the insolvent Any person interested in any disclaimed property may apply to the Court and the Court may upon such application order possession of the disclaimed property to be delivered up to him or make such other order as to the possession  
 55 thereof as may be just Any person injured by the operation of this section shall be deemed a creditor of the Bankrupt to the extent of such injury and may accordingly prove the same as a debt under the insolvency The Official Receiver or trustee shall not be entitled to disclaim any property in pursuance of this Act in cases where an

Disclaimer as to onerous property.

32 and 33 Vic. c. 71 ss. 23 24.



application in writing has been made to him by any person interested in such property requiring such Official Receiver or trustee to decide whether he will disclaim or not and the Official Receiver or trustee has for a period of not less than *twenty-eight* days after the receipt of such application or such further time as may be allowed by the Court declined or neglected to give notice whether he disclaims the same or not. 5

Power of trustee to deal with property.

87. Subject to the provisions of this Act the trustee shall have power to do the following things :—

- (I.) To receive and decide upon proof of debts in the prescribed manner and for such purpose to administer oaths. 10
- (II.) To carry on the business of the bankrupt so far as may be necessary for the beneficial winding up of the same.
- (III.) To bring or defend any action suit or other legal proceeding relating to the property of the bankrupt. 15
- (IV.) To deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with the same and the provisions of the Fifth part of the "Real Property Act 1862" shall so far as the same are applicable extend and apply to proceedings in bankruptcy under this Act. 20
- (V.) To exercise any powers the capacity to exercise which is vested in him under this Act and to execute all powers of attorney deeds and other instruments expedient or necessary for the purpose of carrying into effect the provisions of this Act. 25
- (VI.) To sell all the property of the bankrupt (including the goodwill of the business if any and the book debts due or growing due to the bankrupt by public auction or private contract with power if he thinks fit to transfer the whole thereof to any person or company or to sell the same in parcels. 30
- (VII.) To give receipts for any money received by him which receipts shall effectually discharge the person paying such moneys from all responsibility in respect of the application thereof. 35
- (VIII.) To prove rank claim and draw a dividend in the matter of the insolvency bankruptcy or sequestration of the estate of any debtor of the bankrupt out of the Colony as well as within the Colony. 40

Power to allow bankrupt to manage property.

32 and 33 Vic. c. 71 s. 26.

88. The Official Receiver or trustee may appoint the bankrupt himself to superintend the management of the property or of any part thereof or to carry on the trade or business of the bankrupt (if any) for the benefit of the creditors and in any other respect to aid in administering the property in such manner and on such terms as the creditors may direct. 45

Power of trustee to compromise.

89. The trustee may with the sanction of a special resolution of a general meeting of creditors or of the committee of inspection do all or any of the following things :—

- (I.) Mortgage or pledge any part of the property of the bankrupt estate for the purpose of raising money for the payment of his debts. 50
- (II.) Refer any dispute to arbitration compromise all debts claims and liabilities whether present or future certain or contingent liquidated or unliquidated subsisting or supposed to subsist between the bankrupt and any debtor or person who may have incurred any liability to the bankrupt upon the receipt of such sums payable at such times and generally upon such terms as may be agreed upon. 55

32 and 33 Vic. c. 71 s. 27.

(III.)



- (III.) Make such compromise or other arrangement as may be thought expedient with creditors or persons claiming to be creditors in respect of any debts provable under the bankruptcy.
- 5 (IV.) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt made or capable of being made on the trustee by any person or by the trustee on any person.
- 10 (V.) Divide in its existing form amongst the creditors according to its estimated value any property which from its peculiar nature or other special circumstances cannot advantageously be realized by sale.

The sanction given for the purposes of this section may be a general permission to do all or any of the above-mentioned things or a permission to do all or any of them in any specified case or cases.

90. Where the trustee is himself a solicitor he may contract to be paid a certain sum by way of percentage or otherwise as a remuneration for his services as a trustee including all professional services and any such contract shall notwithstanding any law to the contrary be lawful.

Trustee if a solicitor may be paid for services.  
32 and 33 Vic. c. 71 s. 29.

91. The Official Receiver or trustee shall pay all sums from time to time received by him into such Bank as the majority of the creditors in number and value at any general meeting shall appoint and failing such appointment into such Bank as the rules may from time to time appoint and if he at any time keep in his hands any sum exceeding *fifty* pounds for more than *ten* days he shall be subject to the following liabilities that is to say:—

Trustee to pay moneys into Bank.

(I.) He shall pay interest at the rate of *twenty* pounds per centum per annum on the excess of such sum above *fifty* pounds as he may retain in his hands.

32 and 33 Vic. c. 71 s. 30.

(II.) Unless he can prove to the satisfaction of the Court that his reason for retaining the money was sufficient he shall on the application of any creditor be dismissed from his office by the Court and shall have no claim for remuneration and be liable to any expenses to which the creditors may be put by or in consequence of his dismissal.

92. If the bankrupt shall at the date of the order of sequestration be a member of a firm the Court may authorize the trustee upon his application to commence or prosecute any action at law suit in equity or other proceeding in the name of such trustee and of the remaining partner against any debtor of the partnership and such judgment decree or order may be obtained therein as if such action suit or other proceeding had been instituted with the consent of such partner and if such partner shall execute any release of the debt or demand for which such action or suit is instituted such release shall be void provided that every such partner shall have notice given him of such application and be at liberty to show cause against it and if no benefit be claimed by him by virtue of the said proceedings shall be indemnified against the payment of any costs in respect of such action suit or other proceeding in such manner as the Court may direct and the Court may upon the application of such partner direct that he may receive so much of the proceeds of such action or suit as such Court shall direct.

In case of a member of a firm becoming bankrupt Judge may authorize action or suit in name of he trustee and remaining partner.

12 and 13 Vic. c. 126 s. 152.

Partner to have notice and be at liberty to show cause.

Judge may direct partner to have part of proceeds.

93. No Official Receiver or trustee shall be personally responsible or liable for any act *bonâ fide* done by him or by his order or authority in the execution of his duty as such receiver or trustee by reason of the order *nisi* for sequestration being discharged and no Official Receiver or trustee shall be deemed personally answerable for

Assignee or trustee not personally liable for act done in execution of his duty.



for or by reason of his having received any money bills notes or other negotiable instruments in his character of Official Receiver or trustee provided he shall have paid or deposited such money bills notes and other negotiable instruments in some Bank to his credit as Official Receiver or trustee of the bankrupt estate to which they 5 belong and shall have given notice of such payment or deposit (as the case may be) to the person claiming such money bills or other negotiable instruments of the Official Receiver or trustee And provided also that the Official Receiver or elected assignee or trustee after such payment or deposit shall not have dealt with such money bills 10 notes or other negotiable instruments otherwise than in the execution of his duty as Official Receiver or trustee and if an action shall be brought against any Official Receiver or trustee for any such act done by him or by his order or authority in the execution of his duty either solely or where there shall be two trustees by a trustee jointly 15 with any other trustee in respect of such money bills notes or other negotiable instruments the Court in which the same shall be brought or a Judge thereof may upon application of the Official Receiver or trustee and upon an affidavit of facts set aside the proceedings in such action so far as the Official Receiver or trustee is concerned with such 20 costs or without costs as to the Court or Judge shall seem meet.

Mortgage may be redeemed by assignee.

94. If a bankrupt shall have conveyed or assigned any real or personal estate or deposited any deeds such conveyance or assignment insurance or deposit being upon condition or power of redemption at a future day by payment of money or otherwise the Official Receiver 25 or trustee may before the time of the performance of such condition make tender or payment of money or other performance accordance to such condition and after such tender payment or performance such real or personal estate may be sold and disposed of for the benefit of the creditors. 30

Mortgagee may bid at sale subject to orders of the Court.

95. Any mortgagee with the leave of the Court first obtained may bid at any sale of the mortgaged property.

Life estate in remainder not to be sold except by order of the Court.

96. Where under a settlement or will a bankrupt shall be entitled to a life estate in remainder expectant upon the death or deaths of any previous tenant or tenants for life with any remainder over to the bank- 35 rupt's issue or the heirs of his body or any of them as purchasers the life estate of such bankrupt shall not be sold before it falls into possession without an express order of the Court.

Court may order payment of debts due to the insolvent's estate.

97. Any Official Receiver or trustee may apply to the Court for a summons calling upon any person alleged to be indebted to the 40 bankrupt estate to pay the amount of such indebtedness and the Court may order that such person shall forthwith or at such time and in such manner by instalments or otherwise as to the Court may seem expedient pay the amount if the same does not exceed *two hundred* pounds to such Receiver or assignee or trustee. 45

Limitation of action.

98. Every action brought against any person for anything done in pursuance of this Act shall be commenced within *six* months next after the cause of action has arisen and the defendant in any such action may plead the general issue and give this Act and the special matter in evidence at the trial and if it shall appear that the matter 50 or thing alleged to have been done was in fact done by the authority of this Act or that such action was commenced after the time limited as aforesaid for bringing the same the jury shall find for the defendant.

Insolvent's books not subject to lien.

99. No person whosoever shall be entitled as against any Official Receiver or trustee to withhold possession of the books of 55 account or any papers or documents relating to the accounts of the bankrupt or to claim any lien thereon.

Portion of pay half-pay salary or pension of insolvent to be applicable for creditors.

100. The Court may in its discretion at any time prior to the issue of a certificate order such portion as such Court may think fit of the



the pay half-pay salary emolument or pension of a bankrupt to be paid to the Official Receiver or trustee and applied in payment of the debts of such bankrupt and such order being lodged in the office of any officer or person appointed to pay or paying any such pay half-pay salary emolument or pension such portion of the said pay half-pay salary emolument or pension as shall be specified in such order shall be paid to such Receiver or trustee until the Court shall otherwise order and such order may be enforced by attachment.

101. Any Official Receiver or trustee or creditor of an estate sequestrated by the executor or administrator of any person deceased may after the whole of the personal estate has been administered if the same be not sufficient to pay the debts proved and provable against such estate apply to the Court upon notice to the persons to whom the real estate of the said deceased may have descended or been divided for an order vesting such real estate in the Receiver or trustee for the purpose of distribution amongst the creditors of the deceased and the Court may make such order and thereupon such real estate shall vest in such Receiver or trustee for the whole estate of the persons served and the same shall be realized and distributed in the same manner as the real estate of any bankrupt.

Trustee of deceased person may apply for order to vest real estate.

102. Any Official Receiver or trustee or credit or of any estate sequestrated by the executor or administrator of any person deceased or by the person vested with the administration of an estate in trust of creditors or by the greater number of partners of any company trading or having effects within the Colony may apply to the Court in a summary way or by petition if so directed requiring the person who had surrendered such estate to make good any sum in respect to claims cognizable in Equity if due to such estate and thereupon all such accounts and inquiries shall be taken and orders made as shall be just.

Liability of persons surrendering estate for amounts due by them.

103. If any debt or sum of money due to any bankrupt be charged upon any land by way of equitable mortgage the Official Receiver or trustee may apply to the Court upon notice to all parties interested for an order for the sale of the lands comprised in such equitable mortgage and the Court may make such order.

Court may order sale of property under equitable charge.

104. The estate real or personal of any person deceased whose estate is sequestrated by his or her representative shall be distributed and administered upon the same principles and in the same way as the estate of any living person.

Mode of distribution of deceased person's estate.

105. Where the bankrupt has property real or personal elsewhere than in New South Wales or any interest therein whether in possession reversion or expectancy the Court may upon the application of the Official Receiver or trustee order such insolvent to execute all necessary deeds instruments and writings and to do all such acts matters and things as may be necessary to enable such Receiver or trustee to realize or make available the whole or such part thereof or the proceeds thereof as the Court may think proper for distribution amongst the creditors of the said bankrupt.

Court may require conveyance by insolvent of his property out of the Colony.

106. If upon the application of the Official Receiver or trustee it shall be proved to the satisfaction of the Court that there is reason to believe that the bankrupt has been guilty of fraud or concealment of property or has absconded the Court may order that for a period of three months from the date of the order of sequestration all post letters directed or addressed to the bankrupt shall be re-directed re-addressed sent or delivered by the Postmaster-General or the officers acting under him to the Registrar or Accountant and upon notice by transmission of an office copy of any such order to the Postmaster-General or the officers acting under him of the making of such order the Postmaster-General or such officers as aforesaid may re-address re-direct send or deliver all such post letters to the said Registrar or Accountant

Post letters may be re-addressed and sent to the Registrar.



Accountant who may deal with the same as the Court may think proper and the Court may upon any application to be made for that purpose renew any such order for a like or for any other less period as often as may be necessary.

If produce of estate pay twenty shillings in the pound and leave surplus such surplus to be paid to bankrupt.

107. If the produce of a bankrupt estate shall be sufficient to 5 pay twenty shillings in the pound as hereinafter mentioned and leave a surplus the Court may upon the application of the bankrupt after reasonable notice in writing to the assignee or trustee order the remainder of the bankrupt estate to be conveyed assigned and delivered to such bankrupt his executors administrators or assigns and every 10 such bankrupt shall be entitled to recover the remainder (if any) of the debts due to him.

### (3.) Proof of Debts.

When and how debts may be proved.

108. All debts provable in bankruptcy may be proved at the single meeting of creditors in petty estate under three hundred pounds 15 in value or at the first or second meeting or at the third or at any special meeting of creditors as already provided either before the Court or Commissioner in the country but where a trustee has been elected at the second meeting and confirmed then every creditor of the bankrupt or any one or more of several joint creditors may prove his 20 or their debt by delivering or sending through the general post to the trustee an affidavit or declaration by the creditor containing a full true and complete statement of account between the creditor and the bankrupt and that the debt thereby appearing to be due from the estate of the insolvent to the creditor is justly due and all bodies politic and 25 incorporated companies may prove by an agent provided such agent shall in his affidavit or declaration state that he is such agent and that he is authorized to make such proof and such affidavit or declaration shall be in such form as may be prescribed by the rules.

Votes at meetings.

109. No person shall vote at any meeting if notice of an 30 application to expunge or reduce his proof has been given and if before or at any meeting of creditors any creditor or any Official Receiver or trustee or the bankrupt shall give notice of motion to expunge or reduce a proof of debt sought to be used at such meeting it shall unless the Court shall otherwise order be adjourned until such 35 motion has been disposed of or until such time as the Court may direct.

Assignee or trustees to examine all proofs and to make out list of creditors who have proved.

110. The trustee shall examine all the affidavits and declarations of proof aforesaid and compare the same with the books accounts and other documents of the bankrupt and shall from time to time make out a list of the creditors who have proved stating the amount and 40 nature of such debts which list shall be open to the inspection of any creditor who has proved and all proofs of debt delivered or sent to a trustee shall be filed by him in the office of the Court.

Proof may be expunged or reduced.

111. The Court may at any time expunge or reduce a proof of debt on the application of the Official Receiver or of the trustee or 45 creditor or of the bankrupt except when the plan of distribution has been approved or allowed and confirmed and then only on a special order re-opening the same as justice may require for fraud or for perjury or subornation of perjury committed by the claimant or his agent.

Landlord to be entitled to three months' rent &c.

112. No distress for rent shall be made levied or proceeded in 50 after sequestration but the landlord shall be entitled to receive out of the bankrupt estate so much rent as shall be then due not exceeding three months' rent and shall be allowed to come in as a creditor and share ratably with the other creditors for the balance.

As to securing to claimants debts which may eventually be established.

113. When by reason of the absence of any person from the 55 jurisdiction or from any other cause the Court shall be of opinion that a claimant who has not proved his debt may eventually be able to establish



establish the same the Court may allow such claim to be entered in the proceedings in the bankrupt estate and may give reasonable time for proving the same and in the meantime may make such order for securing the amount thereof in case the said claim shall be afterwards established as the Court shall think fit.

114. Any debt provable in bankruptcy may be proved at any time before the final distribution of the estate but when any debt is so proved after any dividend has been paid to the creditors such dividend shall not in any way be disturbed or affected by or in respect of any such debt but such creditor shall receive payment of his debt out of the future assets of the estate in the same proportion as the other creditors shall have already received and shall afterwards receive payment.

Within what time debts are provable and effect thereof on dividend previously made.

115. A person entitled to enforce against any bankrupt payment of any money costs or expenses by process of contempt issuing out of any Court shall be entitled to come in as a creditor under the sequestration and prove the amount payable under the process subject to such ascertaining of the amount as may be properly had by taxation or otherwise.

Proof for money costs &c. of which payment may be enforced by process of contempt. 24 and 25 Vic. c. 134 s. 149.

