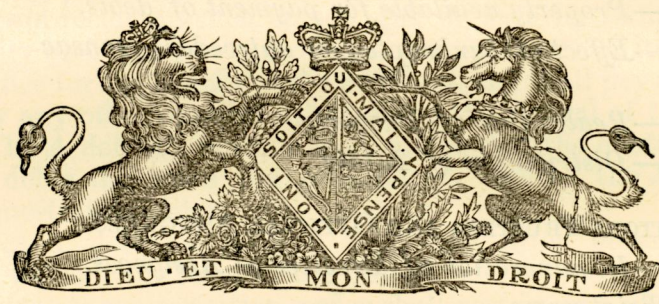


*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Legislative Assembly Chamber,  
Sydney, 1 November, 1887. }*

STEPHEN W. JONES,  
*Clerk of Legislative Assembly.*

## New South Wales.



ANNO QUINQUAGESIMO PRIMO

# VICTORIÆ REGINÆ.

\*\*\*\*\*

No. .

An Act to amend and consolidate the Law relating to Insolvency and Bankruptcy, and to provide for the due collection, administration, and distribution of Insolvent and Bankrupt Estates, and for the prevention of frauds affecting the same.

BE 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:—

5 *Preliminary.*

1. This Act may be cited as the "Bankruptcy Act, 1888," and shall commence and come into operation on the first day of January one thousand eight hundred and eighty-eight, and its sections shall be arranged as follows:—

Short title and commencement of Act.

10 PART I.—PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE OF BANKRUPT.

*Sections 1–3—Preliminary.*

*Section 4—Acts of Bankruptcy.*

*Sections 5–12—Sequestration Order.*

15 *Sections 13–18—Proceedings consequent on Order.*

*Sections 19–20—Composition or Scheme of arrangement.*

*Sections 21–26—Creditors Trustees and Committee of Inspection.*

27—A

*Sections*



*Bankruptcy.*

*Sections 27-33—Control over personal property of Bankrupt.*

*Sections 34-36—Release of Estate.*

*Sections 37-44—Bankrupt's certificate.*

PART II.—ADMINISTRATION OF PROPERTY.

5 *Sections 45-47—Proof of Debts.*

*Sections 48-50—Preferential Debts.*

*Sections 51-52—Property available for payment of debts.*

*Sections 53-58—Effect of bankruptcy on antecedent transactions.*

10 *Sections 59-66—Realisation of Property.*

*Sections 67-79—Distribution of Estate.*

PART III.—CREDITORS TRUSTEES AND OFFICIAL ASSIGNEES.

*Sections 80-84—Remuneration of Trustees or Assignees.*

*Section 85—Official name.*

15 *Sections 86-90—Appointment and Removal.*

*Sections 91-101—Control over Assignees and Trustees.*

PART IV.—PROCEDURE.

*Sections 102-108.*

PART V.—APPLICATION OF ACT.

20 *Sections 109-120.*

PART VI.—INDICTABLE OFFENCES.

*Sections 121-126.*

PART VII.—JURISDICTION.

25 *Sections 127-135—Creation of Bankruptcy Division of Supreme Court.*

*Sections 136-144—Officers of the Court.*

PART VIII.—MISCELLANEOUS PROVISIONS.

30 2. (1) The enactments described in the Fourth Schedule are hereby repealed as from the commencement of this Act to the extent mentioned in that Schedule. <sup>Repeal of enactments.</sup>

(2) The repeal effected by this Act shall not affect—

(a) Anything done or suffered before the commencement of this Act under any enactment repealed by this Act; nor

35 (b) Any right or privilege acquired, or duty imposed, or liability or disqualification incurred, under any enactment so repealed; nor

(c) Any fine, forfeiture, or other punishment incurred or to be incurred in respect of any offence committed or to be committed against any enactment so repealed; nor

40 (d) The institution or continuance of any proceeding or other remedy, whether under any enactment so repealed, or otherwise, for ascertaining any such liability or disqualification, or enforcing or recovering any such fine, forfeiture, or punishment, as aforesaid.

45 (3) Notwithstanding the repeal effected by this Act the proceedings under any order of sequestration or composition with creditors under the several enactments described in the Fourth Schedule,



*Bankruptcy.*

Schedule, pending at the commencement of this Act, shall, except so far as any provision of this Act is expressly applied to pending proceedings continue, and all the provisions of the said enactments shall, except as aforesaid apply thereto, as if this Act had not passed.

5

*Interpretation.*

3. (1) In this Act, unless the context otherwise requires :— Interpretation of terms.
- “The Judge” means the Judge having jurisdiction in bankruptcy under this Act :
- “Affidavit” includes statutory declarations affirmations and attestations on honour :
- “Available Act of bankruptcy” means any Act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the sequestration order is made :
- “Bankruptcy” includes a composition or arrangement made under the provisions of this Act :
- “Bankrupt” includes a compounding or arranging debtor under the provisions of this Act :
- “Debt provable in bankruptcy” or “provable debt” includes any debt or liability by this Act made provable in bankruptcy :
- “Gazette” means published in the *Government Gazette* of the Colony of New South Wales :
- “General rules” include forms :
- “Goods” include all chattels personal :
- “The Court” means the Supreme Court of the Colony of New South Wales :
- “Local Bank” means any bank in or in the neighbourhood of the bankruptcy district in which the proceedings are taken :
- “Oath” includes affirmation, statutory declaration, and attestation on honour :
- “Ordinary resolution” means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of the creditors and voting on the resolution :
- “Person” includes a body of persons corporate or unincorporate :
- “Prescribed” means prescribed by general rules within the meaning of this Act :
- “Property” ordinarily so called includes money, goods, things in action, land, and every description of property, whether real or personal and whether situate in New South Wales or elsewhere ; also, obligations, present or future, vested or contingent, arising out of or incident to property as above defined :
- “Resolution” means ordinary resolution :
- “Secured creditor” means a person holding a mortgage charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor :
- “Schedule” means Schedule to this Act :
- “Sheriff” includes any officer charged with the execution of a writ or other process :
- “Special Resolution” means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution :
- The term “Trustee” shall in all cases where not inconsistent with the context include the official assignee when he fills the office of trustee.
- (2) The Schedules to this Act shall be construed and have effect as part of this Act.



*Bankruptcy.*

## PART I.

PROCEEDINGS FROM ACT OF BANKRUPTCY TO BANKRUPT'S  
EXAMINATION.*Acts of Bankruptcy.*

5 4. (1) A debtor commits an act of bankruptcy in each of the Acts of bankruptcy.  
following cases:—

- (a) If in New South Wales or elsewhere he makes a conveyance (Chamberlain's Act  
or assignment of his property to a trustee or trustees for the s. 4.)  
benefit of his creditors generally :
- 10 (b) If in New South Wales or elsewhere he makes a conveyance,  
gift, delivery, assignment or transfer of his property, or of 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.
- 15 (c) If in New South Wales or elsewhere he makes any conveyance  
or transfer of his property or any part thereof, or creates any  
charge thereon which would under this or any other Act  
be void as a fraudulent preference if a sequestration order  
were made against him.
- 20 (d) If with intent to defeat or delay his creditors he does any of  
the following things, namely, departs out of New South  
Wales, or being out of New South Wales remains out of  
New South Wales, or departs from his dwelling-house, or  
otherwise absents himself, or begins to keep house :
- 25 (e) If execution issued against him has been levied by seizure  
and sale of his goods under process in an action in any Court,  
or in any civil proceeding in the Supreme Court, and if he  
has not within five days of such sale, satisfied the same by  
payment or otherwise.
- 30 (f) If he files in the Court a declaration of his inability to pay  
his debts or presents a bankruptcy petition against himself :
- 35 (g) If a creditor has obtained a final judgment against him for  
any amount, and (execution thereon not having been stayed),  
has served on him in New South Wales, or, by leave of the  
Judge, elsewhere, a bankruptcy notice under this Act, requir-  
ing him to pay the judgment debt in accordance with the  
terms of the judgment, or to secure or compound for it to the  
satisfaction of the creditors or the Judge, and he does not,  
within seven days after service of the notice, in case the  
40 service is effected in New South Wales, and in case the  
service is effected elsewhere, then within the time limited in  
that behalf by the order giving leave to effect the service,  
either comply with the requirements of the notice, or satisfy  
the Judge that he has a counter-claim set-off or cross demand  
which equals or exceeds the amount of the judgment debt,  
45 and which he could not set up in the action in which the  
judgment was obtained.
- (h) If the debtor gives notice to any of his creditors that he has  
suspended, or that he is about to suspend, payment of his debts.
- 50 (i) If he has been adjudged bankrupt or insolvent by a British  
Court of competent jurisdiction out of New South Wales and  
has not received a certificate of discharge or other corres-  
ponding release—of any of which facts a copy of the order  
or orders or certificate or release made or given by such Court  
certified under its seal shall be sufficient evidence.
- 55 (j) If he has not presented a bankruptcy petition against himself  
or filed in the Court a declaration of his inability to pay his  
debts within forty-eight hours after having at a convened  
meeting



*Bankruptcy.*

meeting of his creditors admitted that he is unable to pay his debts and been thereupon required by a majority in number of his creditors present to present such petition or file such declaration.

5 (2) A bankruptcy notice under this Act shall be in the form prescribed in the fifth Schedule hereto and shall state the consequences of non-compliance therewith and shall be served in the manner prescribed by the rules of Court for the time being in force, it shall be under the hand of the Registrar and shall be granted upon the applica-  
10 tion of the creditor claiming to be entitled thereto.

(3) Upon the debtor satisfying the Judge that such notice ought not to have issued the Judge may order the payment to him by the creditor applying for such notice of all the costs occasioned by the issue thereof, and if satisfied that the notice was issued maliciously  
15 and without reasonable and probable cause may at the request of the debtor assess the damages occasioned thereby.

(4) Upon security being given by the debtor for payment of the debt and the cost of establishing it, the Judge may stay all proceedings on the notice, and may stay execution on the judgment  
20 in respect of which such notice was issued, for such a time, in either case, as he thinks fit. [Compare Chamberlain's Act s. 7 (s).]

*Sections 5 to 12—Sequestration Order.*

5. (I) Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the Judge may, on a bankruptcy petition  
25 being presented either by a creditor or by the debtor, make an order, in this Act called a sequestration order. Jurisdiction to make sequestration order.

(II) When a sequestration order has been made, the debtor thereby becomes a bankrupt, and continues a bankrupt until a certificate of discharge has been issued to him in manner hereinafter provided.

30 6. A creditor shall not be entitled to present a bankruptcy petition against a debtor unless— Conditions on which creditor may or may not petition.

(a) The debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors,  
35 amounts to fifty pounds, and (See Chamberlain's Act, section 6)

(b) The debt is a liquidated sum, payable either immediately or at some certain future time, whether due at law or in equity, and

(c) The act of bankruptcy in which the petition is grounded has occurred within six months before the presentation of the  
40 petition, and

(d) The debtor is domiciled in New South Wales, or, within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling house or place of business in New South Wales.

45 Provided that when the alleged act of bankruptcy is that set forth in sub-section (a), of clause four, no sequestration order shall be made upon the petition of a creditor or creditors, if such creditor or creditors do not represent at least one fifth in value of all the creditors.

7. If the petitioning creditor is a secured creditor, he must, in  
50 his petition, either state that he is willing to give up his security for the benefit of the creditors in the event of a sequestration order being made, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated  
55 in the same manner as if he were an unsecured creditor. Secured creditor.

8. (1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf, having knowledge of the facts, and served in the prescribed manner. Proceedings and order on creditor's petition.

(2) (See section 7, Chamberlain's Act.)



*Bankruptcy.*

(2) At the hearing the Judge shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and, if satisfied with the proof, may make a sequestration order in pursuance of the petition.

(3) If the bankrupt has made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally, the trustee or trustees under such assignment shall also receive the prescribed notice of the hearing and may appear to show cause why the petition should not be dismissed, and unless it shall appear to the Judge that it will be for the advantage of the creditors that the estate should be administered under the said deed such petition shall be dismissed.

Trustees shall receive notice of hearing.

(4) If the Judge is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the Judge may dismiss the petition. Provided that where a petition has been dismissed in consequence of the petitioning creditor's default in proceeding on such petition, or in consequence of his collusion with the person or persons sought to be made bankrupt therein, the Judge may, within six months after the dismissal of such petition, upon the application of any other creditor or creditors whose debt or debts existed at the date of the said petition, direct that the same may be revived and thereupon a sequestration order may be made, as if upon the petition of the last-mentioned creditor or creditors, but such sequestration order shall take effect from the date of the original petition.

Proviso for revival on dismissal of petition.  
5 Vic. No. 17, s. 28.

(5) If it appears to the Judge upon the hearing of the petition that the petition 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. Provided that nothing herein shall affect the right of the respondent to sue the petitioner for damages beyond the amount awarded by the Judge.

5 Vic. s. 17, No. 27

(6) When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure, or compound for a judgment debt, the Judge may, if he thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment.

(7) Where the debtor appears on the petition, and denies that he is indebted to the petitioner or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Judge, on such security (if any) being given as the Judge may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may instead of dismissing the petition stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

Staying proceedings on petition upon security being given.

(8) Where proceedings are stayed, the Judge may, if by reason of the delay caused by the stay of proceedings or for any other cause he thinks just, make a sequestration order on the petition of some other creditor, and shall thereupon dismiss, on such terms as he thinks just, the petition in which proceedings have been stayed as aforesaid.

(9) A creditor's petition shall not, after presentment, be withdrawn without the leave of the Judge.

(10) Where a petition is withdrawn, or discharged, or where proceedings upon a petition are stayed in consequence of the petitioning

Proviso for revival on proceeding being stayed.



*Bankruptcy.*

petitioning creditor's default, or his collusion with the bankrupt, the Judge within six months after such withdrawal or discharge may on the petition of any other creditor or creditors, whose debt or debts existed at the date of the service of the said petition, direct that a  
5 sequestration order shall be made.

(11) If any person against whom a sequestration order has been made pays any money to any petitioning creditor or to 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,  
10 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 petition.

9. (1) A debtor's petition shall allege that the debtor is unable  
15 to pay his debts and upon the presentation thereof the Judge shall make a sequestration order.

