

Legislative Council.

58<sup>o</sup> VICTORIÆ, 1894.

## A BILL

To amend the "Bankruptcy Act, 1887," and the "Bankruptcy Act Amendment Act, 1888," and to amend the Law relating to Bankruptcy and Bills of Sale.

[MR. SIMPSON;—11 December, 1894.]

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       1. This Act may be cited as the "Bankruptcy Acts Amendment Act, 1894," and this Act and the "Bankruptcy Act, 1887" (hereinafter referred to as the Principal Act), and the "Bankruptcy Act Amendment Act, 1888," may be cited together as the "Bankruptcy Acts, 1887, 1888, 1894."
- 10       2. The following sections of the Principal Act are amended as follows:—
- |  |                                      |
|--|--------------------------------------|
| Section eight, subsections (3) and (10), by substituting the word "debtor" for the word "bankrupt."  | Section 8, subsections (3) and (10). |
| Section ten, subsection (2), by inserting the words "or take any fresh step in," after the word, "commence."   | Section 10, subsection (2).          |
| Section seventeen, subsection (2), by omitting the words "except such matters and directions as relate to an offer of composition or other arrangement of a bankrupt's affairs," | Section 17, subsection (2).          |

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Section

Section 18.	Section eighteen, by inserting the words "or Registrar," after the word "Judge" in subsections (1), (3), and (9), wherever it occurs, and in the first clause of subsection (8), and by omitting the words "or by the Registrar" in subsections (1) and (3).	5
Section 19, subsection (15).	Section nineteen, subsection (15), by omitting the words "if the debtor had been adjudged bankrupt."	
Section 21, subsection (1).	Section twenty-one, subsection (1), by omitting the words "in place of or" before the words "in addition to the Official Assignee."	10
Section 22, subsection (2).	Section twenty-two, subsection (2), by substituting the words "termination of the first or single meeting" for the words "expiration of four weeks from the date of the sequestration order."	
Section 30, subsections (3), (4), (5).	Section thirty, subsections (3), (4), and (5), by substituting the word "bankrupt" for the word "debtor" in each subsection.	15
Section 31.	Section thirty-one, by substituting the words "in the course of any proceeding under this Act" for the words "under the preceding section," and by omitting the words "touching any of the matters aforesaid."	20
Section 37.	Section thirty-seven, by substituting the word "approved" for the word "confirmed."	
Section 40, subsection (5).	Section forty, subsection (5), by adding the words "or Registrar" after the word "Judge."	
Section 50.	Section fifty, by inserting the words "as against the estate of the bankrupt," after the words "proceeded with."	25
Section 51.	Section fifty-one, by substituting the words "an order is made for the sequestration of his estate" for the words "a sequestration order is made against him," and by substituting the word "six" for the word "three" before the word "months."	30
Section 52 (3).	Section fifty-two (3), by inserting the words "or at any time between that time and the date of the order of sequestration" after the words "commencement of the bankruptcy."	
Section 57.	Section fifty-seven, by re-inserting the words "and preferences" struck out by section two of the "Bankruptcy Act Amendment Act, 1888."	35
Section 58.	Section fifty-eight, by inserting the word "available" before the words "act of bankruptcy."	
Section 78.	Section seventy-eight, by inserting after the words "so much thereof as can" the words "in the opinion of such Official Assignee or trustee or," and by substituting the words "winding up of the estate" for the words "Official Assigneeship or trusteeship."	40
Section 81, subsection (1).	Section eighty-one, subsection (1), by substituting the words "gross amount coming into the hands of the Official Assignee" for the words "amount realised."	45
Section 83, subsections (4) and (7).	Section eighty-three, subsections (4) and (7), by adding after the word "Registrar" wherever it occurs, the words "or other taxing officer appointed by the Judge."	50
Section 83, subsection (6).	Section eighty-three, subsection (6), by substituting the words "Master or Deputy Registrar" for the words "Chief Clerk."	
Section 86, sub- section (1).	Section eighty-six, subsection (1), by inserting the words "with the approval of the Judge" before the word "appoint."	
Section 97.	Section ninety-seven, by substituting the words "so long as he has any assets unadministered in his hands" for the words "during the continuance of the bankruptcy."	55
Section 101.	Section one hundred and one, by adding the words "for the purposes of this section 'dividends' shall include 'balances.'"	