116. Demands in the nature of unliquidated damages arising otherwise than by reason of a contract or promise shall not be provable in bankruptcy but save as aforesaid all other debts and liabilities present or future certain or contingent to which the bankrupt subject at the date of the order of sequestration or to which he may become subject before he obtains his certificate by reason of any obligation incurred previously to the date of the order of sequestration shall be deemed to be debts provable in bankruptcy and may be proved in manner aforesaid. An estimate shall be made according to the rules of the Court for the time being in force so far as the same may be applicable and where they are not applicable at the discretion of the Official Receiver or trustee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies or for any other reason does not bear a certain value. Any person aggrieved by any such estimate may appeal to the Court and the Court may if it think the value of the debt or liability incapable of being fairly estimated make an order to that effect and upon such order being made such debt or liability shall for the purposes of this Act be deemed to be a debt not provable in bankruptcy but if the Court think that the value of the debt or liability is capable of being fairly estimated it may direct such value to be assessed with the consent of all the parties interested before the Court itself without the intervention of a jury or if such parties do not consent by jury either before the Court itself or some other competent Court and may give all necessary directions for such purpose and the amount of such value when assessed shall be provable as a debt under the bankruptcy "Liability" shall for the purposes of this Act include any compensation for work or labour done any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant contract agreement or undertaking whether such breach does or does not occur or is or is not likely to occur or capable of occurring before the grant of a certificate to the insolvent and generally it shall include any express or implied engagement agreement or undertaking to pay or capable of resulting in the payment of money or money's worth whether such payment be as respects amount fixed or unliquidated as respects time present or future certain or dependent on any one contingency or on two or more contingencies as to mode of valuation capable of being ascertained by fixed rules or assessable only by a jury or as a matter of opinion.

Description of debts provable in insolvency.

32 and 33 Vic. c. 71 s. 31.



Preferential debts.

117. The debts hereinafter mentioned shall be paid in priority to all other debts. Between themselves such debts shall rank equally and shall be paid in full unless the property of the bankrupt is insufficient to meet them in which case they shall abate in equal proportions between themselves (that is to say)—

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(I.) All local rates due from him at the date of the order of sequestration and having become due and payable within twelve months next before such time.

(II.) Rent as hereinbefore provided.

32 and 33 Vic. c. 71  
s. 32.

(III.) All wages or salary of any clerk or servant in the employment of the bankrupt at the date of the order of sequestration not exceeding four months wages or salary and not exceeding *fifty* pounds all wages of any labourer or workman in the employment of the bankrupt at the date of the order of sequestration and not exceeding four months wages.

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Save as aforesaid all debts provable under the bankruptcy shall be paid *pari passu*.

Preferential claim in  
case of apprenticeship.

32 and 33 Vic. c. 71  
s. 36.

118. Where at the time of the order of sequestration any person is apprenticed or is an articulated clerk to the bankrupt the order of sequestration shall if either the bankrupt or apprentice or clerk give notice in writing to the trustee to that effect be a complete discharge of the indenture of apprenticeship or articles of agreement and if any money has been paid by or on behalf of such apprentice or clerk to the bankrupt as a fee the Official Receiver or trustee may on the application of the apprentice or clerk or of some person on his behalf pay such sum as such receiver or trustee subject to an appeal to the Court thinks reasonable out of the bankrupt's estate to or for the use of the apprentice or clerk regard being had to the amount paid by him or on his behalf and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy and to the other circumstances of the case. Where it appears expedient to an Official Receiver or trustee he may on the application of any apprentice or articulated clerk to the bankrupt or any person acting on behalf of such apprentice or articulated clerk instead of acting under the preceding provisions of this section transfer the indenture of apprenticeship or articles of agreement to some other person.

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Proof in case of rent  
and periodical  
payment.  
Ib. s. 35.

119. When any rent or other payment falls due at stated periods and the order of sequestration is made at any time other than one of such periods the person entitled to such rent or payment may prove for a proportionate part thereof up to the day of the date of the order of sequestration as if such rent or payment grew due from day to day.

Interest on debts.  
32 and 33 Vic. c. 71  
s. 36.

120. Interest on any debt provable in bankruptcy may be allowed by the Court Commissioner or trustee under the same circumstances in which interest would have been allowable by a jury if an action had been brought for such debt.

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Proof in respect of  
distinct contracts.  
Ib. s. 37.

121. If the bankrupt is at the date of the order of sequestration liable in respect of distinct contracts as member of two or more distinct firms or as a sole contractor and also as member of a firm the circumstance that such firms are in whole or in part composed of the same individuals or that the sole contractor is also one of the joint contractors shall not prevent proof in respect of such contracts against the properties respectively liable upon such contracts.

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Allowance to insolvent  
for maintenance  
or service.  
Ib. s. 38.

122. The Official Receiver or trustee may from time to time make such allowance as may be approved by the Court or by the Committee of Inspection or resolution passed by a general meeting of creditors to the bankrupt out of his property for the support of the bankrupt and his family or in consideration of his services if he is engaged in winding up his estate.

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123. Where there have been mutual credits mutual debts or other mutual dealings between the bankrupt and any other person proving or claiming to prove a debt under the sequestration an account shall be taken of what is due from the one party to the other in respect of such mutual dealings and the sum due from the one party shall be set-off against any sum due from the other party and the balance of such account and no more shall be claimed or paid on either side respectively.

Set-off.

Ib. s. 39.

124. A creditor holding a specific security on the property of the bankrupt or any part thereof may on giving up his security prove for his whole debt. He shall also be entitled to a dividend in respect of the balance due to him after realizing or giving credit for the value of his security in manner and at the time prescribed. A creditor holding such security as aforesaid and not complying with the foregoing conditions shall be excluded from all share in any dividend.

Provision as to secured creditor.

Ib. s. 40.

#### (4.) Distribution of Estate.

125. The Official Receiver or the trustee of any bankrupt estate as soon as possible after the single or third meeting as the case may be and not later than six months after sequestration in respect to estates not required to be administered at a single meeting shall frame and lay before the Court an exact account of the balance of the said estate containing the proceeds of all sales and debts then collected and an account of all debts still outstanding and an inventory of all property and effects still unsold and also all debts due by the said estate and shall form a plan for distribution of the assets of the said estate specifying first such creditors as are entitled to any preference in the order of their legal preference and secondly the concurrent creditors and the balance remaining for division amongst them and similar accounts and plans shall be also submitted before the end of each successive three months unless otherwise ordered.

Account and plan of distribution.

Sec. 87 of 5 Vic. No. 7.

126. As soon as the Accountant in bankruptcy shall make his report of the audit by him of such account and the plan for distribution has been approved for confirmation it shall be open in the office of the Registrar for the inspection of the creditors and bankrupt a reasonable time as may be directed but not being less than fourteen days from the advertisement thereof and the Official Receiver or trustee shall cause notice thereof to be given in the *Gazette*.

Audit and inspection and notice thereof.

From sec. 88 of 5 Vic. No. 17.

127. It shall be lawful for the bankrupt or any party interested in the estate under sequestration and for any proved creditor who may conceive himself aggrieved by the said plan of distribution within the time aforesaid to enter his objection in writing with the Registrar stating the grounds thereof and also it shall be lawful for the Court to permit such objection to be entered at any time before the final confirmation of the said plan upon sufficient cause to be shown to the satisfaction of the Court and upon such terms as the said Court shall impose.

As to objections thereto.

Sec. 89 of 5 Vic. No. 17.

128. Any person as aforesaid objecting to the said account or plan of distribution shall apply to the Court for an order calling upon the Official Receiver or trustee and also upon the party whose interest might be affected thereby to show cause why the said plan should not be altered or amended as the case may be and thereupon it shall and may be lawful for the Court upon hearing the said parties to make such order as shall seem fit. Provided that whenever any alteration or amendment shall be ordered in the said plan whereby the interest of any party who has not made appearance in the said Court shall be affected the same shall again be open for inspection of the creditors and notice thereof shall be given as aforesaid.

Proceedings before Court thereon.

Sec. 90 of 5 Vic. No. 17.



Confirmation by  
Court and effect  
thereof.  
Sec. 91 of 5 Vic.  
No. 17.

129. It shall be lawful for the Official Receiver or trustee after the expiration of the time appointed for the inspection of the said account and plan of distribution and no objection being entered thereto or if any objection has been stated after the Court has made order thereon as aforesaid to apply to the Court that the said plan may be allowed and confirmed by the Court and thereupon it shall be lawful for the said Court to allow and confirm the same and such allowance and confirmation shall have the effect of a final judgment as between the bankrupt and the creditors of such bankrupt respectively except as to the amount of any debt therein specified but afterwards expunged or reduced and except against such creditors as shall afterwards be admitted by the said Court in manner hereinbefore provided to prove the debts and rank upon the same estate at any time before the final distribution thereof. 5 10

Official receiver and  
trustee to file  
statement.

130. The Official Receiver or trustee shall at such periods as may be fixed by the General Rules or Order of the Court file in the office of the Accountant statements showing how the bankrupt estate has been applied and disposed of under the following heads (that is to say) :— 15

- (I.) Gross amount of assets realized 20
- (II.) Costs charges allowances and expenses including the percentage payable into the Treasury
- (III.) Remuneration or commission.
- (IV.) Preferential payments to creditors or others directed or authorized to be made by this Act. 25
- (V.) Dividends to general creditors.
- (VI.) Balance undisposed of.

Further accounts.

And if any part of the bankrupt estate be not at the time of filing any such statement collected got in sold or disposed of such statement shall also specify shortly the nature of such unrealized estate The Official Receiver or trustee shall make out and file such further or fuller statements or accounts as the Court may order And the Court may at all times direct the examination of any trustee as already provided in respect to an Official Receiver. 30

Court may disallow  
costs charges &c.

131. The Court may upon the complaint of any creditor or person interested or upon the report or audit by the Accountant inquire into and allow or disallow as may be just all or any part of the costs charges expenses and payments charged claimed or made by any Official Receiver or trustee and make such order thereon as the Court may think fit. 40

Trustee to give  
notice of dividend.  
12 and 13 Vic.  
c. 106 s. 190.

132. The Official Receiver and trustee shall cause notice to be given in such way as the rules shall prescribe when and where dividends or moneys are payable to creditors and others interested in the insolvent estate and the remedy to obtain payment shall be by application to the Court and the order of the Court thereon. 45

Repayments to  
"Bankruptcy Suitors  
Fund."

133. Whenever by any order made under the provisions of the tenth section of the Act forty-seventh Victoria number moneys are paid out of the "Bankruptcy Suitors Fund" and assets thereafter become available in the particular estate which in such order mentioned or upon the estate in question being released from sequestration the Court may order repayment to the Colonial Treasurer with or without interest as the circumstances of the case may require for the benefit of such fund. 50



PART VI.

*Bankrupt.*

134. Every bankrupt before he obtains his certificate shall from time to time as the rules shall direct inform the assignee or trustee of any change in his residence and of his mode and means of livelihood and the insolvent shall to the utmost of his power aid in the realization of his property and the distribution of the proceeds amongst his creditors he shall produce such a statement of his affairs and shall give such schedule or inventory of his property such list of his creditors and debtors and of the debts due to and from them respectively submit to such examination in respect of his property or his creditors attend all meetings of his creditors wait at such times on the official receiver or trustee execute such powers of attorney conveyances deeds and instruments and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the official receiver or trustee or may be prescribed by the Rules of Court or be directed by the Court by any special order or orders made in reference to any particular bankruptcy or made on the occasion of any special application by the official receiver or trustee or any creditor If the bankrupt wilfully fail to perform the duties imposed on him by this section or any of them or if he fail to deliver up possession to the trustee of any part of his property which is divisible amongst his creditors under this Act and which may for the time being be in the possession or under the control of such insolvent he shall in addition to any other punishment to which he may be subject be guilty of a misdemeanor and may be punished accordingly.

Conduct of bankrupt.

32 and 33 Vic. c. 71 s. 19.

135. The Court may by warrant addressed to any constable or prescribed officer of the Court cause a bankrupt to be arrested and any books papers money goods and chattels in his possession to be seized and him and them to be safely kept as prescribed until such time as the Court may order under the following circumstances—

Arrest of bankrupt under certain circumstances.

(I.) If after sequestration it appear to the Court that there is probable reason for believing that the bankrupt is about to go abroad or to quit his place of residence with a view of avoiding examination in respect of his affairs or otherwise delaying or embarrassing the proceedings in bankruptcy.

(II.) If after sequestration it appear to the Court that there is probable cause for believing that the bankrupt is about to remove his goods or chattels with a view of preventing or delaying such goods or chattels being taken possession of by the official receiver trustee or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or chattels or any books documents or writings which might be of use to his creditors in the course of his bankruptcy.

32 and 33 Vic. c. 71 s. 86.

(III.) If after the service of a debtor's summons or after sequestration the debtor or bankrupt remove any goods or chattels in his possession above the value of five pounds without the leave of the official receiver trustee or if without good cause shown he fails to attend any meeting or examination ordered by the Court.

136. If a bankrupt shall die after sequestration under Part II or order *nisi* under Part III for sequestration the sequestration shall after notice has been given to such persons (if any) as the Court may think fit be proceeded in as if such bankrupt were living.

Court may proceed notwithstanding death of bankrupt. 12 and 13 Vic. c. 106 s. 116.



Offer of composition  
and order of release  
thereon.

From 86 sec. of 5  
Vic. No. 7.

137. If at any time after sequestration creditors by a special resolution may agree to accept an offer of composition or security for composition by the bankrupt or any person on his behalf the bankrupt may apply to the Court for an order releasing his estate from sequestration and the Court may upon being satisfied that such offer has been actually accepted in the manner prescribed and that the terms of such offer has been complied with by the bankrupt and that acceptance of the same has not been procured by him or anyone in his behalf to his knowledge or belief by any fraudulent or undue means or influence or to the advantage of one creditor over another unless with the knowledge and consent in writing of the rest of the creditors make such order upon such terms as to costs commission or remuneration and charges already incurred as may be just In case the bankrupt or any person making such offer shall not make the payments or perform the acts agreed to be paid or performed in such offer the payment or performance may be enforced by the official receiver trustee or any creditor by proceedings as and for a contempt of Court.

If bankrupt pay in  
full or obtain release.

From Victorian Act.

138. If a bankrupt or any person on his behalf pay in full all his creditors or obtain a legal release of the debts due by the bankrupt to such creditors the bankrupt may apply to the Court for an order releasing his estate from sequestration and the Court may upon being satisfied that all the creditors of such bankrupt have been paid in full or released their debts as aforesaid and that no proceedings of a criminal nature are pending or contemplated against the bankrupt make such order upon such terms as to costs commission or remuneration and charges already incurred as may be just.

Order of Court shall  
have effect of  
revesting his estate  
in insolvent when  
released from  
sequestration.

From sec. 5 of 10  
Vic. No. 14 and sec.  
81 of By. Act 1869.

139. Any order of the Court whereby the estate of any bankrupt shall be ordered to be released from sequestration shall have the effect of revesting in the bankrupt or in such person as the Court may appoint and upon such terms and subject to such conditions as the Court may by order declare all the property of the insolvent undisposed of which by virtue of this Act shall be vested in any Receiver or trustee of any bankrupt estate in the same manner as if the estate of such bankrupt had never been sequestrated Provided that all sales and disposition of property and payments duly made and all acts theretofore done by such assignee or trustee shall be valid.

## PART VII.

### *Examination of Bankrupt and Witnesses.*

Examination sitting.  
Sec. 34 and 67 of  
Insolvent Act 5 Vic.  
No. 17.

140. The Court shall within three months after sequestration appoint a public sitting for examination to be holden at the single or second meeting whereat the bankrupt shall attend to account for his bankruptcy and submit to be examined on oath by the Official Receiver or trustee or any creditor as to his trade dealings and estate and upon any matter which may tend to disclose any secret alienation transfer surrender delivery or concealment of his estate or effects and the Court may adjourn such sitting from time to time as it may think fit and the Registrar shall give notice of the time and place at which such sitting is to be held by advertisement in the *Gazette* and one daily newspaper published in Sydney and shall give notice to the insolvent in the prescribed mode.

Power of Court to  
summon persons  
before it suspected of  
having property of  
bankrupt.

141. The Court may on the application of the Official Receiver or trustee or of any creditor at any time after a sequestration summon before it or a Commissioner in the country the bankrupt or his wife or any other person known or suspected to have in his possession any of the



- the estate or effects belonging to the bankrupt or supposed to be indebted to the bankrupt or any person whom the Court may deem capable of giving information respecting the bankrupt his trade dealings or property and the Court may require any such person to produce  
5 any documents in his custody or power relating to the bankrupt his dealings or property and if any person so summoned refuses to come before the Court or Commissioner at the time appointed or refuses to produce such documents having no lawful impediment made known to the Court or Commissioner at the time of the sitting and then allowed  
10 the Court or Commissioner may by warrant addressed as aforesaid cause such person to be apprehended and brought up for examination The Court or Commissioner may examine upon oath either by word of mouth or by written interrogatories any person so brought before it in manner aforesaid concerning the bankrupt his dealings or property If  
15 a bankrupt shall at his examination at the single or second meeting or any adjournment thereof or if the bankrupt his wife or any other person shall at any examination upon any summons under this section or any adjournment thereof being thereunto required refuse to lodge a true schedule or inventory of his estate and effects or to surrender the  
20 books papers writings documents bills or vouchers relating to his estate as aforesaid or shall at such sitting or upon such summons refuse to be sworn or shall refuse to answer any lawful question touching any of the matters aforesaid or shall refuse to sign or subscribe his examination (not having any lawful objection allowed by the Court or Commissioner) the Court or Commissioner may commit him to such prison as it shall think fit there to remain without bail until he submit to do the matters aforesaid or to be sworn or make answer or sign and subscribe such examination as aforesaid If a bankrupt or any other  
30 person shall while under examination before the Court be guilty of prevarication or evasion the Court may commit such bankrupt or other person to prison for any term not exceeding fourteen days Any summons for the examination of a bankrupt or other person under this section may be adjourned from time to time as often as it may seem fit to the Court or Commissioner and the Court or Commissioner  
35 shall have and may exercise at any adjournment of any such summons all the powers hereby given The bankrupt and every other person summoned before the Court or Commissioner to be examined or give evidence or make disclosure of the trade dealing estate or effects of any insolvent under this section shall be entitled to the same conduct  
40 money and expenses as a witness in any civil suit.
142. If any person be committed by the Court or Commissioner for refusing to answer any question every such question shall be set out in the warrant and any person committed under this Part of this Act for refusing to answer may make application by appeal to the  
45 Supreme Court or to the Court as the case may be in order to be discharged from such commitment and if there shall appear to the said Supreme Court or Court any defect or irregularity in the form of the warrant such Supreme Court or Court may and is hereby required to amend the same and to recommit such person to the same prison there  
50 to remain until he shall conform as aforesaid unless it appear to such Supreme Court or Court that the person committed has fully answered all lawful questions put to him on his examination aforesaid or (if such person was committed for refusing to be sworn or for not signing his examination) unless it shall appear to such Supreme Court or Court that  
55 he had a sufficient reason for the same Provided that such Supreme Court or Court may consider the whole examination of such party whereof any such question was a part and if it shall appear from the whole examination that the answer or answers of the party committed is or are satisfactory such Supreme Court or Court shall and may order

32 and 33 Vic. c. 71  
s. 96.  
Sec. 70 of Insolvent  
Act.