(2) A debtor's petition shall not, after presentment, be withdrawn without the leave of the Judge.

10. (1) A sequestration order shall vest in one of the official  
20 assignees to be named in such order, absolutely or for such estate and interest as the bankrupt had therein, all the real and personal property of the bankrupt, which belonged to, was vested in, or was due to such bankrupt, or to which he was in any manner entitled at the time when the act of bankruptcy was committed upon which the bankruptcy  
25 petition was founded against the bankrupt, (or, if such petition was founded upon more than one act of bankruptcy at the time when the first of such acts was committed), and such order shall also vest as aforesaid in such official assignee all the real and personal estate, which, since the time when such act of bankruptcy (or, if more than  
30 one act, then the earliest of such acts) was committed, has been shall have been or shall be purchased by the bankrupt, or which has or shall have reverted descended or come to the bankrupt, or which shall revert descend or come to the bankrupt during the continuance of his bankruptcy.

35 (2) After a sequestration order has been made except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings unless with the  
40 leave of the Judge and on such terms as the Judge may impose.

(3) But this section shall not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

45 (4) The Judge may at any time after the presentation of a bankruptcy petition, upon such conditions as he shall think fit, stay any action, execution, or other legal process against the property or person of the debtor and may discharge him out of custody and any Court in which proceedings are pending against a debtor may, on  
50 proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think fit.

(5) Where a Judge makes an order staying any action or proceeding, or staying proceedings generally, the order may be served  
55 by sending a copy thereof, under the seal of the Court, by prepaid post letter or by leave of the Judge by telegram to the address for service of the plaintiff or other party prosecuting such proceeding.

(6) All actions or proceedings at law or in equity commenced by any person, against whom a sequestration order shall afterwards be  
made,



*Bankruptcy.*

made, shall, upon such order being made, be stayed, until the official assignee or trustee shall make election to prosecute or discontinue the same, and such official assignee or trustee shall be bound to make such election within four weeks after notice to that effect shall be served upon him by any defendant or party in such action or proceedings, or otherwise shall be deemed to have abandoned the same. Provided that any bankrupt shall be permitted to continue in his own name and for his own benefit any action or proceedings commenced by him previous to his bankruptcy for any personal injury or wrong done to himself or to any of his family.

11. 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 and registered instrument 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 bankruptcy  
notice.

12. Where a creditor entitled to present a bankruptcy petition is absent from the Colony, his agent, if authorized to recover his debts or effects, may present the petition and make the proof required in lieu of such creditor. Provided that the person, whom it is sought to make bankrupt, shall have, in addition, 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.

Agent of creditor  
may act for him.

*Sections 13 to 18—Proceedings consequent on Order.*

13. (1) At any time after the making of a sequestration order the official assignee of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business, or the interests of the creditors generally, require the appointment of a special manager or receiver of the estate or business or any part thereof, other than the official assignee, appoint a manager or receiver thereof accordingly, to act until a trustee is appointed, or so long as the creditors may by resolution require.

Power to appoint  
special manager.

(2) Every such special manager or receiver shall, for all the 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.

(3) Every person aggrieved by any act of a receiver or manager, 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.

(4) Such special manager or receiver shall receive such remuneration as the creditors may by resolution determine, or in default of any such resolution, as may be prescribed.

14. (1) Where a sequestration order is made against a debtor, he shall make out and lodge in Court, and furnish to the official assignee, a copy of a statement of and in relation to his affairs in the prescribed form verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names, residences, and occupations of the debtors to his estate and of his creditors, the amounts due by and to each, and the securities given or held by them respectively, the dates when such debts and securities arose and were granted, and such further or other information as may be prescribed or as the official assignee may require.

Debtor's statement  
of affairs.



*Bankruptcy.*

(2) The statement shall be so submitted within the following times, namely:

- (a) If the order is made on the petition of the debtor, upon the making of the sequestration order.
- 5 (b) If the order is made on the petition of a creditor, within seven days from the date of the service of the order.

But the Court may, in either case, for special reasons, extend the time.

(3) The bankrupt shall also deliver to the official assignee all books of account vouchers and other documents and writings in the  
10 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 official assignee, trustee, and manager, in the collection and realisation of the assets.

(4) If the bankrupt fails without reasonable excuse to  
15 comply with the requirements of this section the Judge may on the application of the official assignee or of any creditor adjudge him guilty of contempt of Court and punish him accordingly.

(5) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect this statement  
20 at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of contempt of Court, and shall be punishable accordingly on the application of the official assignee or trustee.

15. (1) As soon as may be after the lodgment of the bankrupt's  
25 statement of affairs as aforesaid a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held at an advertised time and place.

(2) The debtor shall, unless prevented by sickness or other sufficient cause, attend such meeting, and shall submit to such  
30 examination and give such information as the meeting may require.

(3) With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the first schedule shall be observed.

(4) In the interpretation of the said rules the words first  
35 meeting shall include single meeting, except that such single meeting shall be presided over by the Judge or Registrar, anything in the said rules to the contrary notwithstanding.

16. At such first meeting the following business may be  
transacted

40 (1) The creditors may consider whether any and what proposal for a composition or scheme of arrangement shall be entertained

(2) The creditors may determine whether the bankrupt shall be  
45 allowed to retain his household furniture and personal effects or some and what part thereof

(3) Subject to the assent or dissent of the creditors the official assignee may allow the bankrupt to retain his tools in trade and wearing apparel of himself and his wife and children or some specified part thereof above the value of twenty  
50 pounds. Provided that no resolution allowing retention of any other portion of the estate shall have effect unless  
[See sect. 56.] approved of by the Judge

(4) A trustee or committee of inspection may be appointed as hereinafter provided.

55 17. (1) If the estate of the bankrupt does not appear to the official assignee to be of the value of two hundred pounds or upwards, there shall ordinarily be only a single meeting of creditors, which shall specially be so termed and be advertised accordingly.

Single meetings for small bankruptcies.



*Bankruptcy.*

(2) 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 any meeting of creditors where the value of the estate exceeds two hundred pounds, except such matters and directions  
5 as relate to an offer of composition or other arrangement of a bankrupt's affairs.

(3) At such single meeting the Judge, or Registrar, presiding may forthwith rank the creditors, who have proved their debts, according to the legal order of preference, and the official  
10 assignee may forthwith collect and realize the assets accordingly.

(4) Within three months next following such meeting or an adjournment thereof, or earlier if the Judge so directs, the official assignee shall frame an account of such assets and their proceeds with a plan of distribution for audit and approval, as in other cases.

15 (5) If the assets appear at a single meeting to exceed two hundred pounds other meetings may be summoned, and all proceedings and directions shall and may be given or taken as provided in the case of a bankruptcy where the estate exceeds two hundred pounds.

20 18. (1) Where the Judge makes a sequestration order he shall hold a public sitting, on a day to be appointed by him or by the Registrar, for the examination of the bankrupt, and the bankrupt shall attend thereat, and shall be examined as to his conduct, dealings, and property. Public examination  
of debtor.

25 (2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the bankrupt's statement of affairs.

(3) The Judge may adjourn the examination from time to time, and may direct such further examinations to be had from time to time as he may think fit at a date and place to be appointed by him  
30 or by the Registrar.

(4) Any creditor who has proved, or his representative authorized in writing, may question the bankrupt concerning his affairs and the causes of his failure; and any creditor who has tendered or his representative authorized in writing, may question the bankrupt  
35 upon any matters which may serve to establish his alleged claim to be counted as a creditor.

(5) The official assignee shall take part in the examination of the debtor; and for the purpose thereof, if specially authorized by the creditors or the Registrar, may employ a solicitor with or without  
40 counsel.

(6) If a trustee is appointed before the conclusion of the examination he may take part therein, and if authorized by the creditors may employ a solicitor with or without counsel.

(7) The Judge or Registrar presiding may put such questions  
45 to the debtor as he may think expedient.

(8) The bankrupt shall be examined upon oath, and it shall be his duty to answer all such questions as the Judge may put or allow to be put to him. The examination shall be taken down in writing or in shorthand, and when transcribed, shall be read over  
50 to and signed by the bankrupt, before the Judge or Registrar, either at the same or at a future time, and they shall also be open to the inspection of any creditor at all reasonable times.

(9) When the Judge is of opinion that the affairs of the bankrupt have been sufficiently investigated, he shall, by order,  
55 declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors, and the Judge may at any time direct a further examination on being satisfied of its propriety.

*Sections*



*Bankruptcy.**Sections 19 to 20—Composition or Scheme of Arrangement.*

19. (1) The creditors may at the first or any other meeting, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the bankrupt or a proposal for a scheme of arrangement of the bankrupt's affairs.

Power for creditors to accept and Judge to approve composition or arrangement.

(2) The composition or scheme shall not be binding on the creditors unless it is confirmed by a resolution passed by a majority in number representing three-fourths in value of all the creditors who have proved at a subsequent meeting of the creditors, and is approved by the Judge.

[Chamberlain's Act, s. 18.]

Any creditor who has proved his debt may assent to or dissent from such composition or scheme by a letter addressed to the official assignee in the prescribed form, and attested by a witness, so as to be received by such official assignee not later than two days preceding such subsequent meeting, and such creditor shall be taken as being present and voting at such meeting.

(3) The subsequent meeting shall be summoned by the official assignee 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 assignee thereon.

(4) The bankrupt or the official assignee may, after the composition or scheme is accepted by the creditors, apply to the Judge to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(5) The Judge shall, before approving the composition or scheme, hear a report of the official assignee as to the terms of the composition or scheme and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

(6) If the Judge is of opinion that the terms of the composition or scheme are not calculated to benefit the general body of creditors, the Judge may, in his discretion, refuse to approve the composition or scheme.

(7) If the Judge 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 Judge.

(8) A composition or scheme accepted or 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 bankrupt and provable in bankruptcy.

(9) A certificate of the official assignee or registrar that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

(10) The provisions of a composition or scheme under this section may be enforced by the Court, or a Judge thereof, on application by any person interested, and any disobedience of an order of the Court or Judge made on the application shall be deemed a contempt of Court.

(11) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Judge, on satisfactory evidence, that the composition or scheme cannot in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the bankrupt, or that the approval of the Judge was obtained by fraud, the Judge may, if he thinks fit, on application by any creditor, annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done under or in pursuance



*Bankruptcy.*

pursuance of the composition or scheme. And any debt provable in other respects, which has been contracted before the date of the sequestration order, shall be provable in the bankruptcy.

(12) If, under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property or manage his business, the provisions of Parts III and VII of this Act, so far as the nature of the case and the terms of the composition or scheme admit, shall apply to the trustee as if he were a creditor's trustee in a bankruptcy, and as if the terms "bankruptcy," and "bankrupt," included respectively a composition or scheme of arrangement, and a compounding or arranging debtor.

(13) No composition or scheme shall be approved by the Judge which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

(14) No composition or scheme shall be approved of by the Judge which does not provide for payment to the creditors of seven shillings and sixpence in the pound, unless in opinion of the Judge the bankruptcy was caused by misfortune without any misconduct on the part of the debtor. Provided that if at any time after such approval the Judge shall be satisfied that such opinion was erroneous he may declare the creditors released from the terms of the composition, but no payment made in the meantime thereunder shall be disturbed.

(15) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be able to obtain his certificate of discharge if the debtor had been adjudged bankrupt.

20. Notwithstanding the acceptance and approval of a composition or scheme, such composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the debtor would not be discharged by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Effect of composition or scheme.

*Sections 21 to 26—Creditors Trustees and Committee of Inspection.*

21. (1) Whether the creditors resolve to entertain a proposal for a composition or not they may at any meeting elect such person or persons as they think fit not exceeding two to be trustees of the estate in place of or in addition to the official assignee.

Appointment of trustee.

(2) Such trustee may be a creditor or may be one of the official assignees.

(3) Instead of electing a trustee or trustees as aforesaid the creditors may by resolution leave his or their appointment to the committee of inspection hereinafter named.

(4) When more persons than one are elected or appointed to the office of trustee, the creditors or the committee of inspection (as the case may be) may at any time declare whether any act or all acts required or authorized to be done by the trustees is or are to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee" (except where the context otherwise requires) as also is the official assignee in all cases in which he is elected a trustee.

(5) The creditors or the committee (as the case may be) may at the time of the original election or appointment or at any subsequent time elect or appoint 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, or failing to give security or not being approved of by the Judge.

(6) Trustees shall be joint tenants of the property of the bankrupt.



*Bankruptcy.*

22. (1) Creditors may direct what security (if any) shall be <sup>Security.</sup> given by every elected trustee and to whom for the due performance of the duties of his office.

(2) No trustee shall be appointed after the expiration of  
5 four weeks from the date of the sequestration order except by leave of the Judge.

23. (1) Upon the written acceptance by a trustee of his office <sup>Confirmation of election and power to remove.</sup> and proof of his having given the security required of him the Judge may make an order confirming his election.

10 (2) No official assignee shall be required to give security upon being elected trustee.

(3) The Judge may remove any trustee for misconduct or absence from the Colony and thereupon or on the date of the resignation or incapacity of the trustee the creditors may elect another in his  
15 stead in the same manner as in the original election.

(4) Any creditor may object to the confirmation of the election of a trustee upon the ground that it was not made in good faith by a majority in number and value of the creditors voting, or that the person appointed is not fit to act as trustee or that his  
20 connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interest of the creditors generally.

(5) If any such objection appears to the Judge to be frivolous the creditor making such objection may be ordered to pay  
25 the costs occasioned thereby.

(6) Notice of every confirmation or removal under this section shall forthwith be published by the Registrar in the *Gazette* the production of such *Gazette* shall be evidence that the trustees named have been duly elected and confirmed or removed as the case may be.

30 24. (1) Every order confirming the election of a trustee shall <sup>Vesting of estate in trustee.</sup> divest the estate from the official assignee or from the trustee previously in office as the case may be, and shall vest the same in the trustee or trustees so elected—or in the elected trustee or trustees and assignee jointly—as the case may be, and whenever a new trustee is elected and  
35 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.