- Section one hundred and five, by substituting the words "as if he were still alive" for the words "as if the sequestration order had been made in the first instance against his representatives." Section 105.
- 5 Section one hundred and thirty-seven, by substituting the words "gross amount coming into the hands of the official assignee from time to time in any such estate" for the words "gross produce from time to time of any such estate." Section 137.
- 10 3. The First Schedule to the Principal Act is hereby amended as follows:— Amendment of First Schedule.
- Clause one, by substituting the words "twenty-one" for the word "fourteen." Clause 1.
- Clause two, by substituting the words "creditor named in the statement of affairs then resident in the Colony of New South Wales, or his authorised agent" for the words "proved creditor." Clause 2.
- 15 Clause fourteen, by omitting the whole of the clause. Clause 14.
- Clause nineteen, by adding the words "except with the leave of the Judge or Registrar" at the end of the clause. Clause 19.
- 20 Clauses twenty-three and twenty-four shall not apply to a single meeting. Clauses 23 and 24.
4. The Second Schedule to the Principal Act is hereby amended as follows:— Amendment of Second Schedule.
- 25 Clause six, by inserting the words "or Registrar" after the word "Judge." Clause 6.
- Clause twenty-three, by omitting the whole clause and substituting the following clause in lieu thereof:—The official assignee or a trustee may upon further evidence and after notice to the creditor who has made the proof apply to the Judge or Registrar to expunge such proof or reduce its amount. Clause 23.
- 30 Clause twenty-four, by inserting the words "or official assignee or trustee" after the word "creditor" wherever it occurs. Clause 24.
5. Section five of the "Bankruptcy Act Amendment Act, 1888," is hereby amended by inserting the words "or Registrar" after the words "Judge in Bankruptcy." Amendment of section 5 of 52 Vic. No. 11.
- 35 6. Any person who is for the time being entitled to enforce a final judgment, shall be deemed a creditor who has obtained a final judgment within the meaning of section four of the Principal Act. Person entitled to enforce judgment a creditor within sec. 4 of Principal Act.
- 40 7. Section ten, subsection (1), of the Principal Act, is hereby repealed, and in lieu thereof it is enacted that upon the making of a sequestration order, the property of the bankrupt shall vest in one of the official assignees, to be named in such order, and be divisible among the creditors of the bankrupt in accordance with the provisions of the Principal Act, and any Act amending the same: Provided that until the official assignee or trustee intervenes, all transactions by a bankrupt after his bankruptcy with any person dealing with him *bona fide* and for value in respect of his after-acquired property of any kind whatsoever, and whether real or personal, and whether with or without knowledge of the bankruptcy, shall be valid as against any such official assignee or trustee, and all such transactions heretofore entered into by a bankrupt and not hitherto impeached shall be also valid. Any order made for the sequestration of the estate of an undischarged bankrupt or insolvent shall be deemed a transaction *bona fide* and for value within the meaning of this section. Effect of sequestration order. Sec. 10, subsec. (1) repealed. All transactions valid till intervention of assignee or trustee.
- 45 50 55 8. The Judge may at any time, on the motion of the official assignee, and on being satisfied that an act of bankruptcy has been committed by the bankrupt within the six months next preceding the date of the presentation of the petition upon which the sequestration order was made, order and declare that the bankruptcy shall be deemed to have relation back to and commence on the date of such act of bankruptcy; and such order or declaration shall be *prima facie* evidence of the fact of the alleged act of bankruptcy, and of the commencement of the bankruptcy on such date as aforesaid. Judge may make order antedating commencement of bankruptcy.
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Allowance to bankrupt of personal property.