In what cases the  
bankrupt and others  
under examination  
may be committed.

Commitment of  
bankrupt or witness.

Adjournment of  
summons.

Expenses to be  
tendered to persons  
summoned.

As to discharge from  
prison by Court or  
Judge of person  
under commitment.  
Sec. 72 of Insolvent  
Act.



Questions put to insolvent.

order the party so committed to be discharged No question put to any bankrupt on any examination under this Act shall be deemed unlawful by reason only that the answer thereto may expose him to punishment under this Act.

## PART VIII.

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### Certificate.

Certificate how and when applied for.

Sec. 17 of Act 7 Vic. No. 19.

143. After the expiration of four months from the date of the order of sequestration a bankrupt may cause an advertisement to be inserted in the *Government Gazette* and one daily newspaper stating his intention on a day named therein and not less than twenty nor 10 more than thirty days from the day of the publication of such advertisement to apply to the Court for a certificate of discharge under this Act And every bankrupt shall also give twenty days' notice in writing to the Official Receiver or trustee of his estate of such his intended application and of the time when the same is to be made and such appli- 15 cation shall be heard on such day and on any day or days of adjournment therefrom and the Receiver trustee or any creditor may be heard in opposition to such application upon giving notice of such opposition and the grounds thereof in such manner and at such time as may be prescribed or be directed by order in any particular case The Court 20 shall before granting any such application whether the Official Receiver or trustee or any creditor oppose or not consider the proceedings and depositions (if any) of the bankrupt and any evidence produced by him and if there be opposition then the said depositions (if any) and any other evidence produced by the Receiver trustee creditor or bank- 25 rupt (as the case may be) and shall make order thereon in accordance with the provisions of this Act.

Proceedings on such application.

Conditions as to certificate.

Victorian Act 32 and 33 Vic. c. 71 s. 48.

144. Such certificate shall not be granted unless it is proved to the Court that a dividend of not less than seven shillings and sixpence in the pound has been or will be paid out of the bankrupt estate or 30 might have been or might be paid except through the negligence or fraud of the Official Receiver or trustee but the Court may dispense with this condition or modify the same by reducing the required dividend if the bankrupt shall prove to its satisfaction that the failure to pay seven shillings and sixpence in the pound has arisen from circum- 35 stances for which the bankrupt cannot in the opinion of the Court justly be held responsible.

Refusal of certificate of bankrupt guilty of misdemeanor. Victorian Act.

145. If the bankrupt has been convicted of any felony or misdemeanor under this Act his certificate shall be refused or if the bankrupt has not been tried but the Court is of opinion that the bankrupt 40 has been guilty of a felony or misdemeanor under this Act the certificate is required to be refused and the Court may in addition sentence such bankrupt to imprisonment with or without hard labor for any period not exceeding *one* year.

Court shall refuse certificate in certain cases.

Sec. 18 of 7 Vic. No. 19 Victorian Act.

146. Such certificate shall be refused if the bankrupt has been 45 guilty of any of the eight offences next following (that is to say)—

(I.) If the bankrupt shall have wilfully delayed sequestrating his estate or avoided the sequestration thereof in order to benefit or to assist one or more creditors to the disadvantage and loss of the rest. 50

(II.) If the bankrupt shall have by habits of gambling extravagance or vice diminished his means of payment so as to lead to his becoming bankrupt.

(III.)



- (III.) If the bankrupt has not so far as he was examined there-  
upon made a full and fair disclosure of his property in  
possession reversion or expectancy.
- 5 (IV.) If the bankrupt shall have wilfully violated or omitted to  
comply with any of the provisions of this Act.
- (V.) If the bankrupt shall have contracted any debt or debts to  
any of his creditors without in fact intending to pay or  
having at the time he contracted such debt or debts any  
10 reasonable or probable expectation of being able to pay the  
same.
- (VI.) If the bankrupt being at the time indebted to any of his  
creditors shall have unjustifiably made away with or disposed  
of otherwise than *bond fide* and for a valuable consideration  
any of his property.
- 15 (VII.) If he shall have unlawfully expended for his own benefit  
or appropriated to his own use any property of which he  
shall at the time have had the charge or disposition as a  
trustee or agent factor or broker only and not in any other  
capacity.
- 20 (VIII.) If the bankrupt shall have given any creditor a fraudulent  
or unjust preference.

And such certificate shall be refused or suspended if the bankrupt has been guilty of any of the other offences following (that is to say)—

Certificate refused or  
suspended in other  
cases.

- 25 (IX.) If the bankrupt has not kept reasonable accounts or entries  
of his receipts and payments
- (X.) If the bankrupt being a trader shall neglect to keep or to  
produce to the Official Receiver or Trustee an account to be  
taken annually for the *three years* last preceding his seques-  
tration showing his stock in trade bills receivable and payable  
30 and indebtedness upon open accounts the said stock-book to  
be legibly written and quantities values and summations to  
be clearly shown.
- (XI.) If there shall be an unsatisfied judgment against the bank-  
rupt in any action for assault breach of promise or seduction  
35 or for any malicious injury or for damages in any suit for  
criminal conversation.
- (XII.) If the bankrupt shall have put any creditor to any vexatious  
or unjustifiable expense by any frivolous or inequitable  
defence or claim in any action suit or other proceeding.
- 40 (XIII.) If the bankrupt has not complied with the lawful directions  
and demands of the Official Receiver or Trustee of his estate.
- (XIV.) If the bankrupt being a trader has carried on trade by  
means of fictitious capital.

45 And the Court when refusing or suspending the certificate (for such  
period not exceeding *two years* as it may deem just) may in either case  
also if it see fit sentence the insolvent to imprisonment for any period  
not exceeding *six months*.

Court may imprison.

50 147. If it shall appear to the Court upon an application for a  
certificate that though the bankrupt has not been guilty of any of the  
offences mentioned in the two last preceding sections his conduct before  
or after sequestration has been fraudulent or culpably negligent the  
Court may suspend or refuse the certificate for any period not exceeding  
*one year*.

Court may have  
regard to conduct  
other than the  
matters already  
specified.

55 148. In any case if the Court shall be of opinion that a certificate  
ought not to be granted unconditionally it may grant a certificate  
subject to any condition touching any salary pension emoluments profits  
wages earnings or income which may afterwards become due to or be  
earned by the bankrupt and generally touching after-acquired property.

Conditional certif-  
cate.



No application to be allowed after *twelve months*.

Victorian Act.

149. No application for a certificate shall be entertained by the Court after the expiration of *twelve months* from the date of the order of sequestration unless notice of intention to apply had been duly advertised before the expiration of the said period except by leave of the Court upon such terms (if any) as the Court may think fit. 5

Form of Certificate.

Certificate when to be drawn up.

Victorian Act and sec. 16 of 7 Vic. No. 19.

150. The certificate shall be in the prescribed form and shall be under the hand of the Judge and the seal of the Court but shall not be drawn up or take effect until after the expiration of the time allowed for appeal or if an appeal be brought after the decision of the Supreme Court upon such appeal and shall bear date either the day after the expiration of the time allowed for appeal or the day of the decision of the Supreme Court on appeal as the case may require. Such certificate shall upon taking effect discharge the bankrupt from all debts provable under his bankruptcy save as herein otherwise provided and if thereafter any action shall be brought against him for any such debt claim or demand he may plead in general that the cause of action accrued before he became bankrupt and may give this Act and the special matter in evidence and the certificate shall be sufficient evidence of the sequestration and the proceedings precedent thereto. And such certificate may be revoked and made void by the Court for fraud or for perjury or subornation of perjury committed by the bankrupt in obtaining such certificate or by his agent with the knowledge and privity of such bankrupt. 10 15 20

Effect of certificate.

Effect of certificate in case of partners &c.

151. The certificate shall not release or discharge any person who was a partner with the bankrupt at the time of the bankruptcy or was then jointly bound or had made any joint contract with him. 25

Contract or security &c. with intent to induce creditor to forbear opposition void.

152. Any contract covenant or security made or given by a bankrupt or other person with to or in trust for any creditor for securing the payment of any money as a consideration or with intent to persuade the creditor to forbear opposing the certificate or to appeal against the grant of the same shall be void and any money thereby secured or agreed to be paid shall not be recoverable and the party sued on any such contract or security may plead in general that the cause of action accrued after sequestration and may give this Act and the special matter in evidence but no such security if negotiable shall be void as against a *bonâ fide* holder thereof for value without notice of the consideration for which it was given. If a creditor of a bankrupt shall obtain any sum of money or any goods chattels or security for money from any person as an inducement for forbearing to oppose or for consenting to the allowance of the certificate of such bankrupt or to forbear to appeal against the grant of the same every such creditor so offending shall forfeit and lose for every such offence the treble value or amount of such money goods chattels or security so obtained which may be recovered by any person upon information before and by order of the Court in the prescribed manner. 30 35 40 45

Court may hold insolvent to bail to come up for judgment.

153. If upon an application for a certificate the same is opposed the Court may require the bankrupt to find bail with two sufficient sureties to attend upon the day appointed for giving judgment on such application or in default may commit the bankrupt to prison until the day so appointed. 50

Proceedings where insolvent does not apply.

154. If the bankrupt shall not within *nine months* after sequestration have applied for his certificate the Court may on the application of the official receiver or Trustee or any creditor require the said bankrupt by summons and (in case of his refusal or neglect) may compel him by warrant to appear before the Court and thereupon and from thenceforth the Court may grant refuse or suspend his certificate and punish or otherwise deal with such bankrupt as if the certificate had been applied for by him. 55



155. If a bankrupt before he obtains his certificate becomes seized possessed or entitled of or to any property the official receiver or trustee shall if not otherwise directed by special resolution of a general meeting of creditors or by the committee of inspection apply to the Court upon notice to the bankrupt and such other persons (if any) as the Court may direct for an order directing that such property shall be dealt with under this Act and applied in payment of the creditors and the Court may make such order thereon but the Court shall in doing so have such regard to the rights of creditors of such bankrupt whose debts may have been incurred since the sequestration as it may deem just.

Duty of trustee as to after-acquired property.

156. Any assignee official receiver or trustee becoming bankrupt and being indebted to the estate of which he was assignee or official receiver or trustee in respect of any sum of money improperly retained or employed by him if he shall obtain his certificate and allowance thereof shall not be discharged thereby as to his future effects in respect of the said debt.

When insolvent assignee not discharged as to his future effects.

## PART IX.

### Offences against the Bankrupt Law.

157. As to persons other than the bankrupt the following provisions shall be made :—
- (I.) Any person who shall wilfully conceal any real or personal estate of a bankrupt with intent to defraud his creditors shall be deemed guilty of a misdemeanor and on conviction thereof shall suffer imprisonment with or without hard labour for any period not exceeding *three* years.
- (II.) Every person who shall forge the seal or any order certificate or process of the Court or who shall serve or enforce any such forged order or process knowing the same to be forged or deliver or cause to be delivered to any person any paper falsely purporting to be the original or a copy of any summons certificate order warrant or other process of the Court or Commissioner or who shall act or profess to act under any false colour or pretence of such order warrant or other process shall be guilty of a misdemeanor and being convicted thereof shall be imprisoned with or without hard labor for any term not exceeding *three* years.
- (III.) If any person shall dispose of receive remove retain conceal or embezzle any property moneys or securities for money belonging to any bankrupt estate which have been attached knowing the same to have been so attached and with intent to defeat the said attachment or shall hinder or obstruct or endeavor to hinder or obstruct the sheriff messenger or other person authorized to make the same such person shall on conviction thereof before the Court or any two Justices suffer imprisonment with or without hard labor for any period not exceeding *six* months.
- (IV.) If any person shall whether before or after sequestration receive or accept any property from the bankrupt or from any person on his behalf with intent to defraud the creditors of the bankrupt such person shall be deemed guilty of a misdemeanor and on conviction thereof suffer imprisonment with or without hard labor for any period not exceeding *three* years.

Concealing bankrupt's effects.

32 and 33 Vic. c. 62 s. 14.

Persons forging seal &c. guilty of misdemeanor.

As to offence of removing embezzling &c. any property under attachment.

From sec. 75 of 5 Vic. No. 17.

As to offence of knowingly receiving any fraudulent alienation &c. from insolvent.

From sec. 74 of 5 Vic. No. 17.



Inserting false advertisements.

- (v.) Any person who shall insert or cause to be inserted in the *Gazette* or in any newspaper any advertisement purporting to be under this Act without authority or knowing the same to be false in any material particular shall be guilty of a misdemeanor and on conviction thereof shall suffer imprisonment 5  
for any period not exceeding *three* years.

False claim &c. a misdemeanor.

- (vi.) If any creditor or other person in any bankruptcy or liquidation by arrangement or composition with creditors in pursuance of this Act wilfully and with intent to defraud makes any false claim or any proof declaration or statement 10  
of account which is untrue in any material particular he shall be guilty of a misdemeanor punishable with imprisonment not exceeding *three* years with or without hard labour.

Punishment of fraudulent bankruptcy.

158. Any bankrupt shall in each of the cases following be deemed guilty of fraudulent bankruptcy and on conviction thereof 15  
shall be liable to be imprisoned for any time not exceeding *three* years with or without hard labour (that is to say) —

32 and 33 Vic. c. 9  
s. 11.

- (i.) If he does not to the best of his knowledge and belief fully and truly discover to the Court upon any examination under this Act or to the official or elected assignee or trustee administering his estate for the benefit of his creditors all his property real and personal and how and to whom and for what consideration and when he disposed of any part thereof except such part as has been disposed of in the ordinary way of his business or trade (if any) or laid out in the ordinary expense 25  
of his family unless the jury is satisfied that he had no intent to defraud.
- (ii.) If he does not deliver up to such official or elected Assignee or Trustee or as he or they may direct all such part of his real and personal property as is in his custody or under his 30  
control and which he is required by law to deliver up unless the jury is satisfied that he had no intent to defraud.
- (iii.) If he does not deliver up to such official or elected assignee or trustee or as he or they may direct all books documents papers and writings in his custody or under his control relating 35  
to his property or affairs unless the jury is satisfied that he had no intent to defraud.
- (iv.) If whether before or after sequestration he conceals any part of his property to the value of *ten* pounds or upwards or conceals any debt due to or from him unless the jury is satisfied that he had no intent to defraud. 40
- (v.) If whether before or after sequestration he fraudulently removes any part of his property of the value of *ten* pounds or upwards.
- (vi.) If he makes any material omission in any statement relating 45  
to his affairs unless the jury is satisfied that he had no intent to defraud.
- (vii.) If knowing or believing that a false debt has been proved by any person under the bankruptcy he fail for a period of *one* month to inform such official receiver or elected assignee 50  
or trustee as aforesaid thereof.
- (viii.) If after sequestration he prevents the production of any book document paper or writing affecting or relating to his property or affairs unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law. 55
- (ix.) If whether before or after sequestration he conceals destroys mutilates or falsifies or is privy to the concealment destruction mutilation or falsification of any book or document affecting or relating to his property or affairs unless the jury is satisfied that he had no intent to conceal the state of his 60  
affairs or to defeat the law.

(x.)



- 5 (x.) If whether before or after sequestration he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs unless the jury is satisfied that he had no intent to conceal the state of his affairs or to defeat the law.
- 10 (xi.) If whether before or after sequestration he fraudulently parts with alters or makes any omission or is privy to the fraudulently parting with altering or making any omission in any document affecting or relating to his property or affairs.
- 15 (xii.) If after sequestration or at any meeting of his creditors within *four* months next before sequestration or the commencement of the liquidation he attempts to account for any part of his property by fictitious losses or expenses.
- (xiii.) If within *four* months next before sequestration he by any false representation or other fraud has obtained any property on credit and has not paid for the same.
- 20 (xiv.) If within *four* months next before sequestration he being a trader obtains under the false pretence of carrying on business and dealing in the ordinary way of his trade any property on credit and has not paid for the same unless the jury is satisfied that he had no intent to defraud.
- 25 (xv.) If within *four* months next before sequestration he pawns pledges or disposes of otherwise than in the ordinary way of his trade or business any property which he has obtained on credit and has not paid for unless the jury is satisfied that he had no intent to defraud.
- 30 (xvi.) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy.