(2) The property of the bankrupt shall pass from trustee to trustee, including in that term the official assignee when he fills the  
40 office of trustee, and shall vest in the trustee or trustees for the time being during his or their continuance in office, without any conveyance, assignment, or transfer whatever.

(3) A sequestration order and the order of appointment of a trustee shall, for all purposes of any law in force in the Colony  
45 requiring registration, enrollment or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly.

25. No defect or irregularity in the election of a trustee, or of <sup>Acts done in good faith to be valid.</sup> a member of the committee of inspection shall vitiate any act done in  
50 good faith, and no act of any trustee or of the committee shall be invalid by reason of any failure to elect a co-trustee or any of its members.

26. (1) The creditors, qualified to vote, may at their first or <sup>Committee of inspection.</sup> any subsequent meeting, by resolution, appoint from among the  
55 creditors qualified to vote, or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property. The committee of inspection shall consist of not more than five or less than three persons.

(2)



*Bankruptcy.*

(2) The committee of inspection shall meet at such times as they shall from time to time appoint, and failing such appointment, at least once a month; and the official assignee or a trustee or any member of the committee may also call a meeting of the committee  
5 as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(4) Any member of the committee may resign his office  
10 by notice in writing signed by him, and delivered to the official assignee or trustee.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become  
15 vacant.

(6) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the office of a member of  
20 the committee the official assignee or trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may, by resolution, appoint another creditor or other person eligible as above to fill the vacancy.

(8) The continuing members of the committee, provided  
25 there be not less than two such continuing members, 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.

30 *Sections 27 to 33—Control over Person and Property of Bankrupt.*

27. (1) Every bankrupt shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall also if required by the official assignee or a trustee or creditor, attend any and every other meeting or adjournment thereof, and shall  
35 submit to such examination and give such information as the meeting may require.

Duties of bankrupts as to discovery and realisation of property.  
[See Chamberlain's Act ss. 24-27.]

(2) He shall whenever required to do so bring with him, and give such information as may be required about any books of account, vouchers, and other documents in writing in his possession,  
40 relating to his estate and dealings, and about his assets and about any particular in his statement of affairs.

(3) He shall wait at such times on the official assignee, special manager, or trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and  
45 things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official assignee, special manager, or trustee, or may be prescribed by general rules or be directed by the Judge by any special order or orders made in reference to any particular case, or made on the occasion of any  
50 special application by the official assignee, special manager, trustee, or any creditor or person interested.

(4) He shall aid to the utmost of his power in the realisation of his property, and the distribution of the proceeds among his creditors.

(5) If a bankrupt wilfully fails to perform any of the duties  
55 imposed on him by this section, or to deliver up possession of any part of his property, which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, to the official assignee or to the trustee, or to any person authorized by the



*Bankruptcy.*

the Judge to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

(6) The official assignee or trustee may employ the bankrupt either before or after his discharge in the administration, collection, management or disposition of the assets or any part thereof, and may make him a reasonable allowance for his services.

28. (1) The Judge may, by warrant addressed to the Sheriff or any constable or prescribed officer of the Court, cause a debtor to be arrested, and any books, papers, money, and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Judge may order under the following circumstances :

Arrest of debtor under certain circumstances.

(a) If after a bankruptcy notice has been issued under this Act, or after presentation of a bankruptcy petition by or against him, it appears to the Judge that there is probable reason for believing that he is about to abscond with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy against him.

(b) If, after presentation of a bankruptcy petition by or against him, it appears to the Judge that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official assignee or manager or 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 any books, documents, or writings, which might be of use to his creditors in the course of his bankruptcy.

(c) If, after service of a bankruptcy petition on him, he removes any goods in his possession above the value of five pounds, without the leave of the official assignee or trustee.

(d) If, without good cause shown, he fails to attend any examination ordered by the Judge.

Provided that no arrest upon a bankruptcy notice shall be valid and protected unless the debtor before or at the time of his arrest shall be served with such bankruptcy notice.

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

29. Where a sequestration order is made against a debtor the Judge, on the application of the official assignee or trustee, may from time to time order that for such time, not exceeding three months, as the Judge thinks fit, post letters addressed to the debtor at any place, or places, mentioned in the order for re-direction shall be re-directed, sent or delivered by the Postmaster-General, or the officers acting under him, to the official assignee, or the trustee, or otherwise as the Judge directs, and the same shall be done accordingly.

Re-direction of debtors' letters.

30. (1) The Judge may, on the application of the official assignee or trustee, at any time after a sequestration order has been made against a debtor, summon before him the bankrupt or his wife, or any person known or suspected to have in his possession any of the estate or effects belonging to the bankrupt, or supposed to be indebted to the bankrupt, or any person whom the Judge may deem capable of giving information respecting the bankrupt, his dealings or property, and the Judge may require any such person to produce any documents in his custody or power relating to the bankrupt, his dealings or property.

Discovery of debtor's property.



*Bankruptcy.*

(2) If any person so summoned, after having been tendered a reasonable sum, refuses or neglects to come before the Judge at the time appointed, or refuses or neglects to produce any such document, having no lawful impediment made known to the Judge at the time  
5 of sitting and allowed by him, the Judge may, by warrant, cause him to be apprehended and brought up for examination.

(3) The Judge may examine on oath, or allow to be examined by the official assignee and trustee and any creditor, or by any solicitor or counsel on behalf of such assignee trustee or creditor,  
10 in such cases where a solicitor or counsel may be employed as provided by this Act, either by word of mouth or by written interrogatories, any person so brought before him concerning the debtor, his dealings or property.

(4) If any person on examination before the Judge or in  
15 answer to interrogatories admits or if by other evidence it is proved to the satisfaction of the Judge that he is indebted to the debtor, the Judge may, on the application of the official assignee or trustee, order him to pay to the assignee or trustee, at such time and in such manner as to the Judge seems expedient, the amount admitted, or any  
20 part thereof, either in full discharge of the whole amount in question or not, as the Judge thinks fit, with or without costs of the examination and order.

(5) If any person on examination before the Judge or in  
25 answer to interrogatories admits or if by other evidence it is proved to the satisfaction of the Judge that he has in his possession any property belonging to the debtor, the Judge may, on the application of the official assignee or trustee, order him to deliver to the official assignee or trustee such property, or any part thereof, at such time, and in such manner, and on such terms as to the Judge may seem  
30 just with or without costs of the examination and order.

31. 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,  
35 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 or Registrar 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  
40 Court. And if any such person while under examination is guilty of prevarication or evasion, or indecent conduct, the Judge or Registrar may commit him to prison for any term not exceeding fourteen days.

32. Any person committed under the last preceding section  
45 may be discharged from such committal on appeal therefrom to the Court if committed by the Judge, and to the Judge if committed by the Registrar, and in such last-mentioned cases a further appeal shall lie to the Court. If the committal was for refusing to answer a question, such question shall be set out in the warrant,  
50 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 or Judge shall order the person committed to be discharged.

33. No question put to the bankrupt in any examination shall  
55 be deemed unlawful by reason only that the answer thereto may expose him to punishment. Provided that no answer to any such question shall be admitted in evidence against him on the trial of any indictment other than on a prosecution against him for perjury.

*Sections*



*Bankruptcy.**Sections 34 to 36—Release of Estate.*

34. After the acceptance and approval of a composition or Release on composition or arrangement. 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, so far as is at the time practicable, 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.

35. If the bankrupt or any person on his behalf shall pay in Release on payment &c. 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 a like order upon such terms as he shall think just.

36. Any order, whereby the estate is released from sequestration, shall have the effect of revesting in the bankrupt or such person as Effect of order. 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 sequestered. Provided that all sales and disposition of the property and payments made and acts theretofore done by the official assignee or trustee shall be valid; and provided that the release of the estate shall not operate as a discharge of the bankrupt unless the Judge shall so order.

*Sections 37 to 44—Bankrupt's Certificate.*

37. Whether a composition or scheme of arrangement has been confirmed as hereinbefore provided or not, and whether his estate has been released or not, the bankrupt may, after the expiration of three months from the date of sequestration, cause an advertisement to be inserted in the *Gazette* and a newspaper published in the place where the bankrupt resided at the date of the sequestration order stating his intention to apply on a day fixed by the Judge or Registrar and named therein not less than fourteen nor more than thirty days from the day of first publication for a certificate of discharge under this Act,—Certificate how and when applied for. Provided that where the Judge has granted a release of the bankrupt's estate under section thirty-five the bankrupt may forthwith apply for a certificate of discharge anything in this section to the contrary notwithstanding

- (1) He shall give fourteen day's notice in writing to the official assignee of such intention.
- (2) The application shall be heard on the appointed day and on any day or days of adjournment and the official assignee and any creditor may be heard in opposition to such application upon giving notice of the grounds thereof.
- (3) On the hearing of the application the Judge shall take into consideration a report of the official assignee as to the bankrupt's conduct or affairs, and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may then be or afterwards become due to the bankrupt or with respect to his after acquired property: Provided that the Judge shall refuse the discharge in all cases where he is satisfied that the bankrupt has done or omitted



*Bankruptcy.*

omitted anything which in the opinion of the Judge amounts to a misdemeanour under this Act or any amendment thereof, and shall, on proof of any of the facts hereinafter mentioned, either refuse the order, or suspend the operation of the order for a specified time, or grant an order of discharge, subject to such conditions as aforesaid.

38. The facts referred to in the last preceding section are—

Grounds for refusing or suspending certificate.

[Compare Chamberlain's Act s. 28.]

- (a) That the bankrupt has omitted to keep such books of account as are usual and proper in the business or occupation carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy.
- (b) That 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.
- (c) That the bankrupt has continued to trade or obtained credit in one or more sums to the amount of fifty pounds or upwards after knowing himself to be insolvent.
- (d) That the bankrupt has contracted any debt provable in the bankruptcy, without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall be on him) of being able to pay it.
- (e) That the bankrupt has brought on his bankruptcy by rash and hazardous speculations or unjustifiable extravagance in living.
- (f) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action or other proceeding properly brought against him.
- (g) That the bankrupt has within three months preceding the date of the sequestration order, when unable to pay his debts as they become due,—given an undue preference to any of his creditors.
- (h) That the bankrupt has on any previous occasion been adjudged bankrupt, or made a statutory composition or arrangement with his creditors, unless his estate then produced ten shillings in the pound or a majority in number and value of the creditors in that estate shall certify that in their opinion the bankruptcy was the result of misfortune only.
- (i) That the bankrupt has not upon surrendering his estate or after his sequestration made a full and fair disclosure of his property in possession reversion or expectancy
- (j) That the bankrupt has wilfully violated or omitted to comply with any of the provisions of this Act.
- (k) That the bankrupt being at the time insolvent has made away with or disposed of any of his property otherwise than in good faith and for valuable consideration.
- (l) That the bankrupt 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 that he has been guilty of any fraudulent breach of trust.
- (m) That there is an unsatisfied judgment against the bankrupt in an action for assault breach of promise seduction or any malicious injury.
- (n) That the bankrupt has carried on business by means of a fictitious capital.



*Bankruptcy.*

39. In either of the following cases; that is to say,
- (1) In the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or
- (2) In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);
- If the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Judge that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Judge may refuse or suspend the certificate of discharge, or grant one subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has come within the provisions of the last preceding section.
40. (1) For the purposes of the last two preceding sections the report of the official assignee shall be *prima facie* evidence of the statements therein contained.
- (2) Notice of the appointment by the Judge or Registrar of the day for hearing the application for a certificate of discharge shall be published in the prescribed manner, and the Judge may hear the official assignee and the trustee, and may also hear any creditor, either personally or by counsel. At the hearing the Judge may put such questions to the bankrupt and receive such evidence as he may think fit.
- (3) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the official assignee or trustee may require in the realization and distribution of such of his property as is vested in such assignee or trustee, and if he fails to do so he shall be guilty of a contempt of Court; and the Judge may also, if he thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment duly made or thing duly done subsequent to the discharge, but before its revocation.
- (4) No certificate of discharge shall be issued until the bankrupt has paid all fees due by him in respect of any proceedings under this Act including such fees as may be payable upon the granting of and in respect of the said certificate, and no bankrupt shall be deemed to be discharged within the meaning of this Act until such certificate has issued.
- (5) A certificate of discharge shall be issued by the Registrar after an order has been made in that behalf by the Judge, and such certificate shall bear the seal of the Court and be in the prescribed form.
- (6) If in consequence of the estate not being sufficiently administered, or for want of sufficient evidence, or for any other reason, the Judge is unable to decide whether a certificate should or should not be granted suspended or refused, he may adjourn the application for such certificate from time to time: Provided that the Judge shall give his decision as soon as may be after the final dividend has been declared as hereinafter provided, and the bankrupt shall then be entitled to demand that such decision be given without delay.
- (7) In all cases where under the provisions of this Act the Judge shall refuse to grant the bankrupt his certificate, and the decision of the Judge shall have been confirmed on appeal, it shall be lawful for the Court upon the application of the bankrupt, and at the request of the majority in number of the creditors who shall have proved

Fraudulent  
statements.  
[Chamberlain's Act  
s. 29.]

Discharge of  
bankrupt.



*Bankruptcy.*

proved in his bankruptcy from time to time to alter and to vary the said decision and to suspend the said certificate for such period as to the said Court shall seem reasonable and just and then grant the same. Provided that no such application shall be made until after  
5 two years shall have elapsed from the date of such refusal by the Judge.

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

(2) If the bankrupt shall not within *nine months* after  
15 sequestration have applied for his certificate the Judge may on application of the official assignee or trustee 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  
20 the certificate had been applied for by him.

42. (1) A certificate of discharge shall not release the bankrupt from any debt on a recognizance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public  
25 revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence: And he shall not be discharged from such excepted debts unless the Treasury certify in writing their consent to his being discharged therefrom. An order of discharge shall not release the  
30 bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(2) A certificate of discharge shall release the bankrupt from  
35 all other debts provable in bankruptcy.

(3) A certificate of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained a certificate of discharge in respect of any debt from which he is  
40 released by the certificate, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence.

(4) A certificate of discharge shall not release any person who at the date of the sequestration order was a partner or co-trustee with  
45 the bankrupt or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

(5) Any assignee or trustee becoming bankrupt and being  
50 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.