9. Subsections (2) and (3) of section sixteen of the Principal Act are hereby repealed, and in lieu thereof it is enacted that the official assignee may, with the consent of the creditors given by resolution at the first or any other meeting of creditors and with the approval of the Judge or Registrar, allow the bankrupt to retain any of his personal property, and such approval shall have the effect of vesting the said property in the bankrupt as from the date of such resolution: Provided that notice of the intention to allow a bankrupt to retain any of his personal property shall be given to all proved creditors two days at least before a vote is taken on the resolution. 5 10

Distribution of assets where creditors give indemnity for costs.

10. In cases where assets in any estate have been recovered by means of an indemnity for costs of litigation given by certain creditors, the Judge may make such order as he may deem just with reference to the distribution of such assets, with a view to giving the indemnifying creditors an advantage over others in consideration of the risk run by them in giving such indemnity. 15

Grounds for refusing or suspending certificate.

11. The facts referred to in section thirty-seven of the Principal Act shall, in addition to those set out in section thirty-eight of the said Act, include the following:—

Frivolous or vexatious action.

(a) That the bankrupt has within the three months preceding the sequestration order incurred unjustifiable expense by bringing a frivolous or vexatious suit or action.

Giving unregistered bill of sale.

(b) That the bankrupt has given a bill of sale which, at the date of the sequestration order, was in existence and had not been registered in accordance with the law then in force dealing with the registration of bills of sale. 25

Giving a bill of sale within three months of sequestration.

(c) That the bankrupt has given a bill of sale at any time within the three months preceding the sequestration order.

Obtaining credit without notice while uncertificated.

(d) That the bankrupt has while an uncertificated bankrupt or insolvent obtained credit to the amount of twenty pounds or upwards from any person without having first informed such person that he was an uncertificated bankrupt or insolvent. 30

Definition of terms in section thirty-eight, subsection (h).

12. In section thirty-eight, subsection (h), of the Principal Act the word "bankrupt" shall include "insolvent," and the word "bankruptcy" shall include "insolvency," and the words "statutory composition or arrangement" shall include an assignment for the benefit of creditors either at Common Law or under the Act of Council fifth Victoria number nine. 35

Section 40, subsection (7) of Principal Act repealed.

13. Section forty, subsection (7), of the Principal Act is hereby repealed, and in lieu thereof it is enacted that the Court or Judge may review, rescind, and vary any order made, in the bankruptcy jurisdiction, by it or him respectively, or by the Registrar acting for the Judge: Provided that no application shall be made by any bankrupt with reference to his certificate of discharge within five years after the making of an order refusing or suspending the operation of such certificate, or granting the same subject to conditions, except with the consent of the majority, in number and value, of the creditors who have proved in his bankruptcy. 40 45

Certificate not to be a release in certain cases except on conditions.

14. In addition to the matters mentioned in section forty-two, subsection (1), of the Principal Act, a certificate of discharge shall not release the bankrupt from any order made under section sixty-one of the Principal Act, or any amendment thereof, or from any liability under a judgment against him as defendant in an action for seduction, libel, or slander, or from liability as a respondent or co-respondent in a suit in the divorce jurisdiction, or under an affiliation order, except to such extent and subject to such conditions as the Judge may think just. 50 55

Discharge of bankrupt on conditions.

15. The Judge may, as one of the conditions referred to in the last preceding section and as a condition of granting an order of discharge

discharge under section thirty-seven of the Principal Act, require the bankrupt to consent to judgment being entered against him by the official assignee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge; and in a matter arising under the last preceding section, the Judge may require the bankrupt to consent to a judgment being entered against him by any person who is a creditor in respect of any matter therein referred to for such unsatisfied balance as aforesaid or any part thereof: Provided that in no case shall execution be issued without leave of the Judge on a judgment consented to by the bankrupt under the provisions of this section.

16. The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.

Suspension and conditions concurrent.