159. If any person who has his estate sequestrated or after the presentation of a petition for compulsory sequestration or within *four* months before such presentation quits New South Wales and takes with him or attempts or makes preparation for quitting New South Wales and for taking with him any part of his property to the amount of *twenty* pounds or upwards which ought by law to be divided amongst his creditors he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of felony punishable with imprisonment for a time not exceeding *three* years with or without hard labour.

Penalty for absconding with property.  
32 and 33 Vic. c. 62, s. 12.

160. Any person shall in each of the cases following be deemed guilty of a misdemeanor and on conviction thereof shall be liable to be imprisoned for any time not exceeding *one* year with or without hard labour (that is to say)—

Penalty on fraudulently obtaining credit &c.

- 45 (I.) If incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud.
- (II.) If he has with intent to defraud his creditors or any of them made or caused to be made any gift delivery or transfer of or any charge on his property.
- 50 (III.) If he has with intent to defraud his creditors concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

32 and 33 Vic. c. 62 s. 13.

55 161. Where any person is liable under any other Act of Parliament or at Common Law to any punishment or penalty for any offence made punishable by this Act such person may be proceeded against under such other Act of Parliament or at Common Law or under this Act so that he be not punished twice for the same offence.

Punishments under this Act cumulative.  
*Ib.* s. 23.



## PART X.

*Miscellaneous.*

Justices of the Peace  
becoming bankrupt.  
*Id.* s. 22.  
Fees to be taken.

162. If any Justice of the Peace has his estate sequestrated under this Act he shall cease to hold such office.

163. The several Court fees mentioned in the Schedule of the said Act forty-seven Victoria number may continue to be taken in all matters and things to be done under this Act but the Court or any Commissioner may in cases of extreme poverty remit such fees. All Court fees shall be payable for and on behalf of Her Majesty into the Colonial Treasury except the fees payable to Commissioners in the country which shall be for their own use and benefit and such fees may be collected by means of stamps adhesive or otherwise as may be prescribed by Rule of Court with the approval of the Treasurer.

Attorney or solicitor  
may be heard.  
From sec. 8 of  
38 Vic. No. 1.

164. Every attorney and solicitor of the Supreme Court may appear and be heard in all matters and proceedings before the Judge in Bankruptcy and before the Registrar or Accountant in Bankruptcy without being obliged to employ counsel and if any person not being such attorney or solicitor shall practice in the bankruptcy jurisdiction he shall be deemed guilty of a contempt of Court.

Books to be kept by  
receiver or trustees.  
From 72nd section of  
Chamberlain's Act.

165. Every Official Receiver and trustee shall keep in manner prescribed proper books in which he shall from time to time cause to be made entries of all receipts and disbursements and any creditor of the bankrupt may subject to the control of the Court personally or his agent inspect such books and take copies or extracts therefrom at his own cost.

Accounts to be  
verified.  
From sec. 78 of  
Chamberlain's Act.

166. The account and plan of distribution to be submitted for audit as already provided and also any account shall be accompanied by an affidavit by the Official Receiver or the trustees respectively in the prescribed form.

Limitation of voting  
power of trustees.  
From sec. 88 of  
Chamberlain's Act.

167. The vote of trustee or of his partner solicitor or clerk or agent either as creditor or on proxy shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

Consolidation of  
petition.  
From sec. 106 of  
Chamberlain's Act.

168. Where two or more petitions are presented for compulsory sequestration in bankruptcy against the same debtor or against debtors being members of the same partnership the Court may consolidate the proceedings or any of them on such terms as the Court think fit.

Power to change  
carriage of pro-  
ceeding.  
From sec. 107 of  
Chamberlain's Act.

169. If the petitioner does not proceed with due diligence on his petition the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in amount and manner required by the Act in case of the petitioning creditor.

Continuance though  
debtor may die.  
From sec. 108 of  
Chamberlain's Act.

170. If a debtor against whom a petition for compulsory sequestration in bankruptcy has been presented dies the Court may order that the proceedings in the matter be continued as if he were alive.

Power to present  
petition against one  
partner.  
From sec. 110 of  
Chamberlain's Act.

171. Any creditor whose debt is sufficient to entitle him to present a petition for compulsory sequestration in bankruptcy against all the partners of a firm may present a petition against any one or more of the firm without including the other.

Power to dismiss  
petition against some  
respondents.  
From sec. 111 of  
Chamberlain's Act.

172. Where there are more respondents than one to a petition the Court may dismiss the petition as to one or more of them without prejudice to the effect of the petition or against the other or others of them.



173. Upon the request of any British Court having jurisdiction in bankruptcy or insolvency the Court shall act in aid and be auxiliary to such Court in all matters of bankruptcy or insolvency and the order of any such Court seeking aid shall be deemed sufficient to enable the Court to exercise in regard to the matters directed by the order such jurisdiction as either the Court which made the request or the Court to which the request is made could exercise in regard to similar matters within their respective jurisdictions.
174. No partnership association or company corporate or registered under the "Companies Act" shall be adjudged bankrupt under this Act but where proceedings are taken for the winding-up of the same under the said "Companies Act" the Equity Judge may on the application of any party interested or without such application transfer all further proceedings to the Court of Bankruptcy and thereupon the winding-up shall be administered in the Bankruptcy Court with the powers provided by this Act and with the powers otherwise existing by the "Companies Act" in the equitable jurisdiction of the Supreme Court.
175. All notices or other documents for the service of which no special mode is directed may be sent by prepaid post-letter to the last known address of the person to be served therewith.
- Court to be auxiliary to British Court in bankruptcy or insolvency.  
Adapted from sec. 74 of Bankruptcy Act 1869 and sec. 118 of Chamberlain's Act.
- Exclusion of partnerships under "Companies Act" but power to transfer proceedings to Court of Bankruptcy.  
Adapted from secs. 123 and sub-sec. 5 of sec. 125 of Chamberlain's Act.
- Notices by post.  
Sec. 142 of Chamberlain's Act.

*Formal Defects.*

176. (I.) No proceedings in the bankruptcy jurisdiction shall be invalidated by any formal defect or by any irregularity unless the Court where an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied or removed by any order of the Court.
- (II.) No defect or irregularity in the appointment or election or confirmation of a receiver or trustee or member of a committee of inspection respectively shall vitiate any act done by him in good faith.
- Formal defects not to invalidate proceedings.  
From Bankruptcy Act 1869 and sec. 143 of Chamberlain's Act

SCHEDULES.



SCHEDULES.

FIRST SCHEDULE.

No. of Act.	Title of Act.	Extent of Repeal.
5 Vic. No. 9 ...	Advancement of Justice Act ...	Sections 33 34 35 36 and 37. 5
5 Vic. No. 17 ...	An Act for giving relief to insolvent persons and providing for the due collection administration and distribution of Insolvent Estates within the Colony of New South Wales and for the prevention of frauds affecting the same.	All the unrepealed sections. 10
7 Vic. No. 19 ...	An Act to amend an Act intituled " <i>An Act for giving relief to insolvent persons and providing for the administration of Insolvent Estates and to abolish imprisonment for debt.</i> "	The unrepealed sections. 15
8 Vic. No. 6 ...	An Act further to amend an Act intituled " <i>An Act for giving relief to insolvent persons and providing for the administration of Insolvent Estates and to abolish imprisonment for debt.</i> "	The whole. 20
8 Vic. No. 15 ...	An Act to amend an Act passed in the fifth year of Her Majesty's reign for the relief of insolvent debtors and also the Act lately passed for amending the same and abolishing imprisonment for debt.	The unrepealed sections. 25
10 Vic. No. 14 ...	An Act to remove difficulties in the disposal administration and distribution of Insolvent Estates—and rider thereto.	The whole.
17 Vic. No. 17 ...	An Act for the appropriation of unclaimed balances in Intestate and Insolvent Estates and for other purposes therein mentioned.	The whole except sections 1 and 6. 30
19 Vic. No. 33 ...	An Act to amend the Insolvent Law of New South Wales.	The whole. 35
20 Vic. No. 11 ...	An Act to provide for the deposit in the Colonial Treasury of moneys in charge of Officers of the Supreme Court.	The whole so far as relates to Assignees.
20 Vic. No. 24 ...	An Act to amend so much of the Insolvent Acts now in force as relates to directions of creditors.	The whole. 40
24 Vic. No. 20 ...	An Act to fix the salary and tenure of office of the Chief Commissioner of Insolvent Estates.	The whole.
25 Vic. No. 8 ...	An Act to amend the laws relating to Insolvency.	The whole except sections 1 2 and 3. 45
31 Vic. No. 9 ...	An Act to facilitate proceedings in Insolvency.	The whole.

SECOND SCHEDULE.

Debtor's Summons.

In the Supreme Court of New South Wales. } 50  
In Bankruptcy. }

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland  
Queen Defender of the Faith &c.

To A.B. (or A.B. and C.D.) of

WE warn you that unless within eight (8) days after the service of this summons on 55  
you exclusive of the day of such service you do pay to E.F. of the sum  
of pounds shillings and pence (and to G.H.  
of ) in the said Colony the sum of pounds shillings  
and pence (and so on if more than two creditors) being the sum (or sums) claimed  
of



of you by him (*or* them) according to the particulars hereunto annexed for (*state consideration*) or shall compound for the same to his (*or* their) satisfaction you will have committed an act of bankruptcy in respect of which your estate may be sequestrated as bankrupt on a bankruptcy petition being presented by the said E.F. (*and* G.H.) unless  
 5 you shall have within the time aforesaid applied to the Court to dismiss this summons on the ground that you are not indebted to him (*or* them) in the sum claimed or that you are indebted to him (*or* them) in a sum less than fifty pounds.

Given under the seal of the Supreme Court of New South Wales in Bankruptcy this      day of      A.D. 18

10

Registrar in Bankruptcy.

*To be endorsed on Summons.*

You are specially to note that the consequences which will follow any neglect to comply with the requisitions contained in the summons are that your estate may be sequestrated as bankrupt on the petition of E.F. (*and* G.H. &c.) should you not pay to or compound  
 15 with him (*or* them) for the sum claimed within eight days from the service of this summons on you.

If however you are not indebted to the said E.F. (*and* G.H. &c.) in the sum claimed or are only indebted to him (*or* them) in a sum less than fifty pounds you must make application to the Court within the like number of days to dismiss this summons  
 20 by filing with the Registrar an affidavit stating that you are not so indebted or only so to a less amount than fifty pounds who will thereupon fix a day for the hearing of your application.

I.M. Solicitor suing out this summons carrying on business at  
 or

25

This summons is sued out by E.F. (*and* G.H. &c.) in person.



of you by him (or them) according to the particular business entered for (state an-  
allegation) or shall compound for the same to his (or their) satisfaction you will pay  
committed an act of bankruptcy in respect of which you may be sequestrated as  
bankrupt on a bankruptcy petition being presented to the court (E.L. (and H.H.) unless  
you shall have within the time allowed applied to the court to discharge this summons  
on the ground that you are not indebted to him (or them) in the sum claimed or that  
you are indebted to him (or them) in a sum less than that claimed.

Given under the seal of the Supreme Court of New South Wales in Blank  
witness my hand and the seal of the said Court this 1st day of 1901.

10  
Deputy Registrar in Bankruptcy.

It is ordered that the respondent shall and lawfully may neglect to comply  
with the requirements of the summons and that when summons may be served  
as bankrupt on the respondent and if he does not pay to or compound  
with him for the sum claimed within eight days from the service of the  
summons on him.

If however, you are not indebted to the said E.L. (and H.H.) in the sum  
claimed or are only indebted to him (or them) in a sum less than the sum  
claimed, you may, within the time allowed, apply to the court to discharge this summons  
on the ground that you are not indebted to him (or them) in the sum claimed or only  
indebted to him (or them) in a sum less than that claimed.

11  
The summons issued out by the respondent on the 1st day of 1901.

12  
The summons issued out by the respondent on the 1st day of 1901.

13  
The summons issued out by the respondent on the 1st day of 1901.

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The summons issued out by the respondent on the 1st day of 1901.

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The summons issued out by the respondent on the 1st day of 1901.

30  
The summons issued out by the respondent on the 1st day of 1901.



(LEGISLATIVE COUNCIL.)

## Bankruptcy Procedure Bill.

(*As agreed to in Select Committee.*)

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- 137. Form and date of certificate.
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- 139. Effect in case of partners.
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#### Indictable Offences—Ss. 144 to 147.

- 144. Punishment for enumerated offences—Concealing property—Forging process  
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- 148. Voting power of trustee.
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#### Debtors' Summons.

#### Notice.



Legislative Council.

48<sup>o</sup> VICTORIÆ, 1884.

## A BILL

For regulating the Procedure in and Consolidating and  
Amending the Law as to Bankruptcy.

(*As agreed to in Select Committee.*)

**W**HEREAS by the "Bankruptcy Law Jurisdiction Act" provision Preamble.  
is made for the establishment of a jurisdiction in the Supreme  
Court in Bankruptcy and for the appointment of a Judge in whom  
primarily such jurisdiction shall be vested and for the appointment of  
Official Assignees and a Registrar and Accountant and other necessary  
officers in aid of that jurisdiction Be it therefore enacted by the  
Queen's Most Excellent Majesty by and with the advice and consent  
of the Legislative Council and Legislative Assembly of New South  
Wales in Parliament assembled and by the authority of the same as  
follows:—

### *Preliminary.*

1. This Act shall commence on the *first* day of *October* one Title and  
thousand eight hundred and eighty-four and may be cited as the commencement.  
"Bankruptcy Procedure Act of 1884."

2. For the purposes of this Act unless the subject or context Explanation of  
requires a different construction the words under inverted commas terms.  
in this section shall have the meanings and include the matters next  
following such words—

"Bankrupt"—Any person in respect of whose property a Sequestration Order is made or in whom such property was then  
legally vested.

c 71—A

"Bankrupt



"Bankrupt Estate"—All property to which the bankrupt is at the time of such Order or to which before obtaining his certificate he shall become entitled at law or in equity in possession remainder or expectancy or to which the official assignee upon such Order becomes entitled.

"Sequestration"—The vesting of the Bankrupt Estate in an Official Assignee under such Order.

"Property"—Money goods land and every other description of property ordinarily so called bills notes debts and other choses in action easements and every estate and interest present or future vested or contingent arising out of or incident to such property And the word "estate" shall in general be taken to mean the bankrupt estate and to include all such property.

"Official Assignee"—Either such Assignee or the elected Trustee as the context indicates And "Assignee" shall in general be taken to include such Trustee.

"First Meeting"—The first of two or three meetings of creditors under this Act or where only a single meeting is provided for then such "Single Meeting."

"Ordinary Resolution"—A resolution passed by a majority in number of creditors present personally or by proxy at a meeting of creditors and voting thereat.

"Special Resolution"—A resolution passed by a majority in number and three-fourths in value of creditors so present and voting.

"Suit" and "Action" severally—Any suit action or other proceeding at law or in equity.

Existing right of audience.

3. Nothing in this Act shall affect any right of audience that any person had immediately before the commencement of this Act and all persons who had that right before the Chief Commissioner of Insolvent Estates shall have equally the right of audience before the Judge in bankruptcy.

Initiation of Proceedings.

4. Any person or body of persons may become bankrupt on his or their petition as hereinafter provided or may be made bankrupt on the petition of a creditor after an act or default termed an act of bankruptcy.

#### *Sequestration Order and Proceedings thereon—Ss. 5 to 31.*

Surrender by person declaring himself insolvent.

5. Upon petition to the Judge in bankruptcy by a person setting forth that he is unable to pay his debts—and is desirous of surrendering his estate in bankruptcy for the benefit of his creditors—the Judge may make an order termed a sequestration order vesting such estate in one of the official assignees.

The like by person representing estate of others.

6. Upon the petition of any person in whom the administration of the estate of a person deceased is vested—or in whom the estate of any person is vested in trust for creditors—setting forth the insufficiency of such estate for payment of the debts for which it is liable—or upon the petition of the greater number of the partners in New South Wales of a firm trading or having any estate therein setting forth the like insufficiency of such estate—the Judge may make a like sequestration order as to such estate.

Acts of bankruptcy.

7. Every act or default by a debtor hereinafter specified shall be deemed to be an act of bankruptcy—

(a) That he has in New South Wales or elsewhere made a conveyance or assignment of his property or any part thereof in trust for the benefit of his creditors generally.