43. (1) Where in the opinion of the Judge a sequestration order ought not to have been made or where it is proved to the satisfaction of the Judge that the debts of the bankrupt are paid in full the  
55 Judge may on the application of any person interested by order discharge such order.

(2) Where a sequestration order is discharged under this section all sales and dispositions of property duly made and all acts theretofore done by the official assignee trustee or other person acting  
under

Application after twelve months.

Proceedings where bankrupt does not apply.

Effect of certificate of discharge.  
[Chamberlain's Act s. 30.]

5 Vic. No. 17, s. 98.

Power for Judge to annul sequestration in certain cases.  
[Chamberlain's Act s. 38.]



*Bankruptcy.*

under their authority or by the Judge Registrar or District Registrar shall be valid but the property of the debtor who was adjudged bankrupt shall vest in such person as the Judge may appoint or in default of any such appointment revert to the debtor for all his  
 5 estate or interest therein on such terms and subject to such conditions if any as the Judge may declare by order.

(3) Notice of the order discharging a sequestration order shall be forthwith published in the *Gazette*.

44. For the purposes of this Part of this Act any debt disputed  
 10 by a debtor shall be considered as paid in full if the debtor enters into a bond in such sum and with such sureties as the Judge or Registrar approves to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt with costs and any debt due to a creditor who cannot be found or cannot be identified shall be  
 15 considered as paid in full if paid into Court.

Meaning of payment of debts in full.

## PART II.

## ADMINISTRATION OF PROPERTY.

*Sections 45 to 47—Proof of Debts.*

45. (1) Demands in the nature of unliquidated damages arising  
 20 otherwise than by reason of contract, promise, or breach of trust, shall not be provable in bankruptcy.

Description of debts provable in bankruptcy.

(2) A person having notice of any act of bankruptcy  
 available against the debtor shall not prove in the bankruptcy for any debt or liability contracted by the debtor subsequently to the date of  
 25 of his so having notice.

[Chamberlain's Act, s. 37.]

(3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the sequestration order, or to which he may become subject before his discharge by reason of any obligation incurred before the  
 30 date of the sequestration order, shall be deemed to be debts provable in bankruptcy.

(4) An estimate shall be made by the official assignee 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.

35 (5) Any person aggrieved by any estimate made by the official assignee or trustee as aforesaid may appeal to the Judge.

(6) If, in the opinion of the Judge, the value of the debt or liability is incapable of being fairly estimated, the Judge may make an order to that effect, and thereupon the debt or liability shall, for  
 40 the purposes of this Act be deemed to be a debt not provable in bankruptcy.

(7) If, in the opinion of the Judge, the value of the debt or liability is capable of being fairly estimated, the Judge may direct the value to be assessed, before the Judge himself without the intervention  
 45 of a jury or before the Registrar, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

(8) "Liability" shall for the purposes of this Act include any compensation for work or labor done, any obligation or possibility  
 50 of an obligation to pay money or moneys worth on the breach of any express or implied covenant, contract, agreement, or undertaking whether the breach does or does not occur, or is or is not likely to occur



*Bankruptcy.*

occur or capable of occurring before the discharge of the debtor, 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 moneys worth, whether the payment is, as respects  
 5 amount fixed on unliquidated; as respects time, present or future, certain or dependent on any one contingency or in two or more contingencies; as to mode of valuation capable of being ascertained by fixed rules, or as a matter of opinion.

46. Where there have been mutual credits, mutual debts, or  
 10 other mutual dealings between a debtor against whom a sequestration order shall be made under this Act and any other person proving or claiming to prove a debt under such sequestration order, 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  
 15 set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed as paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit to the debtor, notice of  
 20 an act of bankruptcy committed by the debtor, and available against him.

Mutual credit and set-off.  
 [Chamberlain's Act, s. 38.]

47. With respect to the mode of proving debts, the right of  
 proof by secured and other creditors, the admission and rejection of  
 proofs, and other matters referred to in the Second Schedule, the rules  
 25 in that Schedule shall be observed.

Rules as to proof of debts.  
 (Chamberlain's Act s. 39.)

*Sections 48 to 50—Preferential Debts.*

48. (1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts—

Priority of debts.  
 (Chamberlain's Act s. 40.)

(a) All wages or salary of any clerk or servant in respect of the  
 30 services rendered to the bankrupt during six months before the date of the sequestration order, not exceeding fifty pounds; and

(b) All wages of any labourer or workmen, not exceeding fifty  
 35 pounds, whether payable for time or piece-work, in respect of the services rendered to the bankrupt during six months before the date of the bankruptcy order.

(2) The foregoing debts shall rank equally between themselves, 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  
 40 proportions between themselves.

(3) In the case of partners the joint estate shall be applicable in the first instance, in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate  
 45 estates it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(4) Subject to the provisions of this Act all debts proved  
 50 in the bankruptcy shall be paid *pari passu*.

(5) Nothing in this section shall alter the effect of the Act thirtieth Victoria number fourteen or shall prejudice the provisions of the Friendly Societies Act thirty-seven Victoria number four or of the twenty-sixth Victoria number thirteen.

49. (1) Where at the time of the presentation of the bank-  
 55 ruptcy petition any person is apprenticed or is an articled clerk to the bankrupt,

Preferential claim in case of apprenticeship.



*Bankruptcy.*

bankrupt, the sequestration order shall, if either the bankrupt or apprentice or clerk gives notice in writing to the official assignee or trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been  
 5 paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the official assignee or trustee may, on the application of the apprentice or clerk or of some person on his behalf, pay such sum as the official assignee or trustee, subject to an appeal to the Judge, thinks reasonable, out of the bankrupt's property, to or for  
 10 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 of articles before the commencement of the bankruptcy, and to the other circumstances of the case.

(2) Where it appears expedient to an official assignee or  
 15 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.

20 50. 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  
 Rent. [Compare Chamberlain's Act section 42 subsection 1, and 5 Victoria No. 17 s. 41.]  
 creditors for the balance.

25 *Sections 51 to 52—Property available for Payment of Debts.*

51. The bankruptcy of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a seques-  
 30 tration order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the  
 35 bankruptcy petition; but no bankruptcy petition, or sequestration order, shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

52. The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not  
 40 comprise the following particulars:

- (1) Property held by the bankrupt on trust for any other person:
- (2) The tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole:

45 But it shall comprise the following particulars:

- (1) All such property as may belong to or to be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and,
- 50 (2) 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 at the commencement of his bankruptcy or before his discharge; and,
- 55 (3) All goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, in his trade or business or occupation, by the consent and permission of

Relation back of Official Assignee's or trustees title. [Chamberlain's Act section 43.]

Description of bankrupt's property divisible amongst creditors.



*Bankruptcy.*

5 of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section.

*Sections 53 to 58—Effect of Bankruptcy on antecedent Transactions.*

10 53. (1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the official assignee or trustee of the bankrupt, unless he has completed the execution or attachment before the date of the sequestration order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

Restriction of rights of creditor under execution or attachment.

[Chamberlain's Act section 45.]

15 (2) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.

20 54. (1) Where the goods of a debtor are taken in execution, and before the sale thereof notice is served on the sheriff that a sequestration order has been made against the debtor, the sheriff shall, on request, deliver the goods to the official assignee or trustee under the order, but the costs of the execution shall be a charge on the goods so delivered, and the official assignee or trustee may sell the goods or an adequate part thereof for the purpose of satisfying the charge.

Duties of sheriff as to goods taken in execution. [Chamberlain's Act s. 46.]

25 (2) Where the goods of a debtor are sold under an execution in respect of a judgment for a sum exceeding twenty pounds, the sheriff shall deduct the costs of the execution from the proceeds of sale, and retain the balance for seven days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and the debtor is adjudged bankrupt thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official assignee or trustee, who shall be

30 entitled to retain the same as against the execution creditor, but otherwise he shall deal with it as if no notice of the presentation of a bankruptcy petition had been served on him.

35 (3) An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the sheriff shall in all cases acquire a good title to them against the official assignee or trustee.

40 55. (1) Any settlement of property not being a settlement made before and in consideration of marriage, 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 one year after the date of the settlement, be void against the official assignee or

45 trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within five years after the date of the settlement, be void against the official assignee or trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his

50 debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.

Avoidance of voluntary settlements.

[Chamberlain's Act s. 47.]



*Bankruptcy.*

(2) Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's 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, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the trustees in the bankruptcy.

(3) "Settlement" shall for the purpose of this section include any conveyance or transfer of property.

56. (1) 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 official assignee or trustee.

Fraudulent preferences.

[C f. 5 Vic. No. 17 s. 8.]

(2) For the purpose 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.

(3) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

57. Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements and preferences, nothing in this Act shall invalidate, in the case of a bankruptcy—

Protection of *bond-fide* transactions without notice. [Chamberlain's Act, s. 49 and 25 Vic. No. 8.]

(a) Any payment by the bankrupt to any of his creditors,

(b) Any payment or delivery to the bankrupt,

(c) Any conveyance or assignment by the bankrupt for valuable consideration,

(d) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration,

Provided that both the following conditions are complied with, namely—

(1) The payment, delivery, conveyance, assignment, contract dealing, or transaction, as the case may be, takes place before the date of the sequestration order; and

(2) The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

58. Every distribution of property which is under this Act an act of bankruptcy shall be void against the official assignee or trustee 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.

Assignment when void.



*Bankruptcy.**Sections 59 to 66—Realisation of Property.*

59. (1) The official assignee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.

Possession of property by official assignee.

5 (2) The official assignee or trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the Supreme Court, and the Judge may on his application, enforce such acquisition or retention accordingly.

[Chamberlain's Act, s. 50.]

10 (3) Where any part 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 official assignee or trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become  
15 bankrupt.

(4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the official assignee.

(5) Any treasurer or other officer, or banker, attorney, or  
20 agent of a bankrupt, shall pay and deliver to the official assignee or trustee all money and securities in his possession or power, as such officer, banker, attorney, or agent, which he is not by law entitled to retain as against the bankrupt or the official assignee or the trustee. If he does not he shall be guilty of a contempt of Court, and may be  
25 punished accordingly on the application of the official assignee or trustee.

60. (1) Any person acting under warrant of the Judge may seize any part of the property of a bankrupt, in the custody or possession of the bankrupt, or of any other person, and with a view to such  
30 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 when the Judge is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him,  
35 the Judge may, if he thinks fit, grant a search warrant to any constable or officer of the Court, who may execute it according to its tenor.

Seizure of property of bankrupt.

[Chamberlain's Act, s. 51.]

(2) Any person acting under such warrant 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  
40 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 misdemeanour.

61. (1) Where a bankrupt is an officer of the army or navy, or  
45 an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the official assignee or trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the Judge or Registrar, on the application of the assignee or trustee,  
50 with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct. Before making any order under this sub-section the Judge or Registrar shall communicate with the chief officer of the department as to the amount, time, and manner of the payment to the trustee, and shall obtain the written consent of the  
55 chief officer to the terms of such payment.

Appropriation of portion of pay or salary to creditors.

(2) When a bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half pay, or pension, or any compensation charged on the Consolidated Revenue, the Judge or Registrar,



*Bankruptcy.*

Registrar, on the application of the assignee or trustee, shall from time to time make such order as he thinks just for the payment of the salary, income, half-pay, pension, compensation, or of any part thereof, to the trustee to be applied by him in such manner as the Judge may direct.

- 5 (3) Nothing in this section shall take away or abridge any power of the chief officer of any public department to dismiss a bankrupt, or to declare the pension, half pay, or compensation of any bankrupt to be forfeited.

- 10 62. (1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is 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 consignee or trustee notwithstanding that he has endeavoured to sell, or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may by writing signed by him, at any time within three months after the date of the sequestration order disclaim the property.

Disclaimer of  
onerous property.  
[Chamberlain's Act,  
s. 55.]

- 20 Provided that where any such property shall not have come to the knowledge of the official assignee or trustee within three months after the date of the sequestration order he may, upon obtaining permission from the Judge, disclaim such property at any time within two months after he first became aware thereof.

- 25 (2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests, and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the official assignee or trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, (except so far as is necessary for the purpose of releasing the bankrupt and his property and the official assignee or trustee from liability), affect the rights or liabilities of any person.

- 35 (3) An official assignee or trustee shall not be entitled to disclaim a lease without leave of the Judge, except in any cases which may be prescribed by general rules, and the Judge may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, compensation for use, occupation of the premises since the date of sequestration, and other matters arising out of the tenancy as the Judge thinks just.

- 45 (4) The official assignee or trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will disclaim or not, and the assignee or trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Judge, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the assignee or trustee after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

- 55 (5) The Judge may, on the application of any person who is, as against the official assignee or trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise,



*Bankruptcy.*

otherwise, as to the Judge may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

(6) The Judge may, on application by any person either  
5 claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as he thinks fit make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of  
10 compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Judge thinks just; and, on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose

15 Provided always, that where the property disclaimed is of a leasehold nature, the Judge shall not make a vesting order in favour of any person claiming under the bankrupt, whether as underlessee or as mortgagee by demise except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was  
20 subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or underlessee declining to accept a vesting order upon such terms shall be excluded from all interest in, and security upon the property, and if there shall be no person claiming under the bankrupt who is willing to accept an  
25 order upon such terms, the Judge shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease, freed and discharged from all estates incumbrances and interests  
30 created therein by the bankrupt.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury and may accordingly prove the same as a debt under the bankruptcy.

35 63. Subject to the provisions of this Act the official assignee or trustee may do all or any of the following things : Powers of assignee or trustee independently of Committee of Inspection.

(1) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due  
40 or growing due to the bankrupt) by public auction with power to transfer the whole thereof to any person or company or to sell the same in parcels.

(2) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from  
45 all responsibility in respect of the application thereof.

(3) Prove, rank, claim and draw a dividend in respect of any debt due to the bankrupt.

(4) Exercise any powers the capacity to exercise which is vested in the official assignee or trustee under this Act, and execute any powers of attorney, deeds, and other instruments  
50 for the purpose of carrying into effect the provisions of this Act.

(5) Deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt  
55 might have dealt with it.

64. The official assignee or trustee may with the permission of the committee of inspection do all or any of the following things :— Powers exercisable by officers, assignee, or trustee, with permission of Committee of Inspection.