17. The provisions of section fifty-six of the Principal Act shall not be held to invalidate any transaction thereunder to the extent of any present advance *bona fide* made by any existing creditor without notice of an available act of bankruptcy, but the burden of proving the fact of the advance and that it was made *bona fide* and without such notice shall be upon the person setting up the same.

Section 56 of the Principal Act not to invalidate certain transactions.

18. (I) Subsection (1) of section sixty-one of the Principal Act is hereby repealed, and in lieu thereof it is enacted that where the bankrupt is an officer of the army or navy, or of the Colonial Forces, or an officer or clerk or otherwise employed or engaged in the Civil Service of the Crown, the Judge or Registrar may, on the application of the official assignee or a trustee, make an order for the payment to such assignee or trustee for distribution among the creditors of the bankrupt of so much of the bankrupt's pay and salary then due or thereafter to become due as he shall think fit: Provided that before making any such order, the Judge or Registrar shall communicate with the chief officer of the Department under which the pay or salary is enjoyed as to the amount, times, and manner of such payment, and shall hear and give consideration to any report which such chief officer may make as to the circumstances of the case.

Power to direct payment by Civil Servant, &c, out of salary. Sec. 61 (1) repealed.

(II) Subsection (2) of section sixty-one of the Principal Act is hereby amended by substituting the word "may" for the words "shall from time to time."

19. Subsection (1) of section sixty-five of the Principal Act is repealed, and in lieu thereof it is enacted that the permission given for the purposes of section sixty-four of the Principal Act shall not be a general permission to do all or any of the things therein mentioned but only a permission to do the particular thing for which permission is sought in the specified case.

Permission under sec. 64 to be specific. Sec. 65 (1) repealed.

20. Section ninety-four of the Principal Act is hereby repealed, and in lieu thereof it is enacted as follows:—

Audit of accounts of official assignee and trustee. Sec. 94 repealed.

(I) Every official assignee and 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 and to the Colonial Treasurer an account of his receipts and payments as such assignee or trustee.

(II) The account shall be in the prescribed form, and shall be made in duplicate, and verified by affidavit in the prescribed form.

(III) The Colonial Treasurer shall cause the account so sent to be audited; and for the purpose of the audit the official assignee or trustee shall produce for the inspection of the Colonial Treasurer, or such officer of the Treasury as he may appoint for the purpose, such books, accounts, and vouchers, and shall furnish such information, as the Colonial Treasurer or such officer may require.

(IV) The Colonial Treasurer shall forthwith forward a report of such audit to the Judge.

Dividend payable on loans limited to amount actually advanced and interest at 8 p.c.

21. Any person proving against the estate of a bankrupt for a debt in respect of money lent under any contract or agreement shall state on oath the actual amount of the money lent as aforesaid and the amount repaid to him in respect thereof, and he shall be entitled as against the other creditors to receive a dividend only in respect of the balance then due upon the amount actually lent, and in respect of interest at a rate not exceeding eight pounds per centum per annum: Provided that such person shall be entitled to be ranked as a creditor for the full amount due under the said contract or agreement, and shall be paid the full amount so due as aforesaid out of any assets remaining after the payment in full of all other debts proved in the estate.

Unregistered deeds of assignment not protected.

22. No deed of conveyance or assignment for the benefit of creditors shall be taken to come within the proviso to section six, or the provisions of subsection (3) of section eight, or of section fifty-eight of the Principal Act, or within the protection of the Principal Act or any Act amending the same, unless such deed is duly registered, within one month from the execution of the same by the assignor, by filing in the office of the Registrar-General an examined copy signed by one or more of the parties to the original deed of assignment and certified by the oath of some credible person taken before a Judge or before the Registrar-General or his deputy, or before any Commissioner for Affidavits. And the Registrar-General shall register the said copy accordingly.

Renewal of registration of bill of sale.

23. (I) No bill of sale shall have any validity as against the official assignee or trustee of a bankrupt estate unless it is duly registered in accordance with and within the time prescribed by the law then in force dealing with the registration of bills of sale, and unless such registration is renewed by the grantee or his assignee once at least every twelve months.