(b)



- (b) That he has in New South Wales or elsewhere made a conveyance assignment gift delivery or transfer of his property or any part thereof with intent to defeat or delay his creditors or any of them or whereby he has become unable to pay his debts.
- (c) That he has with intent to defeat or delay his creditors or any of them departed out of New South Wales—or being out of New South Wales has continued to absent himself therefrom—or has departed from his dwelling-house or otherwise absented himself.
- (d) That he has filed in the Court a declaration of his inability to pay his debts.
- (e) That he has not within five days after the seizure of his property or part thereof under an execution against him for debt satisfied the same by payment or otherwise.
- (f) That he has been adjudged bankrupt or insolvent by a British Court of competent jurisdiction out of New South Wales—of which fact a copy of the order made by such Court certified under its seal shall be sufficient evidence.
- (g) That he has not within five days satisfied the process on a judgment decree or order obtained by a creditor after having been required so to do by the officer charged with its enforcement.
- (h) That he has not presented a petition under the fifth section of this Act within forty-eight hours after having at a convened meeting of his creditors admitted that he is unable to pay his debts and been thereupon required by a majority of the creditors present to present such a petition.
- (i) That he has given a preference in favour of a creditor which if his estate were sequestrated would be deemed to be a fraudulent preference of such creditor.
- (j) That he has for eight days succeeding the service on him of a debtor's summons neglected to pay his creditor the debt therein mentioned or to secure or compound for the same.

8. The summons mentioned in the preceding section shall be Debtor's summons. substantially in the form contained in the schedule hereto. It shall be under the hand of the Judge and may be obtained by any creditor whose debt would entitle him to petition under the next following section on proof of such debt and that he has used all reasonable efforts to obtain payment. Within the time limited by such summons the debtor may apply to dismiss the same on the ground that he is not indebted as alleged and the Judge may dismiss the summons with or without costs or may upon security being given for payment of the debt and cost of establishing it stay all proceedings on the summons for such time as he thinks fit.

9. Any creditor or creditors to whom singly or in the aggregate Petitioning creditor there is due above the value of any security not less than fifty pounds may present a petition against the debtor if he shall within six months previously have committed an act of bankruptcy setting forth the amount of the debt or debts and the act or acts of bankruptcy and praying that such debtor's estate may be sequestrated and the Judge upon proof thereof may make a sequestration order conditional as hereinafter mentioned. Every creditor whose debt is wholly or in part Secured debts. secured shall either state in the petition that he is willing to surrender his security in which case the debt shall for the purposes of the petition be deemed to be unsecured or he shall state the value of the security in which latter case the debt shall for the purposes of the petition be deemed to be the amount due after deducting such value. Any person  
to



to whom when the petition is presented money is due but not payable until a future time shall be deemed a creditor within the meaning of this section.

The like against estate of a partnership.

10. Any such creditor or creditors of a partnership may present a like petition if the partners or any of them shall within six months previously have committed an act of bankruptcy praying that the partnership estate may be sequestrated and the sequestration order shall be valid although all the partners be not included therein—and the like proceedings may be taken concerning such estate and the partners severally as in the case of other estates and persons. Provided that nothing in this section shall prevent any creditor from proceeding separately against the partners and their separate estates in respect of debts due by the partnership as in the case of a debt due by any partner individually.

The like against estate of a deceased person.

11. Any such creditor or creditors of the estate of a person deceased may present a like petition if any executor or administrator of such estate has committed an act of bankruptcy whereby the creditors may be defeated or delayed in obtaining payment of their debts praying that the estate may be sequestrated—and the like proceedings may be taken concerning such estate and its representatives as in the case of other estates and persons.

Costs under sequestration order.

12. All costs incurred in the matter of any bankruptcy shall be paid out of the estate and form a first charge thereon—provided that every petitioning creditor shall at his own cost prosecute all proceedings until the close of the second or single meeting of creditors after which the assignee first deducting the fees of Court and his own charges and expenditure (the same together with the petitioner's costs to be taxed by the proper officer) shall reimburse such petitioner his outlay.

Conditional Order.

13. Every sequestration order upon a creditor's petition shall be conditional in the first instance and shall specify a time within which cause may be shown against making the order absolute and shall be served personally on each respondent by delivering to him an office copy thereof unless there be reasonable ground to believe that he is keeping out of the way to avoid service or has left New South Wales in either of which cases the Judge may allow service to be in such manner as the Judge shall direct.

Service of same.

Notice of intention to oppose.

14. The respondent if he intends to oppose the order being made absolute shall within four days after service thereof file in the office of the Registrar if the respondent's residence is within twenty miles of Sydney or if at a greater distance shall put into the nearest post-office addressed to the Registrar a notice in writing of such intention signed by him which notice shall state whether he disputes the act of bankruptcy or the petitioning creditor's debt or both—and if he intends to rely on any special defence the notice shall contain the particulars of such defence—Provided that the Judge may on application enlarge the time for such filing or delivery.

Making order absolute or discharge thereof.

15. On the day appointed by the order or on the day to which the time may have been enlarged the Judge may finally determine thereon or postpone the determination for such time as he thinks fit and on the hearing if the respondent does not appear or if no notice of opposition has been given the order may be made absolute. If the respondent appears and notice of opposition has been given the proceedings upon the hearing shall be conducted as nearly as may be as on a trial at law and the order may be made absolute or discharged with or without costs as the Judge shall think just. If such order be discharged all questions affecting the estate of the respondent or the validity of any act relating thereto shall be determined as if no such order had been made.



16. If it appears to the Judge upon the hearing that the petition for sequestration was unfounded and vexatious or malicious he may allow the respondent then or at some other fixed time to prove any damage sustained thereby and may award such sum in respect thereof not exceeding *two hundred pounds* as the Judge shall deem fit and may compel payment thereof by summary process against the petitioner.

If petition unfounded and malicious.

17. If after the making of any sequestration order the petitioning creditor's debt is found insufficient to sustain such order or if it be discharged or allowed to lapse in consequence of the petitioning creditor's default or his collusion with the bankrupt the Judge within six months after such discharge or lapsing may on the petition of any other creditor or creditors whose debt or debts existed at the date of the sequestration direct that the sequestration be revived and thereafter it shall be prosecuted as if originally obtained on the last-mentioned petition.

Sequestration revived by another creditor.

18. If any person against whom a sequestration order has been made pays any money to any petitioning creditor or any one on his behalf or gives to such creditor any security for his debt or part thereof such payment gift or security shall be a new act of bankruptcy and the person receiving such money gift or security shall deliver up such security and repay or deliver the money or gift or its full value to the assignee for the benefit of the creditors and shall pay all the costs incurred by any other creditor in obtaining the revival of the sequestration.

As to payments &c. to petitioning creditor.

19. The Registrar shall forthwith publish in the *Gazette* a notice of every sequestration order and also send a like notice to the Registrar-General who shall make a note of the same in every index of registered instruments kept in his office for public inspection. The Registrar shall also send notice of every such order and notice of the issue of any debtor's summons to the Sheriff who shall forthwith register the same respectively in his office.

Registration of sequestration order

and debtor's summons.

20. The sequestration shall take effect from the date of the sequestration order or where the act of bankruptcy was neglect to comply with the requirements of a debtor's summons shall take effect from the time of registry of such summons and shall vest the bankrupt estate in the assignee from such date or time.

Commencement of sequestration.

21. Further execution of any judgment or process against the person or property of a bankrupt shall after sequestration be stayed and where any property has been seized by legal process but has not been sold it shall vest in and on demand be delivered to the assignee.

Effect of sequestration on judgments.

22. No action shall be brought against a bankrupt for any debt provable against his estate—and any pending action for such a debt shall upon the sequestration order be stayed and the plaintiff may prove such debt together with the costs then incurred. Any action pending against a bankrupt for damages sustained by an injury or wrong or breach of contract or for recovery of any other claim unliquidated in amount shall upon such order be stayed and the plaintiff after notice to the assignee to defend such action may proceed to judgment thereon which when recovered shall be a debt provable against the estate.

Effect upon actions.

23. A bankrupt in custody of the Sheriff or any other officer under legal process for a debt provable against the estate may be discharged by the Judge out of custody on such conditions as he shall think fit.

Effect on bankrupt in custody.

24. The Judge may at any time after the issue of a debtor's summons restrain further proceedings in any action or legal process against the debtor in respect of any debt provable against his estate or may allow such proceedings to be continued upon such terms as may be

Injunction may be granted after debtor's summons.



be just The Judge may also at any time after such summons appoint a receiver or manager of the property of the debtor or any part thereof and may direct immediate possession to be taken accordingly.

Powers and conduct  
of receiver manager  
&c.

25. Every receiver or manager appointed under the preceding section and the assignee or trustee in any estate shall for all purposes of obtaining and retaining possession of the property or business of the debtor be in the same position in all respects as a receiver and manager appointed by the Supreme Court in its Equitable Jurisdiction and the Judge may enforce such acquisition or retention accordingly Every person aggrieved by any act of such receiver or manager assignee or trustee may apply to the Judge who may confirm or disallow the act complained of and make such order in the premises as shall be just.

Effect on actions  
commenced by  
bankrupt.

26. Every action commenced by a person before his bankruptcy shall upon the sequestration order be stayed until the official assignee elects to prosecute or discontinue the same and unless he makes such election within six weeks after notice served on him by any defendant in such action the assignee shall be deemed to have abandoned the same Provided that a bankrupt may continue or may commence and carry on in his own name and for his own benefit any action for any personal injury or wrong done to himself or to any of his family.

Actions by or  
against assignee.

27. The assignee upon filing in the proper office a statement of the fact of the sequestration may continue in his own name any action except as last aforesaid to which the bankrupt is party or may discontinue the same and may defend any action against the bankrupt affecting his estate Whenever an assignee resigns dies or is removed no action by him affecting the estate shall be abated but upon a like statement of such resignation death or removal and that a new assignee has been appointed any Judge of the Court in which it is pending may allow the name of the new assignee to be substituted and the action may proceed accordingly.

Agent of creditor  
may act for him.

28. The agent of any creditor may do all acts authorised or required to be done by a creditor under this Act And where a creditor entitled to petition for the sequestration of an estate is absent from the Colony his agent if authorised to recover his debts or effects may present the petition and make the proof required in lieu of such creditor Provided that the person whose estate is sought to be sequestrated shall have the same rights and remedies in every such case against such agent as he has under this Act against the person in whose name such proceeding is taken and all notices summonses orders and documents may be served upon such agent and shall have the same effect as if served upon the creditor.

Signature by firm.

29. Any petition under this Act or acceptance of an offer of composition or security for composition or any release or authority to vote or to do any act affecting a bankrupt's person or estate purporting severally to be by a partnership shall be deemed duly signed if signed with the style of the firm by any partner thereof and any proof of debt may be made by one partner on behalf of the others.

Proof of  
sequestration.

30. In all proceedings where it is necessary to prove that any party was bankrupt or that his estate was sequestrated in bankruptcy it shall be sufficient to allege that such party being bankrupt within the meaning of this Act his estate was duly sequestrated and proof of such allegation may be made by the production of an office copy of the sequestration order which on proof of the identity of the party therein named shall be sufficient for the purposes of such allegation.

As to choses in action  
and joint contractors.

31. Every person to whom any chose in action belonging to the bankrupt estate is assigned under this Act may sue and be sued in respect thereof in his own name And where the bankrupt is a contractor jointly with another person such person may sue and be sued alone in respect of such contract.

*Meetings*



Meetings of Creditors—Ss. 32 to 40.

32. Every meeting of creditors except such as shall be convened by the assignee shall be advertised by the Registrar in the *Gazette* and at least one daily newspaper published in Sydney and shall be holden at such time and place as the Judge shall have appointed and if holden in Sydney shall take place before the Judge or Registrar and in any other part of the Colony before the Commissioner of the district who shall take the votes of the creditors on all matters to be determined at the meeting and shall certify to the Judge the proceedings thereat. Time and place for meetings.

33. Every meeting may from time to time be adjourned by the person before whom it is holden to such time and place as he may deem most convenient and all such things may be done at any adjournment as might have been done at the original meeting. Adjournments.

34. The Judge or Registrar or assignee may at any time summon a meeting of the creditors for the purpose of determining any question specifically submitted to them. Provided that notice of every meeting convened by the assignee shall be given to the creditors in such manner as the General Rules shall direct. Provided also that no business shall be transacted at any such meeting unless three creditors at the least entitled to vote (where there are three so entitled) are present in person or by proxy thereat. Special meetings.

35. There shall be three ordinary meetings of creditors in every estate which appears to the assignee to be of the value of *two* hundred pounds or upwards and such meetings shall be designated respectively the first second and third meetings but in every estate appearing to him to be under that value there shall ordinarily be only a single meeting which shall specially be so termed and be advertised accordingly. At such single meeting the bankrupt shall attend and all such matters may be done and directions given as are authorized to be done or given at the first second or third meeting except such matters and directions as relate to an offer of composition or other arrangement of a bankrupt's affairs. Three ordinary meetings.

36. Unless at such single meeting it appears to the Judge Registrar or Commissioner presiding that the assets of the estate exceed *two* hundred pounds in value he may forthwith rank the creditors who have proved their debts according to the legal order of preference and the creditors present may direct the assignee to collect and realize the assets and forthwith distribute the proceeds accordingly. And within three months next following or earlier if the Judge so directs the assignee shall frame an account of such assets and their proceeds with a plan of distribution for audit and approval as in other cases. But if the assets appear at such meeting to exceed *two* hundred pounds a second and third meeting shall be summoned as by this Act is provided. Single meeting.

37. The bankrupt shall as soon as possible after the issue (or where the sequestration is compulsory then after service on him) of the sequestration order attend at the office of the assignee and give every information in his power as to the bankrupt estate and shall if required deliver to such assignee a schedule thereof and of his liabilities and creditors and persons indebted to him together with all books of account vouchers and other documents and writings in the possession or power of such bankrupt relating to his estate and dealings and shall at all times as far as lies in his power assist the assignee in the collection and realization of the assets. The bankrupt shall attend every meeting at which he is required by the Judge or assignee to be present and shall obey all directions respecting the estate given to him by the creditors at any meeting provided that every such direction may be appealed from by the bankrupt or any creditor and shall be subject to reversal or alteration as the Judge may direct. Bankrupt's attendance and duties.



First Ordinary  
Meeting.

Furniture tools &c.

Second Ordinary  
Meeting.

Bankrupt's examina-  
tion thereat.

Third Ordinary  
Meeting.

38. The first meeting in any estate where a second and third ordinary meeting are required shall be for proof of debts and determining whether the bankrupt shall be allowed to retain his household furniture and personal effects or some and what part thereof Subject to the assent or dissent of creditors at that meeting the assignee may allow the bankrupt to retain his tools in trade and the wearing apparel of himself and his wife and children Provided that no resolution allowing retention of any other portion of the estate shall have effect unless approved of in writing by the Judge.

39. The second meeting shall be for proof of debts and deciding on measures for realization of the assets giving directions to the assignee for that purpose proceeding to the election of trustees deciding on any offer of composition or scheme of arrangement or appointing a committee of inspection Every resolution at that meeting shall be subject to appeal by the assignee the bankrupt or any creditor to the Judge who may confirm reverse or alter the same or remit the question for decision by a special meeting At that meeting the bankrupt shall attend for examination on oath as to the cause of his bankruptcy and as to his dealings and property including debts due to him and the state of his affairs generally and shall answer every lawful question put to him by the person presiding or by the assignee or any creditor and shall if so required lodge and verify (or may amend if already lodged) a schedule of such property showing all liens thereon and the value to the best of his belief of the available assets and shall surrender to the assignee if not already surrendered all books vouchers and writings relating to such dealings and property.

40. The third meeting shall be for receiving reports from the assignee or trustee and committee of inspection if any as to the conduct of the bankrupt the amount realized in the estate the expenses of or incident to such realization and the particulars of all assets outstanding if any for considering the proposed distribution of the funds available and expected and generally for determining all questions connected with the winding up of the estate.

#### *Proving Debts and Voting—Ss. 41 to 48.*

Proof of debt.

41. Every person claiming to be a creditor of the bankrupt may at the first or second meeting (or by leave of the Judge at the third or any special meeting) prove his debt against the estate by affidavit or otherwise to the satisfaction of the Judge or other person presiding and the proof shall by him be allowed or rejected subject to appeal as hereinbefore is provided Every person to whom the bankrupt was at the time of sequestration under legal liability to pay money at a future time shall be accounted a creditor and entitled to prove for the amount of money specified in the instrument under which it is payable but subject to a rebate at five per cent. per annum interest up to the time of maturity of the debt or if interest is included in such amount then at the rate charged.

Proofs before  
Assignee.

42. Every affidavit in proof of a debt may with the fee or fees payable in respect thereof be delivered or sent by post to the assignee who shall examine such proof and submit it with his report thereon at the next meeting to the Judge or other person there presiding for his allowance or rejection And the assignee shall keep a list in his office of all debts the proofs of which are allowed showing the nature and amount of each which list shall be open to inspection by the bankrupt or any creditor or other person interested.



43. No creditor shall be admitted to vote at any meeting unless at or before its commencement his debt shall have been or shall then be proved and allowed and deposited with the Registrar. Every creditor so admitted may vote in person or by proxy provided that the instrument of delegation in a form prescribed by the General Rules shall have been deposited with the Judge or other person presiding at or before the commencement of the meeting. Voting.

44. The decision of every question at a meeting shall be by Ordinary Resolution except where hereinafter otherwise provided or unless one creditor entitled to vote and whose proved debt amounts to *one hundred* pounds or two creditors so entitled whose proved debts amount unitedly to *one hundred and fifty* pounds require the voting to be by number and value in which case the decision shall be by Special Resolution. No creditor whose proved debt is under *twenty* pounds shall be reckoned in number but his debt shall be included in the votes as to value. Resolution Ordinary or Special.