(1) Carry on the business of the bankrupt so far as may be necessary for the beneficial winding up of the same.

(2)



*Bankruptcy.*

- (2) Bring institute or defend any action or other legal proceeding relative to the property of the bankrupt.
- (3) Employ a solicitor counsel or other agent to take any proceedings or to do any business which may be sanctioned by the Committee of Inspection.
- (4) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the Committee think fit.
- (5) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts.
- (6) 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 person who may have incurred any liability to the bankrupt, on the receipt of such sums payable at such times, and generally on such terms as may be agreed on.
- (7) 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.
- (8) 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 official assignee or trustee by any person, or by the official assignee or trustee on any person.
- (9) 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 be readily or advantageously sold.
- (10) Appoint the bankrupt himself to superintend the management of the property of the bankrupt or any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee or trustee may direct.
- (11) Make such allowance as he may think just 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, but any such allowance may be reduced by the Judge.

65. (1) 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. Sanction may be general or specific.

(2) It shall not be necessary for persons dealt with by the assignee or trustee 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.

66. If there be no committee of inspection, any act or thing or any direction or permission by their act authorized or required to be done or given by the committee may be done or given by the Judge or Registrar.



*Bankruptcy.**Sections 67 to 79—Distribution of Estate.*

67. As soon as possible and not later than four months after sequestration (or three months in respect of estates requiring only a single meeting) the assignee or trustee 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 unsecured 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.

Account and plan of distribution.

68. 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 or trustee shall cause notice thereof to be given to the creditors and inserted in the *Gazette*.

Audit and notice thereof.

69. 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.

As to objections thereto.

70. The person objecting to the account or plan shall apply to the Judge or Registrar for an order calling on the assignee or trustee 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.

Proceedings thereon.

71. 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 or trustee 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 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.

Confirmation and effect thereof.

72. (1) Where a sequestration order is made against one partner of a firm, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

Joint and separate dividends.  
Chamberlain's Act, s. 59.

(2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Judge on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the official assignee or trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.



*Bankruptcy.*

73. Any creditor, who has not proved his debt before the declaration of any dividend or dividends, shall be entitled to be paid out of any money for the time being in the hands of the official assignee or trustee any dividend or dividends he may have failed to receive, before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein. Right of creditor who has not proved debt before declaration of a dividend.
74. No action for a dividend shall lie against the official assignees or trustee, but if the official assignee or trustee refuses to pay any dividend the Judge may, if he thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application. No action for dividend.
75. The assignee shall cause notice to be given as prescribed when and where dividends are payable to creditors and others interested in the estate. Assignee to give notice of dividend.
76. The assignee or trustee 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.
77. The Judge or Registrar 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 or trustee or of any payment made by such assignee or trustee and make such order thereon as the Judge or Registrar thinks fit. Judge may disallow costs charges &c.
78. When the official assignee or trustee has realized all the property of the bankrupt, so much thereof as can, in the joint opinion of himself and of the committee of inspection where such committee has been appointed, or realized without needlessly protracting the official assigneeship or trusteeship, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Judge within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims. After the expiration of the time so limited, or, if the Judge on application by any such claimant grant him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other person. Final dividend.
79. The bankrupt shall be entitled to any surplus remaining after payment in full of all his creditors, with interest, as by this Act provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition. Right of bankrupt to surplus.



*Bankruptcy.*

## PART III.

## CREDITORS TRUSTEES, AND OFFICIAL ASSIGNEES.

*Sections 80 to 84—Remuneration of Trustees and Assignees.*

50 (1) Where the creditors appoint any person to be trustee of a bankrupt's estate, his remuneration (if any) shall be fixed by a resolution of the creditors, or, if the creditors so resolve, by the Committee of Inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realized, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

Remuneration of  
Trustees.  
[Chamberlain's Act]  
s. 72 (1, 2, 3).

(2) If one-fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the Judge that the remuneration is unnecessarily large, the Judge shall fix the amount of the remuneration.

(3) The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover.

(4) Where no remuneration has been voted to a trustee he shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him in or about the proceedings of the bankruptcy as the Registrar may allow.

(5) The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as a creditor, or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

[Chamberlain's Act,  
s. 88.]

(1) Where no trustee is appointed an official assignee shall receive, in the absence of any resolution of the creditors allowing a larger amount, a remuneration in the nature of a commission or percentage at the rate of *five* per centum, of which one half shall be payable on the amount realized in each estate, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other half shall be payable upon each dividend as and when it is declared.

Remuneration of  
official assignee.

(2) An official assignee, who is elected to act as trustee, shall receive remuneration as such trustee, provided that it is not less than the remuneration by this section allowed to an official assignee.

(3) Where a trustee or trustees are duly appointed under this Act (of whom the official assignee is not one), the official assignee shall receive from such trustee or trustees such sum for his services as the Registrar may from time to time declare to be reasonable, provided that such sums in the aggregate do not exceed (except upon special order of the Judge on that behalf and made under the next following section), the amount allowed by this section when no creditor's trustee has been appointed.

82. The Judge may from time to time order that the remuneration of a trustee or official assignee be increased and may take into account in allowing such increase.

Power to increase  
remuneration for  
special services.

(a) Any special services rendered by such trustee or assignee.  
(b) Any special circumstance, which, in the opinion of the Judge, increased the difficulty of realizing the estate.

(1) An official assignee, or trustee is entitled to receive out of the estate in priority to the payment of a dividend payment for moneys disbursed, and for liabilities and costs incurred by him on behalf of the estate and in accordance with the provisions of this Act.

Trustee or assignee  
to be recouped  
expenses.

(2)



*Bankruptcy.*

(2) Where a trustee or manager receives remuneration for his services as such no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by statute or rules to be performed by himself.

Allowance and  
taxation of costs.

5 (3) Where the trustee is a solicitor he may contract that the remuneration for his services as trustee shall include all professional services.

(4) All bills and charges of solicitors, managers, accountants, auctioneers, brokers, official assignees or trustees, and other  
10 persons, shall be taxed by the Registrar, and no payments in respect thereof shall be allowed in the official assignee's or trustee's accounts without proof of such taxation having been made. The Registrar shall satisfy himself before passing such bills and charges that the  
15 employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned.

(5) Every such person shall, on request by the official assignee or trustee (which request the official assignee or trustee shall make a sufficient time before declaring a dividend) deliver his bill of  
20 costs or charges to the Registrar for taxation, and if he fails to do within seven days after receipt of the request, or such further time as the Judge or Registrar, on application, may grant, the official assignee or trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as  
25 well against the official assignee or trustee personally as against the estate.

(6) The Registrar may refer for taxation any common law charges in any bill of costs or charges to the Prothonotary, and any equity or conveyancing charges to the Chief Clerk in Equity; and in  
30 respect of such charges the decision of the Prothonotary or Chief Clerk shall be deemed to be the decision of the Registrar and be subject to appeal to the Judge under this Act.

(7) An appeal shall lie to the Judge from the decision of the Registrar in allowing or disallowing any item on the motion of  
35 the official assignee or trustee or any creditor of the estate or any other person interested.

84. (1) No official assignee, trustee, receiver, manager, or member of a Committee of Inspection shall, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any  
40 solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditor or allowed by this Act and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his  
45 remuneration, either as receiver, manager, or trustee to the bankrupt, or any solicitor or other person that may be employed about a bankruptcy.

Prohibition of secret  
understandings.  
(Chamberlain's Act  
s. 72 (5).)

(2) Any person offending against this section shall be guilty of a misdemeanour.

50 *Section 85—Official Name.*

85. A trustee or official assignee may sue and be sued by the official name of "the trustee or the official assignee of the property of  
a bankrupt" inserting the name of the bankrupt and by that name may in any part of the British dominions  
55 or elsewhere hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Official name of  
trustee.



*Bankruptcy.**Sections 86-90—Appointment and Removal.*

86. Official or elected assignees of Insolvent Estates shall here-  
 after be named Official or Elected Assignees in Bankruptcy, and the  
 Governor and Executive Council may appoint such number of fit  
 5 persons Official Assignees in Bankruptcy as may be in the opinion of  
 the Judge from time to time required, and the present Official  
 Assignees shall be the first Official Assignees under this Act, and both  
 such Official and Elected Assignees shall be under the direction and  
 control of the Judge. Every official assignee shall upon his appoint-  
 10 ment give such security as may be prescribed.

Official or elected  
 Assignee to be  
 appointed by  
 Governor and  
 Executive Council.

87. If an order of sequestration is made against an official  
 assignee or a trustee he shall thereby vacate his office.

Office of trustee  
 vacated by insol-  
 vency.

88. (1) The creditors may, by ordinary resolution, at a meeting  
 specially called for that purpose, of which seven days' notice has been  
 15 given, remove a trustee elected by them, or appointed by the committee  
 of inspection, and may at the same or any subsequent meeting appoint  
 another person to fill the vacancy as hereinafter provided in case of a  
 vacancy in the office of trustee.

Removal of trustee.

(2) If the Judge is of opinion that a trustee is guilty of  
 20 misconduct, or fails to perform his duties under this Act, the Judge  
 may remove him from his office, but if the creditors, by ordinary  
 resolution, disapprove of his removal, he or they may appeal against  
 it to the Court.

89. (1) If a vacancy occurs in the office of trustee the creditors  
 25 in general meeting may appoint a person to fill the vacancy, and there-  
 upon the same proceedings shall be taken as in the case of a first  
 appointment.

Proceedings in case  
 of a vacancy in the  
 office of trustee.

(2) The official assignee shall, on the requisition of any  
 creditor, summon a meeting for the purpose of filling any such vacancy.

30 (3) If the creditors do not, within three weeks after the  
 occurrence of a vacancy appoint a person to fill the vacancy, the official  
 assignee shall report the matter to the Judge, and the Judge may  
 appoint a trustee; but in such case the creditors or committee of  
 inspection shall have the same power of appointing a trustee as in the  
 35 case of a first appointment.

(4) During any vacancy in the office of trustee the official  
 assignee shall act as trustee.

90. Any official assignee or trustee or manager or receiver may  
 apply to the Judge for leave to resign his office, and if no valid objec-  
 40 tion be stated, and if the Judge be satisfied that he has complied with  
 the provisions of this Act, and with the rules, his application may  
 be granted; but if any objection be stated thereto the Judge shall  
 proceed to determine the same, and shall make such order thereon  
 as he shall deem fit, and if the application of any such official  
 45 assignee or trustee or manager or receiver for leave to resign be  
 granted, the Judge may make such orders as may be necessary for the  
 preservation and administration of the estate until a new assignee or  
 trustee or manager or receiver be appointed or elected and confirmed,  
 and for the discharge and acquittance of such assignee or trustee or  
 50 manager or receiver, and for the security and payment of any un-  
 claimed dividends to the parties entitled to the same. Provided always  
 that no order of the Judge allowing such assignee trustee manager  
 or receiver to resign, shall prevent the assignee trustee manager or  
 receiver thereafter appointed or elected and confirmed in his stead,  
 55 from calling upon him to account for anything done or left undone  
 prior to his resignation.

Resignation.

*Sections*



*Bankruptcy.**Sections 91 to 101—Control over Assignees and Trustees.*

91. (1) Subject to the provisions of this Act the assignee and trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by any resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

Discretionary powers of trustee and control thereof.

(2) The assignee or trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, or whenever requested in writing to do so by one fourth in value of the creditors.

(3) The assignee or trustee may apply to the Judge or Registrar in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

(4) Subject to the provisions of this Act the assignee or trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

92. If the bankrupt or any of the creditors, or any other person, is aggrieved by any act or decision of the assignee or trustee, he may apply to the Judge, and the Judge may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as shall be just.

Appeal to Judge against trustees.

93. (1) The Judge shall take cognizance of the conduct of assignees and trustees and in the event of any assignee or trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by statute, rules or otherwise, with respect to the performance of his duties, or omitting to use reasonable diligence with respect to the performance of his duties, or in the event of any complaint being made to the Judge by any creditor in regard thereto, the Judge shall inquire into the matter and take such action thereon as may be deemed expedient.

Control of Judge over trustees and assignees.

(2) The Judge may at any time require an assignee or trustee to answer any inquiry made by him in relation to any bankruptcy in which such assignee or trustee is engaged, and may, if he think fit, examine on oath such assignee or trustee or any other person concerning the bankruptcy.

(3) The Judge may also direct an investigation to be made of the books and vouchers of the assignee or trustee by the Accountant or Registrar.

94. (1) Every official assignee or trustee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the Registrar, or as he may direct, an account of his receipts and payments as such assignee or trustee.

Audit of Official Assignees' or Trustees' accounts.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by statutory declaration in the prescribed form.

(3) The Registrar shall cause the accounts so sent to be audited, and for the purposes of the audit the official assignee or trustee shall furnish the Registrar with such vouchers and information as the Registrar may require, and the Registrar may at any time require the production of and inspect any books or accounts kept by the official assignee or trustee.



*Bankruptcy.*

95. The official assignee or trustee shall, whenever required by any creditor so to do, and on payment by such creditor of the prescribed fee, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such  
5 creditors.

The official assignee or trustee to furnish list of creditors.

96. The official assignee or trustee shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings of meetings, and of such other matters as may be prescribed, and any creditor of the bankrupt may,  
10 subject to the control of the Judge, personally or by his agent inspect any such books.

Books to be kept by official assignee or trustee.

97. (1) Every official assignee or trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy transmit to the  
15 Judge a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form.

Annual statement of proceedings.

(2) The Judge shall cause the statement as transmitted to be examined, and call the official assignee or trustee to account for  
20 any misfeasance, neglect, or omission which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance neglect or omission.

98. (1) An account called the Bankruptcy Estate Account shall be kept by the Accountant with such bank or banks, as the Colonial Treasurer may from time to time direct, and all moneys received by the Accountant in respect of proceedings under this Act shall be paid to that account.  
25

Payment of money into Court.

(2) Every Official Assignee and every trustee shall, in such  
30 manner and at such times as may be prescribed, pay the money received by him to the Accountant, who shall furnish a receipt of the money so paid.

(3) Provided that if it appear to the Official Assignee, or, (if a committee of inspection has been appointed), to such committee  
35 that for the purpose of carrying on the debtor's business, or of obtaining advances, or because of the probable amount of the cash balance, or, if the Registrar shall certify that for any other reason it is for the advantage of the creditor that the Official Assignee or Trustee should have an account with a bank, the Accountant shall authorize the  
40 Official Assignee or trustee to make his payments into and out of such bank as the Registrar may select.

Such account shall be opened and kept by the assignee or trustee in the name of the debtor's estate; and any interest receivable in respect of the account shall be part of the assets of the estate.

(4) If an assignee or trustee at any time retain for more  
45 than ten days a sum exceeding fifty pounds, or such other amount as in any particular case the Registrar authorize him to retain, then, unless he explains the retention to the satisfaction of the Judge, he shall pay interest on the amount so retained in excess at the rate of  
50 twenty pounds per centum per annum, and shall have no claim for remuneration, and may be removed from his office, and shall be liable to pay any expenses occasioned by reason of his default.

99. No official assignee or trustee shall pay any sums received by him as such assignee or trustee into his private banker's account,  
55 or otherwise than as hereinbefore directed.

No payments allowed into private accounts.

[Chamberlain's Act, s. 78.]

100. (1) Whenever the cash balance standing to the credit of the bankruptcy estate account is in excess of the amount which in the opinion of the Registrar is required for the time being to answer demands in respect of bankrupt's estates, the Registrar shall notify  
the

Investment of surplus funds.  
[Chamberlain's Act s. 76.]



*Bankruptcy.*

the same to the Colonial Treasurer, and shall pay over the same or any part thereof as the Colonial Treasurer may require to the Colonial Treasurer to such account as the Colonial Treasurer may direct, and the Colonial Treasurer may invest the said sums or any part thereof  
5 in Government securities to be placed to the credit of the said account.

(2) Whenever any part of the money so invested is, in the opinion of the Registrar, required to answer any demands in respect of bankrupt's estates the Registrar shall notify to the Colonial  
10 Treasurer the amount so required, and the Colonial Treasurer shall thereupon repay to the Registrar such sum as may be required to the credit of the Bankruptcy Estates account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on the investments under this section shall be paid to such account as the Colonial Treasurer may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of bankruptcy proceedings.

101. All dividends in insolvent estates, now in the hands of any of  
20 the present Official or Elected Assignees of Insolvent Estates or in the hands of the Colonial Treasurer, and which have not been claimed for the space of six months from the date of any advertisement in a public newspaper published in Sydney and also in the place where the insolvent resided at the time of his sequestration stating that such dividends  
25 were receivable, or which shall remain unclaimed for the space of six months from the time this Act shall come into operation, shall be paid into the Colonial Treasury to the credit of a fund to be called the "Bankruptcy Unclaimed Dividend Fund"; and any unclaimed dividends in the hands of any of the Official Assignees at the time  
30 when this Act shall come into operation which have not been advertised as aforesaid, shall be so advertised by the Assignee, and if the same are not claimed within six months from such advertisement such dividends shall be paid into the Colonial Treasury to the credit of the said fund, and the expenses of such advertisements shall  
35 be paid out of the amount of the dividends mentioned therein, and the same shall be paid subject to such deduction; and all dividends in estates administered under the provisions of this Act, unless the Judge shall otherwise order, which shall be unclaimed by the parties entitled thereto for the space of six months next after the same shall be  
40 payable, shall be paid into the Colonial Treasury to the credit of the said fund. The Governor in Council may direct that all sums paid to the credit of the said fund shall be vested in debentures of the Government of New South Wales, and the interest arising from such investment shall be paid to the credit of a fund to be called the "Bankruptcy  
45 Sutors' Fund." Any person entitled to receive any dividend hereby directed to be paid into the said "Unclaimed Dividend Fund" may apply to the Judge for the payment of such dividends to him, and the Judge may order such dividends to be paid to him, and upon every such order the Governor shall issue his warrant for the payment of the  
50 amount specified in such order, and the Treasurer shall pay the same out of the said fund.

Unclaimed dividends to be paid into Unclaimed Dividend Fund. (Bankruptcy Act of 1849 and Victorian Act.)

Unclaimed dividends not already advertised to be advertised.

As to unclaimed dividends in estates under this Act.

Bankruptcy Sutors' Fund.

Unclaimed dividends may under circumstances be paid to persons entitled.



*Bankruptcy.*

## PART IV.

*Sections 102-108—Procedure.*

102. (1) Subject to the provisions of this Act and to general rules, the costs of and incidental to any proceeding under this Act shall be in the discretion of the Judge: Provided that where any issue is tried by a jury the costs shall follow the event, unless, upon application made at the trial, for good cause shown, the Judge before whom such issue is tried shall otherwise order. Discretionary powers of the Court. [Chamberlain's Act ss. 105-115.]
- 10 (2) The Judge or Registrar or District Registrar may at any time adjourn any proceedings before him upon such terms, if any, as he may think fit to impose.
- (3) The Judge or Registrar may at any time amend any written process or proceeding under this Act upon such terms, if any, as he may think fit to impose.
- 15 (4) Where by this Act or by general rules, the time for doing any act or thing is limited, the Judge may extend the time either before or after the expiration thereof, upon such terms, if any, as the Judge may think fit to impose.
- 20 (5) Subject to general rules, the Judge Registrar or District Registrar may in any matter take the whole or any part of the evidence either *viva voce*, or by interrogatories, upon an affidavit, or by commission abroad.
- (6) For the purpose of approving a composition or scheme by joint debtors, the Judge may, if he thinks fit, and on the report of the official assignee that it is expedient so to do, dispense with the public examination of one of such joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.
103. Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the Judge may consolidate the proceedings, or any of them, on such terms as he thinks fit. Consolidation of petitions.
104. Where the petitioner does not proceed with due diligence on his petition, the Judge may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor. Power to change carriage of proceedings.
105. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Judge otherwise orders, be continued as if the sequestration order had been made in the first instance against his representatives. Continuance of proceedings on death of debtor.
- 40 106. The Judge may at any time, for sufficient reasons, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the Judge may think just. Power to stay proceedings.
- 45 107. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others. Power to present petition against one partner.
- 50 108. Where there are more respondents than one to a petition the Judge may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them. Power to dismiss petition against one partner.



*Bankruptcy.*

## PART V.

## Sections 109 to 120—APPLICATION OF ACT.

*Partnerships.*

109. A sequestration order shall not be made against any corporation, or against any partnership or association or company registered under the Companies Act thirty-seven Victoria number nineteen. Provided that nothing in this Act shall affect or limit the power of the Court under the said Act or any Act amending the same to authorize proceedings to be taken before the Judge in Bankruptcy for winding up a Company.

Extension of limited companies.

110. (1) Any creditor or creditors of partnership may present a bankruptcy petition against a partnership, if he or they would be entitled to present such a petition against any one of the members of such partnership.

Sequestration of partnership estate.

15 (2) An order of sequestration may be made against a partnership estate although all the partners be not included therein.

111. The estate of a partnership may be sequestrated upon the petition of the greater number of the partners resident in New South Wales of a firm trading or having any estate herein.

Voluntary sequestration of partnership estate.

20 112. Where an order for sequestration has been made in a bankruptcy petition against or by one member of a partnership, and another bankruptcy petition against or by a member of the same partnership shall be filed the Judge may give such directions for consolidating the proceedings under the petitions as he thinks just.

Property of partners to be vested in same trustee.

25 113. Where a sequestration order is made against a member of a partnership the Judge or Registrar may authorize the assignee or trustee to commence and prosecute any action in the names of the assignee or trustee and of the bankrupt's partner or partners; and any release by such partner of the debt or demand to which the action relates given after such authority shall be void; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the Judge may, if he thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Judge directs.

Actions by trustee and bankrupts' partners.

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

Actions in joint contracts.

40 115. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in such case the Judge may, on application to any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise as the Judge may direct.

Proceedings in partnership's name.

50 116. Any creditor or creditors of the estate of a person deceased may present a bankruptcy 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.

The like against estate of a deceased person.



*Bankruptcy.*

117. 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—may present a bankruptcy petition, and the like proceedings may be taken against and concerning such estate and its representatives as in the case of other estates and persons.

Voluntary sequestration by execution or administration.  
[5 Vic. No. 17, s. 4.]

118. A bankruptcy petition may be presented by and against a married woman in respect of her separate estate.

119. General Rules may be made from time to time by the Judges of the Supreme Court for the purpose of regulating any matters under this Act, which are of an administrative and not of a judicial character.

120. Nothing in this Act shall affect the operation of or pre-judice the provisions of the “Life Assurance Encouragement Act of 1862.”

Saving of rights under Life Assurance Act.

15

## PART VI.

*Sections 121 to 126—INDICTABLE OFFENCES.*

121. Whosoever commits any of the offences mentioned in this section shall be guilty of a misdemeanour and be liable to imprisonment with or without hard labour for any time not exceeding three years and may be ordered to pay damages to any person whom he has injured by such offence—that is to say—

[See Debtors Act of 1869.]

- (a) Whosoever wilfully conceals any property being part of the estate of a bankrupt with intent to defraud his creditors.
- (b) Whosoever forges the signature of the Judge or Registrar or District 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.
- (c) Whoever 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.
- (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.
- (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.
- (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.

Concealing property.

Forging process.

Removing property under attachment.

Receiving property from bankrupt.

Inserting false advertisements.

False claim &c.



*Bankruptcy.*

122. A bankrupt who with intent either to defraud his creditors or dishonestly to conceal the state of his affairs or otherwise to violate or defeat the law shall in each of the cases mentioned in this section be guilty of a misdemeanour and shall be liable to imprisonment with 5 or without hard labour for any time not exceeding *three* years.

Offences by  
bankrupt.

- 10 (a) If he does not to the best of his knowledge and belief fully disclose on examination under this Act or to his assignee or trustee 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.
- 15 (b) If he does not deliver to the assignee or trustee or as such assignee or trustee directs all his property or such as is under his control and which he is required by law so to deliver.
- 20 (c) If he does not deliver to the assignee or trustee or as such assignee or trustee 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.
- 25 (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.
- 30 (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.
- 35 (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.
- 40 (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.
- 45 (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.
- 50 (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.
- 55 (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.



*Bankruptcy.*

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

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

15 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.

20 124. (1) When there is, in the opinion of the Court or Judge, ground to believe that the bankrupt or any other person has been guilty of any offence which is by this statute made a misdemeanour, the Court or Judge may commit the bankrupt or such other person for trial.

25 (2) For the purpose of committing the bankrupt or such other person for trial the Court or Judge shall have all the powers of a Stipendiary Magistrate as to taking depositions, binding over witnesses to appear, admitting the accused to bail or otherwise.

30 (3) Any offence under this part shall be deemed to be included in the term "fraudulent insolvency" within the meaning of any treaty or convention between Great Britain and any foreign power for the extradition of criminals.

125. Where a debtor has been guilty of any criminal offence he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

126. If it shall appear to the Judge upon the application of the Assignee or Trustee that inquiries or proceedings relating to a bankrupt estate ought to be instituted or carried on, or any prosecution ought to be carried on against any person for any offence under this Act, and that there are no funds in the particular estate available for such inquiries proceedings or prosecution, the Judge may direct the payment of the costs of any such inquiries proceedings or prosecution after taxation thereof out of the "Bankruptcy Suitors' Fund," and upon every such order the Governor shall issue his warrant for the payment of the amount of such taxed costs, and the Treasurer shall pay the same out of the said fund.



*Bankruptcy.*

## PART VII.

## JURISDICTION.

*Sections 127 to 135—Creation of Bankruptcy Division in Supreme Court.*

5        127. (1) From and after the commencement of this Act the jurisdiction in insolvency, as established by the Act fifth Victoria number seventeen and the several Acts or parts of Acts amending or extending the same, including the Acts twenty-fifth Victoria number eight and thirty-eighth Victoria number one, and as hitherto exercised by the Supreme Court or by a Judge thereof, or by the Chief Commissioner for Insolvent Estates respectively, shall be the Bankruptcy Jurisdiction of the said Supreme Court, and the entire jurisdiction in insolvency under the said Acts or parts of Acts is hereby transferred to the Supreme Court, and shall be exercised by a Judge thereof to be called the Judge in Bankruptcy.

Composition and jurisdiction of the Bankruptcy Court.

(2) Whenever the terms "Insolvency" or "Insolvent" are used in any statute in force at the date of the passing of this Act such terms shall include the terms respectively "Bankruptcy" and "Bankrupt" and wherever the "Chief Commissioner of Insolvent Estates" is mentioned in any such statute the term shall be interpreted to mean the Judge in Bankruptcy.

128. It shall be lawful for the Governor, with the advice of the Executive Council by commission under the great seal of the Colony in the name and on behalf of Her Majesty, to appoint, in addition to the present Judges, one other Judge of the Supreme Court for the purpose of carrying out this Act, and in substitution for and in place of the present Chief Commissioner of Insolvent Estates, and such Judge shall from the time of his appointment be a Judge of the said Court to all intents and purposes whatsoever: Provided that:—

Appointment of Judge.

30        (1) The Chief Commissioner of Insolvent Estates for the time being at the passing of this Act shall be the first additional Judge so appointed.

(2) Any person hereafter to be appointed under this Act shall be a barrister of not less than five years' standing or a solicitor of not less than seven years' standing.

35        (3) The Judge so appointed shall be liable to removal only as the present Judges of the Supreme Court are severally liable to removal.

Removal of Judge.

40        (4) The Judge so appointed shall be entitled to the same yearly salary, and such yearly salary shall be secured and be payable in like manner as the salaries of the present Puisne Judges are secured and made payable, and such Judge shall be entitled to the same retiring pension or allowance as the other Puisne Judges of the said Court, provided nevertheless that, as far as regards the said Chief Commissioner of Insolvent Estates, every three years service as such Chief Commissioner shall be equivalent but to two years service as such Puisne Judge.

Status of Judge.