45. No person acting or claiming to act as proxy at a meeting shall be admitted to vote on any resolution or proposal thereat which would directly or indirectly place himself or his principal or any partner of his in a position to receive remuneration or emolument out of the estate. Certain proxies disqualified.

46. All liabilities of the bankrupt although contingent may be proved against his estate upon an estimate being made by the assignee (subject to appeal) as to the value of the contingency provided that if the Judge thinks it not susceptible of valuation the claim of debt in respect thereof shall not be allowed. And where any money is payable at fixed periods and the sequestration order is not made at one of them a proportionate part of such money up to the date of the order may be proved—Any person entitled to enforce against the bankrupt the payment of costs or other money by process of contempt may prove his claim as in case of a debt. Contingent and periodical debts. Money due under certain process.

47. Whenever a claimant who has not proved his debt may eventually be able to establish the same the Judge may allow it to be entered as a claim and appoint a time for its establishment and may direct the reservation of a sufficient sum for payment of a dividend thereon. Where a debt is not proved until after payment of a dividend the creditor shall be entitled to payment only out of the remaining assets ratably with the other then unpaid creditors. Time extended for proofs. Proof after dividend.

48. The Judge may at any time before confirmation of the plan of distribution or afterwards in case of proved fraud or perjury expunge or reduce a proof of debt on the application of the assignee or bankrupt or any creditor on such terms as the Judge thinks fit. And pending the disposal of any such application after notice to him thereof the person whose proof of debt is impeached shall not vote at any meeting. Expunging or reducing proofs.

*Preferential debts—Special Provisions—Set-off—Ss. 49 to 55.*

49. No distress for rent shall be levied after the sequestration order but the landlord shall receive out of the estate so much rent as was then due or as by this Act is made provable for a period not exceeding three months and may prove and share ratably with other creditors for the balance. Rent.

50. All local rates due at the date of the sequestration order and not in arrear more than twelve months and all salaries or wages due at that date to any clerk servant workman or labourer for a period not exceeding *four* months and in amount not exceeding *fifty* pounds severally shall be payable in full unless the estate is insufficient to meet all such payments in which case the debts shall as between the claimants abate in equal proportions. Rates and wages.



Articled Clerks and  
Apprentices.

51. Where at the date of the sequestration order any person was an articled clerk to the bankrupt the order shall if the bankrupt or clerk gives notice in writing to the assignee to that effect be a discharge of the articles of agreement and if any money has been paid on behalf of such clerk to the bankrupt as a premium the assignee may on the clerk's application pay such sum as the assignee thinks reasonable out of the estate to or for the use of the clerk. Or the assignee may on the clerk's application transfer the articles of agreement to some other person. The like provisions shall apply to the case of an apprentice and to his indenture of apprenticeship.

Pro rata abatement.

52. All sums preferentially payable under the three last preceding sections shall between themselves be ranked equally and if the assets are not sufficient to pay all such sums they shall abate in equal proportions.

Interest on debts.

53. Interest on any debt may be allowed if interest would be allowable in an action for such debt. Where the bankrupt at the date of the sequestration order was liable in respect of distinct contracts as member of two or more firms or as a sole contractor and also as member of a firm proof shall be receivable in respect of such contracts against the estates respectively liable thereupon.

Distinct contracts.

Set-off.

54. Where there have been mutual credits and debts or other mutual dealings between the bankrupt and the person claiming to prove a debt an account shall be taken of what is due from the one to the other in respect of such dealings and the amounts due respectively shall be set-off the one against the other and the balance on such account shall be claimed or paid on either side.

Secured creditors.

55. A creditor holding security on any property of the bankrupt by lien or otherwise may on giving up such security prove for his whole debt. He shall also be entitled to a dividend in respect of any balance due after realizing or giving credit for the value of his security. A creditor holding any such security and not complying with these conditions shall not share in any dividend.

#### *Composition or Scheme of Arrangement—Ss. 56 to 63.*

Proposal for  
composition &c.

56. If at or before the first meeting the bankrupt or any person on his behalf shall submit to the assignee a proposal for a composition in satisfaction of his debts or a proposal for a scheme of arrangement of his affairs the creditors may at such first meeting or at the second meeting or any adjournment thereof determine by special resolution to entertain or reject such proposal. Every such proposal shall be accompanied by a statement showing the bankrupt's liabilities and assets and generally the state of his affairs and where such statement has been delivered to the assignee a sufficient time before the first meeting he shall report to the meeting thereon.

Special reference.

57. The creditors may at any such meeting by special resolution before determining to entertain or reject the proposal refer the same for investigation and report (or further report as the case may be) to the assignee or to two or more of themselves with or without such assignee and after the coming in of his or their report may at an adjourned or special meeting finally determine the matter. The proposal may before acceptance be modified or otherwise varied by the bankrupt but no composition or scheme shall be accepted except at a meeting (special or by adjournment) duly advertised and holden after that at which it was first considered or shall be binding on any creditor until approved of by the Judge which approval may be appealed against by any creditor entitled to vote and whose debt exceeds fifty pounds.

Acceptance and  
Approval.



58. If the composition or scheme does not provide for payment to the creditors of five shillings in the pound the Judge shall not approve of it unless in his opinion the bankruptcy was caused by misfortune without any misconduct on the part of the debtor and if at any time after approval he shall be satisfied that such opinion was erroneous he may declare the creditors released from the terms of the composition or scheme but no payment made in the meantime thereunder shall be disturbed. Where composition to be disallowed.

59. A composition or scheme duly accepted and approved of under this Act shall be binding on all the creditors so far as relates to provable debts due to them from the debtor and the certificate of the assignee that a composition or scheme has been so accepted and approved of shall in the absence of fraud be conclusive as to its validity. Effect of allowance.

60. The creditors may by special resolution vary the provisions of any composition or scheme previously accepted without prejudice to persons taking interests under those provisions who do not assent to the variation but such resolution shall not take effect until approved of by the Judge whose approval may be obtained in the manner and on the conditions provided in the case of the original composition or scheme. Varying composition.

61. Upon approval of any such composition or scheme the Judge may supersede the sequestration or direct that it be suspended for a period named by him (which may be enlarged from time to time) and at the expiration of the final period that the sequestration be superseded but he may notwithstanding make at any time all necessary orders for enforcing the provisions of the composition or scheme on the application of any person interested therein or affected thereby Disobedience of an order made on any such application shall be deemed a Contempt of Court. Superseding sequestration.

62. If default be made in the payment of any instalment due in pursuance of the composition or scheme or in the performance of any condition or provision therein or if it appears to the Judge that the composition or scheme cannot proceed without injustice or undue delay or that his approval was obtained by fraud the Judge may on application by any person interested discharge such approval and order that the sequestration be continued. Default in payments &c.

63. If in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business every provision of this Act applying to the conduct of an assignee or trustee in bankruptcy shall apply to such appointed trustee. Trustee under the composition.

*Trustees and Committee of Inspection—Ss. 64 to 74.*

64. At the second or any special meeting the creditors instead of retaining the official assignee or retaining him alone may elect such persons as they think fit not exceeding two to be trustees of the estate or may elect a person to be sole trustee thereof or to act conjointly with the assignee and every such person may be a creditor or not or may be one of the official assignees After the confirmation of any such election as hereinafter provided the estate shall vest in the trustees or trustee so elected—or in the elected trustee and assignee jointly as the case may be—in which last-mentioned case such assignee shall be deemed and be a trustee of the estate equally with the one elected. Who may be trustees.

65. The creditors may thereupon direct what security if any shall be given by every such trustee and to whom for the due performance of the duties of his office They may at the same or any subsequent meeting appoint two or more persons not exceeding five being creditors to be a Committee of Inspection for the purpose of superintending the management and administration of the estate. Security by them. Appointment of Committee.



As to plural word  
trustees.

66. For the purposes of this portion of the Act from the present to the seventy-fourth section the word trustees shall equally mean one trustee where one only is elected.

Directions to  
assignee or trustees.

67. The creditors may at any such meeting give directions as to getting in collecting and realizing the estate and the manner in which it shall be managed and generally as to all matters affecting the estate or the interests of the creditors. In respect of all matters as to which no direction is so given the Committee of Inspection may give such directions. It shall be the duty of the assignee or trustees as the case may be to obey all such directions unless on his or their application or the application of the bankrupt or a creditor the Judge shall otherwise order. And in no case shall any portion of the estate above the value of *twenty* pounds be disposed of otherwise than by public auction (although directed by the committee) unless with the sanction of the Judge.

Certain sales  
restricted.

Confirmation of  
election and power  
to remove.

68. Upon the written acceptance by the trustees of their office and proof of their having given the security required of them the Judge may make an Order confirming their election. The Judge may remove any trustee for misconduct or bankruptcy or absence from the Colony and thereupon or on the death resignation or incapacity of a trustee the creditors may elect another in his stead in the same manner as on the original election. Notice of every Order of confirmation or removal under this section shall forthwith be published by the Registrar in the *Gazette*.

Effect of Order  
confirming election  
of trustees.

69. Every Order confirming the election of trustees shall divest the estate from the assignee or from the trustees previously in office as the case may be and shall vest the same in the trustees newly elected and such Order or a copy thereof signed by the Registrar shall be conclusive evidence that the trustees named have been duly elected and confirmed. And whenever a new trustee is elected and confirmed the Order confirming such election shall vest in the new trustee the estate and every right title and remedy vested in the former trustee to the same extent as they were vested in the former trustee.

Remuneration to  
assignee and  
trustees.

70. Where trustees are elected of whom the assignee is not one he shall be paid by them for his services to the time of such election in collecting and managing the estate and for his expenses and other outlay in respect thereof such sum as the Judge shall award. The trustees (and also the assignee where no trustee is elected) shall be paid for their or his services expenses and outlay such sum as the Judge shall award to them or him on the winding up of the estate.

Special provisions as  
to elected trustees.

71. When two trustees are elected the creditors may declare whether any act shall be done by both or may be done by one of such persons and what shall be done in case of a difference between them but both are in this Act included under the word trustee and shall be joint tenants of the estate. No person dealing with a trustee shall be bound to inquire whether he is authorized to do the particular act or whether the sanction of the creditors or committee of inspection has been obtained thereto but the trustee shall be responsible if he omit to comply with any provision of this Act. The creditors may elect persons to act as trustees in succession in the event of the persons first-named or either of them declining to accept the office.

The like.

72. When any vacancy occurs in the office of trustee a meeting for the purpose of filling up such vacancy may be convened by the continuing trustee if there be one or by the Judge on the requisition of any creditor or the bankrupt. The trustees may sue and be sued by the designation of "The trustees of the bankrupt estate of A.B." (inserting the name of the bankrupt) and by such designation may hold property make contracts binding upon them and their successors and do all other acts necessary to be done in the execution of their office.



73. Any member of the Committee of Inspection may resign his office by notice in writing signed by him and delivered to the trustees. The creditors may fix the quorum required to be present at a meeting of the committee. Any member may be removed by the creditors at a meeting of which two clear days notice has been given stating the object of the meeting. On any vacancy occurring in the office of a member of the committee the trustees shall convene a meeting of the creditors for the purpose of filling up such vacancy. The continuing members of the committee may act notwithstanding any such vacancy and where the members are for the time being less than five the creditors may increase the number so that it do not exceed five.

Special provisions as to Committee of Inspection.

74. No defect or irregularity in the election of a trustee or of a member of the committee of inspection shall vitiate any act done in good faith by him and no act of any trustee or of the committee shall be invalid by reason of any failure to elect any of its members. Where there is no committee of inspection any act direction or consent authorized to be done or given by such committee may in the absence of any direction by the creditors be done or given by the Judge.

The like.

*Realization of Estate—Ss. 75 to 101.*

75. The Sheriff's deputy in any district acting as Messenger in Bankruptcy and authorized by warrant under the seal of the Judge shall attach all the property therein belonging or reasonably believed to belong to the bankrupt estate or reputed to have belonged to the bankrupt at the date of the sequestration and shall make an inventory thereof and leave with the person in whose possession any such property is attached a copy of the warrant and inventory having subjoined thereto a notice that the property has been attached as belonging to the bankrupt estate and that any person who knowing the same to have been so attached removes retains conceals or receives any part thereof with intent to defeat the said attachment is guilty of a misdemeanor.

Attachment of property under warrant.

76. Such messenger may by sealing up any repository room or closet on the bankrupt's premises secure any articles which it seems to him expedient so to secure or may leave some person in custody thereof and he may seize any such property whether in the bankrupt's possession or in that of any other person and for the purpose of any such seizure may break open any house or room of the bankrupt where any of his property is reasonably supposed to be. And where the Judge has reason to believe that property of the bankrupt is concealed in a house or place not belonging to him the Judge may grant a search warrant to any constable or officer of the Court who may execute the same according to the tenor thereof.

Powers of Messenger.

Search warrant.

77. Where the sequestration order was on the petition of a creditor the assignee shall until such order is made absolute preserve the estate as nearly as may be having regard to its nature and to the circumstances of the case in the same condition as it was in at the date of such order and (whether the order was on any such petition or was on voluntary surrender) shall except in cases of necessity or urgency or with the sanction of the Judge abstain from realizing any portion of the estate until after the first meeting of creditors. But after such meeting the assignee subject to directions if any from time to time of the creditors or of the Committee of Inspection shall with all reasonable speed collect get in sell and dispose of the whole of the estate in such manner as is by this Act or as shall by such creditors or Committee or the Judge be directed or in default of any such direction as the assignee shall think best.

Cases where realizing is to be delayed.



Transferring  
shares &c.

78. Where any portion of the estate consists of stock shares in ships or any other property transferable in the books of any company office or person the right to transfer such property shall be vested in the assignee to the same extent as the bankrupt might have exercised that right if he had not become bankrupt.

Assignee may apply  
for advice &c.

79. Every assignee may apply to the Judge upon a statement in writing for advice or direction on any question respecting the estate and notice of such application shall be served upon or the hearing thereof be attended by such persons as the Judge shall direct and the assignee in acting upon the advice or direction given shall be deemed to have discharged his duty in the matter unless he has been guilty of concealment or misrepresentation in obtaining such advice or direction. The costs of such application shall be in the Judge's discretion.

Disclaimer as to  
onerous property.

80. When any part of the estate consists of land burdened with onerous covenants or consists of unmarketable shares in companies or unprofitable contracts or any other property not readily saleable by reason of its binding the possessor to the performance of some onerous act or to the payment of money the assignee although he has endeavoured to sell or has taken possession of such property or exercised acts of ownership in relation thereto may by writing under his hand disclaim such property.

Effect of disclaimer.

81. The property disclaimed shall if a contract be determined from the date of the sequestration and if a lease be deemed to have been surrendered on that date and if shares in a company shall be deemed forfeited from that date. Any other species of property shall revert to the person entitled on the determination of the estate or interest of the bankrupt but if there is no person in existence so entitled then in no case shall any estate or interest in the property remain in the bankrupt. Any person interested in the disclaimed property may apply to the Judge who may order possession to be delivered up to him or make such other order as he may think fit. Any person injured by the operation of the preceding section shall be deemed a creditor of the estate to the extent of such injury and may prove the same as a debt.

Where disclaimer  
not allowed.

82. The assignee shall not be entitled to disclaim any property in pursuance of this Act in any case where an application in writing has been made to him by any person interested in such property requiring him to decide whether he will disclaim the same and such assignee has not within *twenty-eight* days after the receipt of such application or such further time as may have been allowed by the Judge given notice to the applicant whether he disclaims the same or not.

Powers of assignee  
as to the estate.

83. Subject to the provisions of this Act the assignee shall have power to do the following things—(a) deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with the same (b) exercise any powers the capacity to exercise which in respect of property was vested in the bankrupt for his benefit or which shall be necessary to carry out the provisions of this Act including the execution of all powers of attorney and instruments for either purpose (c) sell all the property of the bankrupt including the goodwill of his business and his book debts due or growing due by public auction or (if with the written authority of the Judge) by public tender and either the whole at one time or in parcels (d) give receipts for all moneys received by him which receipts shall discharge the person paying them from all responsibility in respect of the application thereof (e) prove debts and claim and draw dividends in the matter of the insolvency or bankruptcy of any person indebted to the bankrupt out of the Colony as well as within it.



84. The assignee may with the sanction of the creditors or of the committee of inspection do the following things—(a) carry on the business of the bankrupt so far as may be necessary for the beneficial winding up of the same (b) bring or defend any suit or other legal proceeding relating to the estate (c) refer any dispute to arbitration and compromise debts claims and liabilities subsisting or supposed to subsist between the bankrupt and any debtor or other person (d) make such compromises or arrangements as may be thought expedient with creditors or persons claiming so to be in respect of debts provable or alleged to be provable under the bankruptcy or with other persons in respect of any claim affecting the estate.

Powers with sanction of creditors.

85. Any sanction given under the preceding section may be by permission to do all the things therein mentioned or to do one or more of them in a specified case And it shall not be necessary for persons dealt with by the assignee to ascertain whether he had the necessary sanction but its existence shall be conclusively presumed for the purposes of the transaction if the person dealt with shall in good faith have acted in reliance on the fact that there was such sanction.