129. Any other Judge of the Supreme Court during vacation, or during the illness of such Judge in Bankruptcy, or during his absence, or for any other reasonable cause, may transact Bankruptcy business and exercise the powers of such Judge. Provided always that upon leave of absence being granted to the Judge in Bankruptcy, it shall be lawful for the Governor with the advice aforesaid, to appoint an Acting Judge in Bankruptcy during such leave of absence; and the Acting Judge in Bankruptcy shall thereupon have the same powers and authorities

During illness any other Judge may transact Bankruptcy business. [Chamberlain's Act s. 102.]



*Bankruptcy.*

authorities and privileges as the Judge originally appointed under this Act, and shall exercise the power and jurisdiction of the Court of Bankruptcy under this Act.

130. (1) The Judge in Bankruptcy shall, for the purposes of such Jurisdiction.  
 5 jurisdiction in Bankruptcy, have full powers to decide all questions [Bankruptcy Act, 1869, s. 72, and Chamberlain's Act, s. 102.] of priorities, and all questions whatsoever, whether at law or in equity or of fact, in any case of Bankruptcy coming within the cognizance of such Judge, or which he may deem expedient or necessary to decide for the purpose of doing complete justice or making complete distribution  
 10 of property in any such case.

(2) If in any proceeding in Bankruptcy there arise any question of fact which either of the parties desires to be tried by a jury, or which the Judge thinks ought to be tried by a jury, then a trial may be directed to be had accordingly before the said Judge or any other  
 15 Judge of the Supreme Court, or before any District Court Judge and the trial may be had accordingly, and may be subject to appeal—in the Supreme Court in the same manner as if it were the trial of an issue of fact in an action,—and in the District Court in the manner in which jury trials in ordinary cases are by law held and appealed  
 20 against in that Court. And the trial may be held at such time and place as the order directing the same may provide.

(3) The Jurisdiction hereby given shall not be exercised by a District Court for the purpose of adjudicating upon any claim, not arising out of the Bankruptcy, which might heretofore have been  
 25 enforced by action in the Supreme Court, unless all parties to the proceeding consent thereto, or the money, money's worth, or right in dispute does not in the opinion of the Judge in Bankruptcy exceed in value two hundred pounds.

(4) Whenever the official assignee or trustee claims any  
 30 property as part of the bankrupt's estate, the Judge may upon motion by the assignee or trustee or any person interested in such property hear and determine, either upon affidavit or upon oral evidence or both upon affidavits and oral evidence, the question raised by such claim and make such order thereupon as he may deem expedient or necessary,  
 35 for the purpose of doing complete justice between all the parties interested. The notice of such motion shall contain the grounds of such claim and shall be served in the prescribed manner. And the Judge may require service of such notice to be made upon any person  
 40 who in his opinion is a proper party to such motion. Provided that the grounds of such claim may be amended at the hearing of the motion upon such terms as the Judge may think fit.

(5) Every order of the Court or Judge made under this Act in any cause or matter may be enforced against all persons bound  
 45 thereby in the same manner as a judgment of the Court to the same effect.

(6) The Judge shall have the same power of giving relief to any party interested in any matter or proceeding before him under this Act as the Court would have if such matter or pro-  
 50 ceeding were pending before it in either its Common Law or Equitable Jurisdiction.

(7) The Judge shall not be subject to be restrained in the execution of his power under this Act by the order of any other Court, nor shall any appeal lie from his decision except in manner  
 55 directed by this Act.

131. Subject to any general rule of the Supreme Court or to any orders of transfer of causes made by the Judges of the Supreme Court,—Transfer of proceed- ings.

(a) All matters pending before the Chief Commissioner of Insol-  
 vent Estates at the commencement of this Act; and [Chamberlain's Act s. 94.]

(4)



*Bankruptcy.*

- (b) All matters arising out of the jurisdiction in Insolvency as established by the Act fifth Victoria number seventeen and the several Acts or parts of Acts passed for amending or adding to the same and pending at the commencement of this Act, except appeals under any of the said Acts to the Supreme Court; and
- (c) All matters in respect of which jurisdiction is given to the Judge in Bankruptcy by this Act, shall be assigned to the Judge in Bankruptcy or to the appropriate ministerial officer as such Judge may direct.
132. Subject to the provisions of this Act and to general rules the Judge in Bankruptcy may exercise in chambers the whole or any part of his jurisdiction. Exercise in chambers of Supreme Court jurisdiction. [Chamberlain's Act s. 98.]
133. The Judge in Bankruptcy may delegate to the Registrar or to the Accountant such of the powers vested in him as it may be deemed expedient for the Judge to delegate to them, subject nevertheless to review on summary application to such Judge. Power to delegate authority to Registrar or Accountant. [Bankruptcy Act 1869 s. 67.]
134. Nothing in this Act, or the transfer of the jurisdiction in Insolvency to Bankruptcy shall take away or affect any right of audience that any persons have had at the commencement of this Act, and all persons who had the right of audience before the Chief Commissioner of Insolvent Estates or the Registrar in Insolvency shall have the like right of audience before the Judge in Bankruptcy or the Registrar or Accountant in Bankruptcy. Saving existing rights of audience. [Chamberlain's Act s. 151.]
135. (1) Appeals against any order or decision or ruling of the Judge in Bankruptcy may be made within the like time, and on the same terms, and in a similar mode, as for the time being provided in respect to an order decision or ruling of a Judge of the Supreme Court, and by the rules of Court. Provided that the Judge in Bankruptcy shall not sit as a Judge of the Supreme Court in any appeal against any order or decision made by him, nor shall any other Judge who may while transacting the bankruptcy business have given a decision, against which any appeal has arisen, sit on such appeal. Rights of appeal preserved as heretofore.
- (2) An appeal shall lie against any order or decision or ruling of the Registrar or of any District Registrar to the Judge within such time and on such terms and in such manner as may be prescribed.

*Sections 136 to 144—Officers of Court.*

136. (1) The Governor may from time to time appoint persons resident in the country parts of the Colony as District Registrars and may also appoint Ministerial officers to carry into effect the provisions of this Act, and all persons so appointed shall be officers of the Supreme Court. Appointment and salaries of Ministerial officers.
- (2) Subject to the provisions of this Act, the officers, clerks, and subordinate persons who are at the commencement of this Act attached to the Insolvency Court and their successors shall be officers of the Supreme Court, and shall be attached to it. Officers of Insolvency Court to be attached to Supreme Court. (Chamberlain's Act s. 94 sub. 1 iv.)
- (3) The salaries to be paid to the Registrar, and to the Accountant, and to the clerks and officers of the Bankruptcy Jurisdiction shall be paid out of the Consolidated Revenue, and the Court fees to the amount provided by the Third Schedule hereto shall be collected and paid into the Colonial Treasury, except those fees receivable by the several District Commissioners of Insolvent Estates (who shall be named District Registrars for the future) which may be retained by them for their own use and benefit. Salaries to be paid out of Consolidated Revenue, and fees collected and paid into Treasury.
137. It shall be lawful for the Governor with the advice of the Executive Council, if occasion shall require, to divide the office of "Registrar in Insolvency" and the "Accountant of the Court," as created



*Bankruptcy.*

created by the eighth section of the Act twenty-fifth Victoria number eight, and to appoint a fit and proper person to each of such offices separately, and each of such two officers shall be subject to the direction and control, and also to review, as to any act done or decision arrived at respectively, of the Judge in Bankruptcy.

138. Every official assignee or trustee shall out of every estate being administered after the passing of this Act pay into the Colonial Treasury towards the expenses of administering this Act such sum not less than one-eighth of a pound, or not exceeding four pounds per centum on the gross produce from time to time of any such estate, and a scale within the limit aforesaid and the time of payment shall be fixed and varied from time to time by any regulations by the Judge in Bankruptcy with the approval of the Colonial Treasurer, and such regulations with the approval thereof shall be submitted to Parliament.

Payment of  
percentage.

139. Wherever it shall appear to the Judge that it is for the advantage of the creditors that any examination or proceedings or enquiries should be held or taken before a District Registrar or that an estate or any part thereof should be administered locally, he may, upon his own motion, or upon the application of the official assignee or the trustee or a creditor, order that any proceedings subsequent to the date of such order be taken at such place or places as he may name in the order.

Power to transfer  
causes to country  
districts.

140. (1) The Judge, at any time after sequestration, on the application of the official assignee, a trustee, or a creditor, may, if it is for the advantage of the creditors, order that an examination or enquiry or account may be held or taken before a district registrar, who shall be paid such sum out of the estate as may be prescribed, or as the Judge may allow.

Power to transfer  
special proceedings.

(2) The present District Commissioners of Insolvent Estates and registrars of the District Courts shall be district registrars for their respective districts, in addition to the district registrars to be appointed under the provisions of this Act.

141. If any question of law arises in any bankruptcy proceedings the Judge may with the consent of all parties interested state the facts in the form of a special case, for the opinion of the Court.

Points of law.

142. (1) The Registrar in bankruptcy shall have the powers and jurisdiction in this section mentioned, and any order made or act done by such registrar, in the exercise of the said powers and jurisdiction shall be deemed the order or act of the Judge.

Jurisdiction in bank-  
ruptcy of registrar.

(2) Subject to general rules limiting the powers conferred by this section, the registrar shall have power—

- (a) To hear debtors petitions, and to make orders for sequestration and adjudications thereon :
- (b) To hold public examination of debtors :
- (c) To grant orders of discharge where the application is not opposed :
- (d) To approve compositions or schemes of arrangement when they are not opposed :
- (e) To make interim orders in any case of urgency :
- (f) To make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers :
- (g) To hear and determine any unopposed or *ex parte* application :
- (h) To summon and examine any person known or suspected to have in his possession effects of the debtor or to be indebted to him, or capable of giving information respecting the debtor, his dealings or property.



*Bankruptcy.*

143. All schedules, statements, accounts, examinations, plans of distribution, reports, and all other documents or proceedings whatsoever required by the provisions of this Act to be submitted to, produced, or held before the Judge, Registrar, District Registrar, Official Assignee, or trustee, shall be filed of record by the Registrar; and the same shall be under the custody of the Registrar, and shall be open to inspection, and extracts may be taken therefrom, as and upon payment of such fee as may be from time to time prescribed. Provided that if the Registrar be satisfied that it is undesirable to file the originals of any of the beforementioned documents or proceedings, he may file certified copies of the same in lieu thereof.
144. A District Registrar shall have the same powers and jurisdiction as the Registrar in respect of the examination, issuing of summonses, enquiry, or account held or taken before him.

Documents, &amp;c., to be filed.

Jurisdiction of District Registrar.

15

## PART VIII.

## MISCELLANEOUS PROVISIONS.

*Evidence.*

145. (1) A copy of the *Gazette* containing any notice inserted therein in pursuance of this Act shall be *prima facie* evidence of the facts stated in the notice.
- (2) The production of a copy of the *Gazette* containing any notice of an order for sequestration, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.
146. (1) A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.
- (2) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.
147. Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by any Court having jurisdiction in bankruptcy, any instrument or copy of an instrument, affidavit, or document made or used in the course of any bankruptcy proceeding, or other proceedings had under this Act, shall, if it appears to be sealed with the seal of any Court having jurisdiction in bankruptcy, or purports to be signed by any Judge thereof, or is certified as a true copy by any registrar thereof, be receivable in evidence in all legal proceedings whatever.
148. In case of the death or absconding of the debtor or his wife, or of a witness whose evidence has been received by any Court in any proceeding under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, shall be admitted as evidence of the matters therein deposed to.
149. A certificate of the Registrar that a person has been appointed trustee under this Act, shall be conclusive evidence of his appointment.

Gazette to be evidence.

Evidence of proceedings at meetings of creditors.

Evidence of proceedings in bankruptcy.

Death of witness.

Certificate of appointment of trustee.



*Bankruptcy.*

150. Where anything is directed or authorized to be done by the creditors under this Act, and no method is prescribed by which the creditors may signify their wishes, they may do so by ordinary resolution.

Method of  
procedure by  
creditors.

5

*Notices.*

151. (1) All notices and 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. Provided that such notice shall date from the date at which in due course of post they would be received by the person to whom they are directed.

Service of Notices.

(2) The Judge or Registrar may postpone any application or proceedings under this Act, if in his opinion sufficient notice of the same has not been given to any party interested.

15

*Formal defects.*

152. (1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Judge or Registrar before whom 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 by any order of that Judge.

Formal defects not  
to invalidate.

(2) No defect or irregularity in the appointment or election of an official assignee, trustee, or member of a committee of inspection shall vitiate any act done by him in good faith.

*Stamp Duty.*

153. Every deed, conveyance, assignment, surrender, admission, or other assurance relating solely to freehold, leasehold, copyhold, or customary property, or to any mortgage, charge, or other encumbrance on, or any estate, right, or interest in any real or personal property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment, surrender, admission or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the trustee under the bankruptcy, and every power of attorney, proxy paper, writ, order, certificate, affidavit, bond relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Act.

Exemption of deeds  
&c. from stamp duty.

*Corporations, &c.*

154. For all or any of the purposes of this Act a corporation may act by any of its officers authorized in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic may act by his committee or *curator bonis*.

Acting of corpora-  
tions, partners, &c.



*Bankruptcy.*

## SCHEDULES.

See section 15.