Sanction may be general or specific.

86. The assignee on such terms as the creditors or committee of inspection shall approve of may appoint the bankrupt to superintend the management of the estate or any part thereof or to carry on his business for the benefit of the creditors and in any other respect to aid in realizing the property and may with their approval make the bankrupt an allowance temporarily out of the estate for the support of himself and his family.

Allowing bankrupt to manage property.

87. Where any trustee under this Act is a solicitor he may notwithstanding any law to the contrary contract to be paid a certain sum by way of percentage or otherwise as a remuneration for his services as trustee including all professional services.

Trustee if a solicitor how paid.

88. The creditors in any estate and the Judges by any General Rule may notwithstanding the Act twentieth Victoria number eleven direct the assignee to pay all moneys received by him into such bank as the creditors appoint and if he at any time keeps in his hands any of such moneys to an amount exceeding *fifty* pounds for more than *ten* days he shall pay interest at the rate of *twenty* pounds per centum per annum on the excess of such amount and unless he shows to the satisfaction of the Judge that his reason for retaining the same was sufficient he may be dismissed from his office by the Judge and shall have no claim for remuneration in the estate for his past services.

As to paying moneys into bank.

89. If the bankrupt at the date of sequestration was a member of a firm the Judge may authorize the assignee to commence and prosecute any suit in the name of such assignee and of the remaining partner against any debtor of the partnership and such judgment or decree may be obtained therein as if the suit had been instituted with the consent of the partner and if he executes any release of the debt or demand for which it was instituted such release shall be void Provided that such partner had notice given him of the application with opportunity to show cause against it If no benefit be claimed by him under the suit he shall be indemnified against any costs in respect thereof in such manner as the Judge thinks fit but if beneficially interested he shall receive so much of the proceeds of the suit as the Judge may find due to him.

Suits &c. where a member of a firm is bankrupt.

90. No assignee shall be personally responsible for any act done by him in good faith or by his authority in the execution of his duty by reason of the order for sequestration being discharged nor by reason of his having received any money or negotiable instrument in his character of assignee provided he shall have deposited such money and instrument in some bank to his credit as assignee of the estate

Assignee not personally liable for acts done in execution of his duty.



estate to which they were supposed to belong and have given notice of such payment or deposit to the person claiming the same and shall not have dealt therewith otherwise than in the execution of his duty. If an action is brought against an assignee for any such act as aforesaid either solely or jointly with a trustee the Judge may upon affidavit of the facts set aside the proceedings as to such assignee or trustee with or without costs as the Judge shall think fit.

Mortgages.  
Deposit of deeds &c.

91. Where the bankrupt has conveyed or assigned any real or personal estate or deposited any deeds upon condition or with the power of redemption at a future day by payment of money or otherwise the assignee notwithstanding the non-arrival of the time for performance of such condition may perform the same or exercise such power of redemption and thereafter the redeemed property or deeds shall become absolutely part of the bankrupt estate and be dealt with accordingly. And the mortgagee of any part of a bankrupt's estate may by leave of the Judge bid for the same at any proffered sale thereof.

As to life estates in remainder.

92. Where under a settlement or will a bankrupt is entitled to a life estate in remainder expectant upon the death of a tenant for life with remainder over to the bankrupt's issue or the heirs of his body or any of them as purchasers such life estate shall not be sold before it falls into possession without the Judge's sanction.

Jurisdiction to order payment of debts or delivery of property.

93. The payment of any debt due to the bankrupt at the date of the sequestration not exceeding in amount five hundred pounds or the delivery of any chattel not exceeding that amount in value then belonging to him or to which the assignee is entitled under any provision in this Act may be enforced summarily by the Judge upon summons to show cause and order thereon the disobedience to which shall be dealt with as for Contempt of Court and all deeds books of account and documents relating to accounts and any money or chattel paid or given by the bankrupt to any person by way of fraudulent preference shall be within this section. Provided that the Judge may order any disputed question of fact in such proceeding to be tried before him by a jury either of four or twelve persons as he may think fit.

Limitation of actions.

94. Every action brought against any person for anything done (or reasonably believed by him to be done) under this Act shall be commenced within *three* months after the cause of action arose and the defendant may plead the general issue and give the special matter in evidence under that plea and if the jury find that the thing complained of was so done or reasonably believed by him to have been so done or that the action was not brought within the time limited as aforesaid the verdict shall be for the defendant.

Bankrupt's salary half-pay &c.

95. The Judge may in his discretion at any time before the issue of the bankrupt's certificate order the whole or part of his salary or half-pay or annuity or pension to be paid to the assignee and applied as part of the estate and after the lodging of such order in the office of any person appointed to pay such salary half-pay annuity or pension the portion thereof specified in such order shall be paid to the assignee until the Judge shall otherwise order.

Estate of deceased person how administered.

96. The estate of a person deceased surrendered by his representative shall be administered on the same principles as the estate of a living person. And where such surrender is by an executor and any land has been devised by the testator (whether subject to the payment of debts or not) and the personal estate is found insufficient to pay the debts proved and provable the Judge on the application of the assignee may after notice to the devisee make an order vesting such land in the assignee and directing any person in possession thereof to deliver possession to such assignee accordingly and thereupon the land shall so vest and may be sold and the proceeds distributed as the Judge shall direct.



97. The assignee of an estate sequestrated under the sixth section of this Act may apply to the Judge requiring the person who surrendered the same to make good any sum due to the estate by him in respect of claims cognizable in Equity and thereupon all such accounts shall be taken and orders made by the Judge as he shall think just. Liability of persons surrendering estate for amounts due by them.

98. Where any money due to the bankrupt is charged upon land by way of equitable mortgage the assignee may apply to the Judge on notice to all parties interested for an order for the sale of such land and the Judge may make such order. Sale of property under equitable charge.

99. Where the bankrupt has property or an interest therein elsewhere than in New South Wales whether in possession reversion or expectancy the Judge may order him to execute all necessary instruments and to do all necessary acts to enable the assignee to make available the whole or such part thereof as the Judge shall think proper. Conveyance of property out of the Colony.

100. On the application of the assignee showing reason to believe that the bankrupt has been guilty of fraud or concealment of property or has absconded the Judge may order that for *three* months from the date of the sequestration all post letters addressed to the bankrupt shall be delivered by the Postmaster-General or officer acting under him to the Registrar and after the lodging of such order in the office of the Postmaster-General he or the proper officer under him shall deliver all such letters to the Registrar who shall deal with them as the Judge may think proper. Bankrupt's letters may be sent to Registrar.

101. If the produce of the estate is finally sufficient to pay twenty shillings in the pound and leave a surplus the Judge on the bankrupt's application (after notice in writing to the assignee) may order such surplus to be paid and the residue of the estate to be transferred to such bankrupt and he shall thereafter be entitled to recover the remainder if any of the debts due to him. Any surplus to be paid to bankrupt.

*Reputed Ownership—Fraudulent Preferences—Ss. 102 to 109.*

102. All goods which at the date of the sequestration or within three months previously thereto were in the possession or at the disposition of the bankrupt by the consent or permission of the true owner thereof and of which the bankrupt then was reputed owner or of which he shall have taken on himself the sale alteration or disposition as owner shall be deemed part of the estate and be dealt with accordingly. Cattle are included within the term goods but not choses in action other than debts due or growing due to the bankrupt in the course of his trade or business nor goods in the bankrupt's possession for a specific purpose only or as a factor for sale by him in the ordinary course of trade. Reputed ownership of goods.

103. Every disposition of property which is under this Act an act of bankruptcy shall be void against the assignee save only that in the case of a conveyance or assignment by the bankrupt of property in trust for his creditors all dealings with such property and all acts done in good faith by any trustee under such instrument shall be valid unless at the time of the dealing or act he knew or had notice that proceedings to sequester the assignor's estate had been or were about to be taken. Assignments when void.

104. Every settlement of property by the bankrupt not made before and in consideration of marriage or in pursuance of an ante nuptial contract nor in favour of a purchaser or incumbrancer for valuable consideration nor upon or for the benefit of the bankrupt's wife or children of or in respect of money or other property of the wife accrued to him after marriage in her right shall if he becomes



bankrupt within two years after such settlement be void against the assignee and be dealt with as part of the estate accordingly—and shall in like manner be void if the bankruptcy is within *ten* years after such settlement unless the claimants under it prove that the settlor was at that date able to pay his debts without the aid of the property comprised therein. The word “settlement” shall for the purposes of this section include any conveyance or transfer of property whatever.

Contracts for future settlement.

105. Every covenant or contract by the bankrupt in consideration of marriage for the future settlement upon or for the benefit of his wife or children of any money or other property in which at the date of his marriage he had no estate or interest and not being money or property of or in right of his wife shall if he becomes bankrupt before it has been actually paid or transferred be in like manner void.

Fraudulent preferences.

106. Every alienation transfer gift surrender delivery mortgage or pledge of any estate or property real or personal—every warrant of attorney or judicial proceeding made taken or suffered—every bill of exchange or promissory note drawn made or endorsed and every payment made—by a person being at the time insolvent or in contemplation of surrendering his estate under this Act or knowing that proceedings for placing the same under sequestration have been commenced or within sixty days before the sequestration thereof—and having the effect in any such case of preferring or with intent to prefer any then existing creditor to another—shall be deemed fraudulent and be void against the assignee. For the purposes of this and the next following section the word insolvent means the inability of a person to pay his debts as they become due from his own moneys.

What payments protected.

107. Provided always that nothing in the preceding section shall affect any payment made by the bankrupt before sequestration for or on account of a debt due and payable by him at the time of payment unless the creditor or person receiving it on his behalf then knew (*a*) that the person making the same was insolvent or was by such payment rendered insolvent (*b*) or that he contemplated the sequestration of his estate (*c*) or that proceedings for placing it under sequestration had been commenced (*d*) or that such payment was a voluntary preference of the paid creditor to other creditors. And notice of any such matter by whomsoever given to the creditor or person so receiving payment shall if in accordance with the fact be equivalent to knowledge.

Other protected transactions.

108. Nothing in this Act shall render invalid any of the following matters made entered into or occurring before the sequestration—that is to say (*a*) any payment of money or delivery of goods of the bankrupt made in good faith to him by a depositary thereof (*b*) any payment made to the bankrupt for value received (*c*) any contract or dealing with the bankrupt in good faith and for valuable consideration.

Preferences under repealed Act.

109. Every alienation payment act matter or thing which immediately before the passing of this Act was by law void as a fraudulent or unjust preference shall be void under this Act and may be dealt with accordingly.

#### *Examination of Bankrupt and Witnesses—Ss. 110 to 118.*

Conduct of bankrupt  
See ss. 37 and 40.

110. At every meeting of creditors which the bankrupt is required to attend he shall submit to such examination on oath in respect of his property accounts and dealings as may then be required of him. He shall from time to time execute such deeds and instruments and generally do all such things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the assignee or be directed by the Judge. If the bankrupt wilfully fails to attend any meeting under this Act of which he had due



due notice or to perform any other duty imposed on him by this section or to deliver up possession to the assignee of any part of his estate he shall be guilty of a misdemeanor.

111. The Judge may by warrant addressed to any constable or officer of the Court cause a bankrupt to be arrested and all books papers money and other property in his possession to be seized and him and them to be safely kept as prescribed by such warrant and until such time as the Judge may order under the following circumstances—(a) if there is reason for believing that the bankrupt is about to go abroad or quit his residence in order to avoid examination in respect of his affairs or otherwise delay or embarrass the proceedings under the sequestration—(b) if there is reason for believing that the bankrupt is about to remove some of his property with a view of preventing or delaying its being taken possession of by the assignee or that there is reason for believing that he has concealed or is about to conceal or destroy some portion of his property or any books documents or writings which might be of use to his creditors—(c) if after the service of a debtor's summons on him or after sequestration the bankrupt shall have removed any part of his property above the value of five pounds without leave of the assignee.

Arrest under certain circumstances.

112. On the application of the assignee or any creditor the Judge may at any time summon the bankrupt or his wife or any person known or suspected to be in the possession of property belonging to the bankrupt and any person supposed to be indebted to the bankrupt or to be capable of giving information respecting his dealings or property to attend before such Judge and may require any person so summoned to produce all documents in his custody or power relating thereto and may examine on oath every such person concerning all such dealings and property. If any person so summoned refuses or neglects to attend at the time and place appointed or to produce such documents having no lawful excuse in that behalf the Judge may by warrant addressed as aforesaid cause such person to be apprehended and brought up for examination.

Power to summon persons suspected of having property of bankrupt.

113. If the bankrupt or any other person (including the wife of such bankrupt) at any examination under the preceding section or any adjournment thereof being thereto required (and not having any lawful excuse in that behalf) shall refuse to surrender any book document or writing relating to the estate or shall refuse to be sworn or to answer any lawful question touching any of the matters aforesaid or to subscribe his examination the Judge may commit him to prison there to remain until he shall have done the thing so required of him or shall be discharged by the Judge or the Court. And if any such person while under examination is guilty of prevarication or evasion the Judge may commit him to prison for any term not exceeding fourteen days.

Committal for refusing to obey or for prevarication.

114. Any examination of a bankrupt or other person before the Judge may be adjourned from time to time as often as such Judge may think fit and he shall have at any adjournment all the powers that he possessed before adjournment.

Adjournments.

115. Every person summoned as aforesaid shall be entitled to the same conduct money and expenses as a witness would be entitled to in any civil suit.

Expenses of persons summoned.

116. The Judge may for the purposes mentioned in the one hundred and twelfth section summon any person to attend before a Commissioner in the country and in such case the powers of examination and adjournment conferred by this Act on the Judge shall vest in such Commissioner and if any person on examination before him shall be guilty of prevarication or evasion or any refusal or other act or omission

Examination before a Commissioner.



omission for which if he were under examination before the Judge such person would be liable to committal he shall be guilty of a misdemeanor.

As to discharge from commitment.

117. Any person committed under the one hundred and thirteenth section may be discharged from such committal on appeal therefrom to the Court. If the committal was for refusing to answer a question such question shall be set out in the warrant and if it appears to the Court that the person committed has fully answered all lawful questions put to him or if committed for refusing to be sworn or to produce a document or for not signing his examination that he had a sufficient reason for such refusal the Court shall order the person committed to be discharged.

Answers to questions when inadmissible.

118. No question put to the bankrupt on any examination shall be deemed unlawful by reason only that the answer thereto may expose him to punishment provided that except for the purposes of this Act no answer to any such question shall be admitted in evidence against him.

#### *Distribution of Estate—Ss. 119 to 126.*

Account and plan of distribution.

119. At or as soon as possible after the third meeting and not later than four months after sequestration (or three months in respect of estates requiring only a single meeting) the assignee shall frame and lay before the Judge an exact account of the balance of the estate specifying the proceeds of sales and debts collected and all debts outstanding together with an inventory of all property still unsold and showing the debts due by the estate. And shall present a plan for distribution of the assets specifying first such creditors as are entitled to preference in their order of legal preference and secondly the concurrent creditors and the balance remaining for division amongst them. A similar account and plan shall be submitted at the end of each successive month unless otherwise ordered.

Audit and notice thereof.

120. As soon as the Accountant in Bankruptcy shall have audited such account and made his report thereon and the plan for distribution has been approved of it shall lie in the office of the Registrar for inspection by the creditors and bankrupt for such reasonable time as may be directed but not less than fourteen days from the advertisement thereof and the assignee shall cause notice thereof to be given in the *Gazette*.

As to objections thereto.

121. The bankrupt and any party interested in the estate and any creditor may within the time aforesaid enter his objection in writing with the Registrar stating the grounds thereof. Provided that the Judge may permit such objection to be entered at any time before final confirmation of the plan on such terms as the Judge thinks fit.

Proceedings thereon.

122. The person objecting to the account or plan shall apply to the Judge for an order calling on the assignee and also on the party whose interest may be affected thereby to show cause why the plan should not be amended and thereupon the Judge upon hearing the parties may make such order as he shall think fit. Provided that whenever any amendment is ordered in the plan whereby the interest of any party who has not been heard is affected the plan shall again be open for inspection and notice thereof be given as aforesaid.

Confirmation and effect thereof.

123. After expiration of the time appointed for inspection of the account and plan of distribution without any objection being entered thereto or if an objection has been entered then after disposal thereof the assignee may apply to the Judge that the plan may be confirmed and thereupon the Judge may confirm the same and such confirmation shall have the effect of a final judgment as between the bankrupt and his creditors except as to the amount of any debt afterwards



afterwards expunged or reduced and except against such creditors as shall afterwards be admitted to prove their debts against the estate at any time before its final distribution.

124. The assignee shall at periods fixed by the General Rules file in the office of the Accountant statements showing how each bankrupt estate has been applied and disposed of under the following heads (that is to say)—(a) Gross amount of assets realized (b) Costs charges allowances and expenses (c) Remuneration or Commission (d) Preferential payments (e) Dividends to general creditors (f) Balance undisposed of And if any part of the estate has not then been collected or disposed of such statement shall specify the nature of such unrealized estate The assignee shall make out and file such further or fuller statements in any case as the Judge may think proper.

Assignee to file periodical statements.

125. The Judge may on the complaint of any creditor or person interested or upon any report or audit by the Accountant allow or disallow all or any part of the costs charges allowances and expenses claimed by any assignee and make such order thereon as the Judge thinks fit.