## THE FIRST SCHEDULE.

## MEETINGS OF CREDITORS.

1. The first meeting of creditors shall be summoned for a day not later than  
5 fourteen days after the date of the sequestration order, unless the Judge for any special  
reason deem it expedient that the meeting be summoned for a later day. Time of first meeting.
2. The official assignee shall summon the meeting by giving not less than seven Advertisement  
days' notice of the time and place thereof in the *Gazette* and in a local paper. thereof.
3. The official assignee shall at such first meeting bring up a provisional report Provisional report.  
10 based upon the debtor's statement of affairs.
4. The meeting shall be held at such place as is in the opinion of the official Place.  
assignee most convenient for the majority of the creditors.
5. The official assignee or trustee may at any time summon a meeting of creditors, Subsequent meetings.  
and shall do so whenever so directed by the Judge, or so requested in writing by one-  
15 fourth in value of the creditors.
6. Meetings subsequent to the first meeting shall be summoned by sending notice Mode of summoning.  
of the time and place thereof to each creditor at the address given in his proof, or if he  
has not proved, at the address given in the debtor's statement of affairs, or at such other  
address as may be known to the person summoning the meeting.
- 20 7. The official assignee, or some person nominated by him, shall be the chairman Chairman.  
at the first meeting. The chairman at subsequent meetings shall be such person as the  
meeting by resolution appoint.
8. A person shall not be entitled to vote as a creditor at the first or any other Right to vote.  
meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due  
25 to him from the debtor, and the proof has been duly lodged before the time appointed  
for the meeting.
9. A creditor shall not vote at any such meeting in respect of any unliquidated Unascertained debts.  
or contingent debt, or any debt the value of which is not ascertained.
10. For the purpose of voting, a secured creditor shall, unless he surrenders his Vote by secured  
30 security, state in his proof the particulars of his security, the date when it was given, creditor.  
and the value at which he assesses it, and shall be entitled to vote only in respect of the  
balance (if any) due to him, after deducting the value of his security. If he votes in  
respect of his whole debt, he shall be deemed to have surrendered his security, unless  
the Judge or Registrar on application is satisfied that the omission to value the security  
35 has arisen from inadvertence.
11. A creditor shall not vote in respect of any debt on or secured by a current Vote on bill or note.  
bill of exchange or promissory note held by him, unless he is willing to treat the  
liability to him thereon of every person who is liable thereon antecedently to the  
debtor, and against whom a sequestration order has not been made, as a security in his  
40 hands, and to estimate the value thereof, and for the purposes of voting, but not for  
the purposes of dividend, to deduct it from his proof.
12. It shall be competent to the official assignee or trustee, within twenty-eight Redemption of  
days after a proof estimating the value of a security as aforesaid has been made use of security.  
45 in voting at any meeting, to require the creditor to give up the security for the benefit  
of the creditors generally on payment of the value so estimated, with an addition thereto  
of twenty per centum. Provided, that where a creditor has put a value on such security,  
he may at any time before he has been required to give up such security as aforesaid,  
correct such valuation by a new proof, and deduct such new value from his debt, but in  
50 that case such addition of twenty per centum shall not be made if the official assignee  
or trustee requires the security to be given up.
13. If a sequestration order is made against one partner of a firm, any creditor Vote by joint creditor  
to whom that partner is indebted jointly with the other partners of the firm or any of  
them, may prove his debt for the purpose of voting at any meeting of creditors, and  
shall be entitled to vote thereat.
- 55 14. The chairman of a meeting shall have power to admit or reject a proof for Admission of votes.  
the purpose of voting, but his decision shall be subject to appeal to the Judge. If he is  
in doubt whether the proof of a creditor should be admitted or rejected, he shall mark  
the proof as objected to and shall allow the creditor to vote, subject to the vote being  
declared invalid in the event of the objection being sustained.
- 60 15. A creditor may vote either in person or by proxy. Mode of voting.
16. Every instrument of proxy shall be in the prescribed form, and shall be Proxy form.  
issued by the official assignee, or, after the appointment of a trustee, by the trustee, and  
every insertion therein shall be in the handwriting of the person giving the proxy.
17. A creditor may give a general proxy to his manager or clerk, or any other General proxy.  
65 person in his regular employment. In such case the instrument of proxy, shall state  
the relation in which the person to act thereunder stands to the creditor.
18. A creditor may give a special proxy to any person to vote at any specified Special proxy.  
meeting, or adjournment thereof, for or against any specific resolution, or for or against  
any specified person as trustee, or member of a committee of inspection.



*Bankruptcy.*

19. A proxy shall not be used unless it is deposited with the official assignee before the meeting at which it is to be used. Deposit of proxy.

20. Where it appears to the satisfaction of the Judge that any solicitation has been used by or on behalf of an official assignee trustee or manager or receiver in obtaining proxies, or in procuring the trusteeship managership or receivership except by the direction of a meeting of creditors, the Judge shall have power if he think fit, to order that no remuneration shall be allowed to the person by whom, or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection, or of the creditors to the contrary. Canvassing for votes.

21. A creditor may appoint the official assignee of the debtor's estate to act in manner prescribed as his general or special proxy. Official receiver as proxy.

22. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place. Adjournment.

23. A meeting shall not be competent to act for any purpose, except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three. Quorum.

24. If within half-an-hour from the time appointed for the meeting, a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days. Quorum not present.

25. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting. Minutes.

26. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor. Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly. Interested vote.

## THE SECOND SCHEDULE.

## PROOF OF DEBTS.

*Proof in Ordinary Cases.*

1. Every creditor shall prove his debt as soon as may be after the making of an order of sequestration. Time for proof.

2. A debt may be proved by delivering or sending through the post in a pre-paid letter to the official assignee, or, if a trustee has been appointed to the trustee, an affidavit verifying the debt. Mode of proof.

3. The affidavit may be made by the creditor himself, or by some person authorized by or on behalf of the creditor. If made by a person so authorized it shall state his authority and means of knowledge. Who may prove.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official assignee or trustee may at any time call for the production of the vouchers. Particulars and vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor. Security.

6. A creditor shall bear the cost of proving his debt unless the Judge otherwise specially orders. Cost.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting, and at all reasonable times. Inspection of proofs.

8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash. Discounts.

*Proof by Secured Creditors.*

9. If a secured creditor realizes his security, he may prove for the balance due to him after deducting the net amount realized. Realisation.

10. If a secured creditor surrenders his security to the official assignee or trustee for the general benefit of the creditors, he may prove for his whole debt. Surrender.

11. If a secured creditor does not either realize or surrender his security he shall, before ranking for dividend state in his proof of the particulars of his security the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed. Assessment.

12. (a) Where a security is so valued the official assignee or trustee may at any time redeem it on payment to the creditor of the assessed value. Redemption

(b)



*Bankruptcy.*

(b) If the official assignee or trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official assignee or trustee, or as, in default of such agreement, the Judge or Registrar may direct. If the sale be by public auction the creditors or the official assignee or the trustee on behalf of the estate may bid or purchase.

(c) Provided that the creditor may at any time, by notice in writing, require the official assignee or trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the official assignee or trustee does not within three months after receiving the notice signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption or any other interest in the property comprised in the security which is vested in the official assignee or trustee shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee, or the trustee, or the Registrar, that the valuation and proof were made *bonâ fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Registrar shall order unless the official assignee or trustee shall allow the amendment without application to the Registrar.

Revaluation.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

Rights on revaluation.

15. If a creditor after having valued his security subsequently realizes it, or if it is realized under the provisions of Rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

Realization after valuation.

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

Exclusion from dividend.

17. Subject to the provisions of Rule 12, a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Act.

Maximum dividend.

40 *Proof in respect of Distinct Contracts.*

18. If a debtor was at the date of the order of sequestration liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as a member of a firm, the circumstance that the 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 the contracts, against the properties respectively liable on the contracts.

Distinct contracts.

*Periodical Payments.*

19. 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 those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Periodical payments.

*Interest.*

20. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the order of sequestration and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding six per centum per annum to the date of the order at the time when the debt or sum was payable, if the debt or sum was payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Interest.

*Debt payable at a future time.*

21. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five pounds per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Future debts.

*Admission*



*Bankruptcy.**Admission or rejection of Proofs.*

22. The official assignee or trustee shall examine every proof and the grounds Admission of proofs.  
of the debt, and in writing admit or reject it, in whole or in part, or require further  
evidence in support of it. If he rejects a proof he shall state in writing to the creditor  
5 the grounds of the rejection.
23. If the official assignee or trustee thinks that a proof has been improperly Expunging.  
admitted, the Judge may on the application of the official assignee or trustee, after notice  
to the creditor who made the proof, expunge the proof or reduce its amount.
24. If a creditor is dissatisfied with the decision of the official assignee or trustee Appeal.  
10 in respect of a proof, the Judge may, on the application of the creditor, reverse or vary  
the decision.
25. The Judge may also expunge or reduce a proof upon the application of a Who may apply.  
creditor if the official assignee or trustee declines to interfere in the matter, or, in the  
case of a composition or scheme, upon the application of the debtor.
- 15 26. For the purpose of any of his duties in relation to proofs, the trustee may Oaths.  
administer oaths and take affidavits.

## THIRD SCHEDULE.

*Court and other Fees to be taken.**Registrar in Bankruptcy.*

		s.	d.
20	Every declaration by a debtor of inability to pay debts ... ..	2	6
	Upon filing every petition surrendering an estate as bankrupt including the order of the Court thereon where the assets shall appear not to exceed £300... ..	2	6
25	When above that amount ... ..	15	0
	For drawing and inserting each advertisement besides the expenses paid for advertising when required to be done... ..	2	6
	Upon receiving and filing every petition against a person having committed an act of bankruptcy ... ..	15	0
30	For filing every affidavit ... ..	1	0
	For every order of the Supreme Court or Court ... ..	5	0
	For every debtor's summons ... ..	5	0
	For filing same or any other proceeding ... ..	1	0
	For every person examined or document exhibited ... ..	1	0
35	For taxing costs in any case—same as in the Supreme Court Office. For making every necessary application and report to the Supreme Court or to the Court and minute of the order thereon ... ..	2	6
	For every warrant of attachment of moveable property ... ..	2	6
	For every summons for the attendance of a person to give evidence or be examined ... ..	5	0
40	For every certified extract from or copy of proceedings relating to insolvent estates of less than ninety words ... ..	2	6
	And above that number per folio ... ..	0	4
	For every inspection of proceeding in each estate for each half hour ... ..	1	0
45	For every certificate of discharge ... ..	10	0
	For every other process before the Supreme Court or Court—same as in the Supreme Court either at Law or in Equity as the case may be ... ..		

*For meetings and examinations before the Court or Commissioners.*

50	For each meeting of creditors or examination in estates under £300 assets ... ..	10	0
	For any other meeting of creditors or examination per diem ... ..	20	0
	For every proof of debt to be paid by the person offering it ... ..	1	0
	For swearing every affidavit by the party sworn ... ..	1	0
55	For every affidavit filed by the party using it ... ..	1	0
	For every person examined by the party producing him ... ..	1	0
	For every warrant for apprehension of insolvent ... ..	5	0
	For every warrant of commitment of any person ... ..	7	6

*Messenger's Fees.*

60	For making every attachment of person or property—The same as now paid for service of civil process of the Supreme Court and mileage ... ..		
	For making inventory and notice and report to Court ... ..	2	6
	Copy of ditto ... ..	2	6

*Sheriff's Fee.*

65	For registering every order for sequestration or debtor's summons or petition for liquidation or composition ... ..	1	0
----	------------------------------------------------------------------------------------------------------------------------	---	---

*The Registrar-General's Fee.*

	For registering every order of sequestration ... ..	1	0
--	-----------------------------------------------------	---	---

*Additional*



*Bankruptcy.**Additional Court Fees for Winding-up of Companies under the Companies Act or the Act 44 Vic. No. 23.*

	For filing every affidavit or any document other than a petition ...	1	0
	For the allowance of each debt ...	1	0
5	For every exhibit produced ...	1	0
	For making up record of debts proved ...	5	0
	For filing any petition ...	15	0
	For every order of the Court ...	5	0
	For every summons issued ...	5	0
10	For every writ of attachment or warrant of committal ...	2	6
	For every person sworn to be paid by the person procuring his examination ...	1	0
	For inspection of proceedings in any matter under the Companies Act for each half hour ...	1	0
15	And the Court fees chargeable from time to time in the Supreme Court in either of its jurisdictions for every other process matter or thing required to be issued or done under the Companies Act and not already provided for by this Schedule.		

## FOURTH SCHEDULE.

No.	No. of Act.	Title of Act.	Extent of repeal.
20	5 Vic. No. 9 ...	Advancement of Justice ...	Sections 33 34 35 36 and 37.
	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.
25	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.
30	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.
35	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.
40	10 Vic. No. 14 ...	An Act to remove difficulties in the disposal administration and distribution of Insolvent Estates—and rider thereto.	The whole.
45	17 Vic. No. 17 ...	An Act for the appropriation of unclaimed balances in intestate or insolvent estates and for other purposes therein mentioned.	The whole except sections 1 and 6.
	17 Vic. No. 32 ...	To authorise the Chief Commissioner of Insolvent Estates to issue certificates in certain cases.	The whole.
50	19 Vic. No. 33 ...	An Act to amend the Insolvent Law of New South Wales.	The whole.
	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 the Chief Commissioner of Insolvent Estates and the Official Assignees.
55	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.
60	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.
65	31 Vic. No. 9 ...	An Act to facilitate proceedings in Insolvency ...	The whole.
	38 Vic. No. 1 ...	An Act to expedite and lessen the expense of proceedings in Insolvency.	The whole except sections 6, 7 and 8.



*Bankruptcy.*

## FIFTH SCHEDULE.

## BANKRUPTCY NOTICE.

(Title.)

To A.B. [or A.B. & Co. of  
 TAKE notice that within [fourteen] days after service of this notice on you, excluding the 5  
 day of such service, you must pay to C.D., of , the sum of £ claimed  
 by him as being the amount due on a final judgment obtained by him against you in the  
 Court, dated ; whereon execution has not been stayed, or you  
 must secure or compound for the said sum to [his] satisfaction or the satisfaction of the  
 Judge ; or you must satisfy the Judge that you have a counter-claim, set-off, or cross- 10  
 demand against C.D. which equals or exceeds the sum claimed by him, and which you  
 could not set up in the action in which the judgment was obtained.

Dated

By the Court,  
Registrar. 15

## INDORSEMENT ON NOTICE.

*You are specially to note,—*

THAT the consequences of not complying with the requisitions of this notice are that  
 you will have committed an act of bankruptcy, on which bankruptcy proceedings may 20  
 be taken against you.

If, however, you have a counter-claim, set-off, or cross-demand, which equals or  
 exceeds the amount claimed by C.D. in respect of the judgment, and which you could  
 not set up in the action in which the said judgment was obtained, you must within  
 days apply to the Judge to set aside this notice, by filing with the  
 Registrar an affidavit to the above effect, setting out the particulars thereof and the 25  
 reasons why you could not set up the same in the said action.

[Name and address of Solicitor suing out the notice] or

This notice is sued out by [C.D.] in person.

Sydney : Charles Potter, Government Printer.—1887.

[2s.]