Judge may disallow costs charges &c.

126. The assignee shall cause notice to be given in such way as the General Rules prescribe when and where dividends are payable to creditors and others interested in the estate and the remedy to obtain payment shall be by application to the Judge and the Judge's order thereon.

Assignee to give notice of dividend.

#### Release of Estate—Ss. 127 to 129.

127. After the acceptance and approval of a composition or scheme of arrangement in manner hereinbefore provided the bankrupt may apply for an Order releasing his estate from sequestration and on his satisfying the Judge that the approved terms of such composition or scheme have been complied with and that its acceptance was not procured by him or to his knowledge or belief procured by any other person by undue means or influence or to the advantage of one creditor over the others (unless in such last-mentioned case with their written consent) the Judge may make such Order on such terms as he shall think just Provided that the terms of the composition or scheme may at any time be enforced notwithstanding the release in the same manner as is by this Act provided notwithstanding supercession in case of the non-performance of any such term.

Release on composition or arrangement.

128. If the bankrupt or any person on his behalf shall pay in full all the creditors or obtain a legal acquittance of the debts due to them the bankrupt may apply for a like Order for the release of his estate and on being satisfied that the creditors have been so paid or have released their debts and that no proceedings of a criminal nature are pending or contemplated against the bankrupt the Judge may make such Order upon such terms as he shall think just.

Release on payment &c.

129. Any Order whereby the estate is released from sequestration shall have the effect of revesting in the bankrupt or in such person as the Judge may appoint subject to such conditions as he may prescribe all the property of the bankrupt undisposed of as if the estate had never been sequestrated Provided that all sales and disposition of property and payments made and acts theretofore done by the assignee or trustee shall be valid.

Effect of Order.

#### Bankrupt's Certificate—Ss. 130 to 143.

130. After the expiration of four months from the date of sequestration the bankrupt may cause an advertisement to be inserted in the *Gazette* and not less than three times in one daily Sydney newspaper stating his intention to apply on a day fixed by the Judge and

Certificate how and when applied for.



and named therein not less than twenty nor more than thirty days from the day of first publication for a certificate of discharge under this Act. He shall give twenty days' notice in writing to the assignee of such intention. The application shall be heard on the appointed day and on any day or days of adjournment and the assignee and any creditor may be heard in opposition to such application upon giving notice of the grounds thereof. The Judge before granting such application whether there is opposition or not shall consider the proceedings in the bankruptcy and the statements and conduct of the bankrupt and any evidence produced by him and by the assignee or opposing creditor and shall grant or refuse the certificate in accordance with the provisions of this Act.

When to be refused  
or suspended.

131. Such certificate shall be refused or suspended for not less than one year in each of the cases following (that is to say)—

- (a.) If the bankrupt has wilfully delayed surrendering his estate or avoided its sequestration in order to benefit or assist one creditor or more to the disadvantage of the rest.
- (b.) If he has by habits of gambling extravagance or vice diminished his means of payment so as to lead in any degree to his becoming insolvent.
- (c.) If he has not upon surrendering his estate or after its sequestration made a full and fair disclosure of his property in possession reversion or expectancy.
- (d.) If he has wilfully violated or omitted to comply with any of the provisions of this Act.
- (e.) If he has contracted any debt without having at the time a reasonable or probable expectation of being able to pay the same.
- (f.) If being at the time insolvent he has made away with or disposed of any of his property otherwise than in good faith and for valuable consideration.
- (g.) If he has unlawfully expended for his own benefit or appropriated to his own use any property of which he at the time had the charge or disposition as a trustee factor broker or agent only or if he has been guilty of any fraudulent breach of trust.
- (h.) If he has been convicted of any indictable offence under this Act.
- (i.) If he has given any creditor a fraudulent or unjust preference.

When may be refused  
or suspended.

132. Such certificate shall be liable to refusal or suspension for a term not exceeding two years in each of the cases following (that is to say)—

- (a.) If the bankrupt has not kept reasonable accounts and entries of his receipts and payments and such books of account as are usual and proper in the business carried on by him.
- (b.) If such books have not entries therein sufficient to disclose his business transactions if any and financial position during the twelve months preceding his bankruptcy.
- (c.) If there is any unsatisfied judgment against him in an action for assault breach of promise seduction or any malicious injury.
- (d.) If he has put a creditor to vexatious or unjustifiable expense by any frivolous or inequitable defence or claim in any action or other proceeding.
- (e.) If he has carried on business by means of fictitious capital or has contracted any debt after knowing himself to be insolvent.
- (f.) If he has been a bankrupt within five years preceding his application unless the estate produced ten shillings in the pound or a majority in number and value of the creditors in that estate certify that in their opinion the bankruptcy was the result of misfortune only.



133. If it appears to the Judge that although the bankrupt may not have been guilty of any of the offences mentioned in the two preceding sections his conduct before or after sequestration has in respect of dealings with creditors or with his property or has in the contracting of debts or extravagance in living or omitting to assist his assignee been culpable his certificate may be suspended for a period not exceeding *one year*.

Additional causes of suspension.

134. No application by the bankrupt for a certificate shall be allowed after *twelve months* from the date of sequestration unless notice of his intention to apply was duly advertised before the expiration of that period except by leave of the Judge on such terms as he may think proper.

Application after twelve months.

135. If the application for a certificate is opposed by the assignee the Judge may require the bankrupt to find bail with two sufficient sureties to attend on the day appointed for giving judgment in the matter and in default may commit the bankrupt to prison until that day.

Holding bankrupt to bail.

136. If the bankrupt shall not within *nine months* after sequestration have applied for his certificate the Judge may require him by summons and in case of his refusal or neglect may compel him by warrant to appear before the Judge and show cause if he has any why a certificate of discharge should not in his case be refused or suspended and on such appearance the Judge may deal with the case and grant refuse or suspend such certificate and otherwise deal with such bankrupt as if the certificate had been applied for by him.

Proceeding where bankrupt does not apply.

137. The certificate shall be in a form prescribed by the Rules and shall be under the hand of the Judge and the seal of the Court but shall not take effect until after expiration of the time allowed for appeal or if an appeal be brought until after the decision of the Court thereupon. It shall bear date accordingly either on the day after expiration of the time allowed for appeal or on the day of the decision of the Court as the case may require.

Form and date of certificate.

138. The certificate shall discharge the bankrupt from all debts and claims provable under his bankruptcy save as herein otherwise provided and if thereafter any action is brought against him for any such debt or claim he may plead that the cause of action accrued before he became bankrupt and the certificate shall be sufficient evidence of the sequestration and of all matters necessary to support the same. The certificate may be revoked by the Judge or Court for fraud or perjury in obtaining such certificate committed by the bankrupt or by any one with his privity.

Effect of certificate.

139. The certificate shall not release or discharge any person who was a partner with the bankrupt at the time of the bankruptcy or was then jointly bound or was a joint contractor with him.

Effect in case of partners.

140. Any contract or security by the bankrupt or any other person with or to or in trust for any creditor to pay or for securing payment of any money or the delivery of any property as a consideration for not opposing the certificate or for not appealing against the grant of the same shall be void and any person sued on any such contract or security may plead that the cause of action accrued after and in reference to the sequestration and may give the special matter in evidence but no such security if negotiable shall be void as against a holder for value without knowledge or notice of the consideration for which it was given.

Contract or security to forbear opposition.

141. If any creditor of the bankrupt obtains any money or property or security for money from any person for forbearing to oppose the certificate of such bankrupt or for forbearing to appeal against the grant of the same such creditor shall forfeit for such offence the treble amount or value of such money or property or security so obtained to be recovered by any person upon information before and by order of the Judge.

Creditor so forbearing.



Concerning after-acquired property.

142. If the bankrupt before he obtains his certificate becomes possessed of or entitled to any property the assignee if not otherwise directed by special resolution at a meeting of the creditors shall apply to the Judge on notice to the bankrupt and such other persons as the Judge may direct for an Order to attach such property and apply it in payment of the creditors and the Judge may make such order in the matter as he may think just having regard to the rights of persons who have become creditors since the sequestration.

When an assignee not discharged as to future effects.

143. Any assignee or trustee becoming bankrupt and being indebted to the estate of which he was such assignee or trustee in respect of money improperly retained or employed by him shall not be discharged from such debt as to any future assets although he may have obtained his certificate.

#### *Indictable Offences—Ss. 144 to 147.*

Punishment for enumerated offences.

144. Whosoever commits any of the offences mentioned in this section shall be guilty of a misdemeanor and be liable to imprisonment with or without hard labour for any time not exceeding three years—that is to say—

Concealing property.

(a.) Whosoever wilfully conceals any property being part of the estate of a bankrupt with intent to defraud his creditors.

Forging process.

(b.) Whosoever forges the signature of the Judge or Registrar or Accountant in bankruptcy to any order certificate or process of the Court or Judge or serves or enforces any such forged order or process knowing the same to be forged or delivers or causes to be delivered to any person any paper or writing falsely purporting to be a summons order warrant or process of the Court or Judge or to be a copy thereof knowing such paper or writing to be false or who acts or endeavours to act under colour or pretence of such process.

Removing property under attachment.

(c.) Whosoever disposes of receives removes retains conceals or embezzles any property money or security for money which has been attached as part of a bankrupt estate knowing the same to have been so attached and with intent to defeat the attachment or obstructs or endeavours to obstruct the sheriff messenger or other person authorized to make the same in the discharge of his duty.

Receiving property from bankrupt.

(d.) Whosoever whether before or after the sequestration of an estate receives any property from the bankrupt or from any person on his behalf with intent to defraud or to assist such bankrupt in defrauding his creditors.

Inserting false advertisements.

(e.) Whosoever inserts or causes to be inserted in any newspaper any advertisement purporting to be under this Act without authority or knowing the same to be false in any material particular with intent in any such case to defraud or deceive.

False claim &c.

(f.) Whosoever in any proceeding in bankruptcy or while an estate is under liquidation by arrangement or composition with creditors makes any false claim or any declaration or statement of account which is untrue in any material particular with intent to defraud.

Offences by bankrupt.

145. A bankrupt shall in each of the cases mentioned in this section be guilty of a misdemeanor and shall be liable to imprisonment with or without hard labour for any time not exceeding *three* years Provided that if in any such case the jury are satisfied and specially



specially so find that the bankrupt had no intent either to defraud his creditors or dishonestly to conceal the state of his affairs or otherwise to violate or defeat the law he shall be acquitted—

- (a.) If he does not to the best of his knowledge and belief fully disclose on examination under this Act or to his assignee all his property real and personal and how and to whom and for what consideration and when he has disposed thereof except such part as has been disposed of in the ordinary way of his business or laid out in the ordinary expense of his family.
- (b.) If he does not deliver to the assignee or as he directs all his property or such as is under his control and which he is required by law so to deliver.
- (c.) If he does not deliver to the assignee or as he directs all books documents papers and writings under his control relating to his property or affairs.
- (d.) If whether before or after sequestration he conceals any part of his property to the value of *ten* pounds or any debt due to or by him or after sequestration removes any part of his property of that value.
- (e.) If he makes any material omission in any statement relating to his affairs.
- (f.) If knowing that a false debt has been proved under the bankruptcy he fails for *one* month to inform his assignee thereof.
- (g.) If after sequestration he prevents the production of any book document paper or writing relating to his property or affairs.
- (h.) If whether before or after sequestration he conceals destroys mutilates or falsifies or is privy to the concealment destruction mutilation or falsification of any book or document relating to his property or affairs.
- (i.) If whether before or after sequestration he makes or is privy to making a false entry in any book or document relating to his property or affairs.
- (j.) If whether before or after sequestration he parts with any book or document relating to his property or affairs or alters or makes any omission therein.
- (k.) If after or within *four* months before sequestration he attempts to account for his insolvency by fictitious losses or expenses.
- (l.) If within *four* months before sequestration he has by any false representation or under the pretence of carrying on business in the ordinary way of trade obtained any property for which he has not paid.
- (m.) If within *four* months before sequestration he pledges or disposes of otherwise than in the ordinary way of trade any property which he has obtained on credit and for which he has not paid.
- (n.) If he makes any false representation for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his property or affairs.
- (o.) If within *four* months before sequestration he departs or makes preparation for departing from the colony with any of his property to the amount of *twenty* pounds which ought by law to be divided among his creditors.

146. A bankrupt shall in each of the cases mentioned in this section be guilty of a misdemeanor and be liable to imprisonment for any time not exceeding *two* years with or without hard labour (that is to say)—

- (a.) If incurring any debt or liability he has obtained credit by false representations or by means of any other fraud.

c 71—D

(b.)

Fraudulently  
obtaining credit.



- (b.) If he has made or caused to be made any gift delivery or transfer of his property or any part thereof or created any charge thereon with intent to defraud his creditors or any of them.
- (c.) If he has concealed or removed any part of his property after or within two months before the date of any unsatisfied judgment against him with intent to defraud any creditor.
- General provision as to punishments. 147. Where a person is liable to punishment under any other Act or at Common Law for an offence punishable by this Act he may be proceeded against under such other Act or at Common Law or under this Act but so always that he be not punished twice for the same offence.

*Miscellaneous—Ss. 148 to 153.*

- Voting power of trustee. 148. No vote of any trustee under this Act or of his partner solicitor clerk or agent whether voting as a creditor or as a proxy shall be reckoned in the majority required for passing a resolution affecting such trustee's remuneration or conduct.
- Votes of partners &c. 149. In reckoning the votes at any meeting of creditors the partners of any firm or the persons jointly representing an estate shall be entitled to one vote only.
- Consolidation and carriage of petitions. 150. Where two or more petitions are presented for sequestration against the same debtor or against debtors being members of the same partnership the proceedings or any of them may be consolidated on such terms as the Judge thinks fit And if a petitioner does not proceed with due diligence on his petition the Judge may substitute any other creditor whose debt is of the amount required.
- Death of debtor. 151. If the debtor against whom a petition for sequestration has been presented dies the Judge may order that the proceedings be continued as if such debtor were alive.
- Petition against one partner. 152. Any creditor whose debt is sufficient to entitle him to present a petition for sequestration against all the partners of a firm may present a petition against one or more of them only And where there are more respondents than one to a petition it may be dismissed as to one or more of them without prejudice to the petition as against the other or others.
- Several respondents.
- Imprisonment of bankrupt. 153. In any case in which the Judge refuses a certificate he may sentence the bankrupt to imprisonment for a period not exceeding six months.



SCHEDULE.

*Debtor's Summons.*

Supreme Court of New South Wales. }  
Bankruptcy Jurisdiction. }

To A.B. (or A.B. and C.D.) of

You are hereby warned that unless within eight days after service of this summons (exclusive of the day of service) you pay to E.F. of [place] the sum of [amount] and to G.H. of [place] the sum of [amount] [and so on if more than two creditors] claimed of you by him (or them) or unless you secure or compound for the same to his (or their) satisfaction you will have committed an act of bankruptcy in respect of which your estate may be sequestrated as bankrupt You are therefore hereby summoned either to pay or secure or compound for the said sum (or sums) or else to cause this summons to be dismissed.

Witness the Seal of the Supreme Court (Bankruptcy Jurisdiction) this  
day of 18 L.M.  
Registrar.

*Notice.*

If you are not indebted to E.F. (and G.H. &c.) in the sum (or sums) claimed or are only indebted to him (or them) in a sum less than fifty pounds you may apply to the Judge in Bankruptcy within the said eight days to dismiss this summons by filing with the Registrar an affidavit stating that you are not so indebted who will thereupon fix a day for the hearing of your application.

or  
This summons is sued out by E.F. (and G.H. &c.) in person (or by I.M. Solicitor carrying on business at [state place street number &c.]

[1s. 3d.]

Sydney : Thomas Richards, Government Printer.--1884.



SCHEDULE

John's Name

Supreme Court of New South Wales

Bartholomew T. Proctor

TO THE (A.B. and C.D.)

You are hereby notified that notice is hereby given to you (A.B. and C.D.) that the sum of £100 (one hundred pounds) is due to the said John (A.B. and C.D.) by the said Bartholomew T. Proctor. You are hereby notified that notice is hereby given to you (A.B. and C.D.) that the sum of £100 (one hundred pounds) is due to the said John (A.B. and C.D.) by the said Bartholomew T. Proctor. You are hereby notified that notice is hereby given to you (A.B. and C.D.) that the sum of £100 (one hundred pounds) is due to the said John (A.B. and C.D.) by the said Bartholomew T. Proctor.

Witness the seal of the Supreme Court (Bartholomew T. Proctor) this

day of

18

Bartholomew T. Proctor

If you are not indebted to E.T. (and G.H. &c.) in the sum of £100 (one hundred pounds) claimed on the only indebted to him (or them) in a sum less than the sum claimed you may apply to the Judge in Bankruptcy within the next eight days to disprove the summons by filing and the Judge may adjourn the hearing if he is not satisfied with the evidence filed.

This summons is signed and sealed by E.T. (and G.H. &c.) in person (or by J.M. Solicitor carrying on business as agent for the said E.T. (and G.H. &c.))

The summons is signed and sealed by E.T. (and G.H. &c.) in person (or by J.M. Solicitor carrying on business as agent for the said E.T. (and G.H. &c.))

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