Promise to give a bill of sale.

(II) No promise to give a bill of sale shall have any validity for any purpose against such assignee or trustee as aforesaid, unless it be in writing, stating the amount secured thereby, the names, residences, and occupations of the parties thereto, and signed by the person making the promise, and unless it be registered in accordance with and within the time prescribed by the law then in force dealing with the registration of bills of sale, and unless such registration is renewed by the promisee once at least every twelve months.

Form of renewal.

24. Such renewal of registration shall be effected by filing in the office of the Supreme Court an affidavit stating the date of the bill of sale or promise as aforesaid, the date of its registration, and the date of the last renewal of registration, and the names, residences, and occupations of the parties thereto, as stated therein, and that the bill of sale or promise as aforesaid is still an existing security, and stating what amount is then actually due thereon; and the fact of such renewal shall be noted by the Prothonotary in the book kept by him under the Act of Council nineteenth Victoria number two, or any Act amending the same or in substitution therefor.

Goods comprised in certain bills of sale not within sec. 52 (3).

25. The goods comprised in a bill of sale in respect of which the provisions of this Act have been duly complied with shall be exempt from the provisions of section fifty-two (3) of the Principal Act.

19 Vic. No. 2, incorporated for certain purposes.

26. The enactments from time to time in force with respect to keeping records and lists of bills of sale and making searches therein and extracts therefrom shall apply to renewals of registration and promises to give bills of sale, and for that purpose the provisions of the Act of Council nineteenth Victoria number two, and any other Act relating to bills of sale which may from time to time be in force shall be read with the last three preceding sections.

27. Whenever it is made to appear to the Judge that a District Registrar is prevented by illness, or any other cause, from holding any meeting or examination, which under the provisions of the Principal Act or any Act amending the same is required to be held before such  
 5 District Registrar, the Judge may appoint a person to act as District Registrar for the purpose of holding such meeting or examination, who shall have for the purpose aforesaid the same powers and duties as a District Registrar. Judge may appoint District Registrar for special purposes.
28. After the expiration of five years from the date of the  
 10 sequestration order, or two years from the date of the certificate of discharge, whichever shall first happen, the official assignee may, with the leave of the Judge, cause all or any of the books and other documents and papers lodged with him by a bankrupt or insolvent, to be destroyed. Books, &c. may be destroyed with leave of Judge.
- 15 29. After a plan of distribution has been approved of by the Judge, no creditor shall be entitled by proof of his debt to disturb the plan of distribution, unless he satisfy the Judge that he could not by the exercise of due diligence have proved his debt prior to such approval; and in any order allowing a disturbance of the plan of  
 20 distribution the Judge may impose such terms as to costs or otherwise as he may think fit: Provided that if an amendment is ordered in the plan under section seventy of the Principal Act, any creditor who has proved his debt before the order is made directing such amendment shall be entitled to rank for dividend on the amended plan. Plan of distribution not to be disturbed in certain cases.
- 25 30. No bankrupt shall remove out of the jurisdiction of the Court until after the confirmation of the account and plan of distribution in his estate, except with the consent of three-fourths in number and value of the proved creditors in his estate, unless he has obtained either his certificate of discharge or the leave of the Judge; and any  
 30 bankrupt acting in breach of this section shall be guilty of a misdemeanour, and may be arrested on a warrant issued for that purpose by the Judge or Registrar on the information of any official assignee, trustee, or creditor of his estate. Bankrupt removing out of the jurisdiction without lawful excuse guilty of a misdemeanour.
- 35 31. An order for the compulsory sequestration of the estate of any person now or hereafter under imprisonment for debt may be made on the petition of the Attorney-General, and upon proof that such person has been so imprisoned for twelve months in case of a judgment for defamation or for three months in all other cases, and has declined to petition for the sequestration of his own estate, and the  
 40 Judge may thereupon order his discharge upon such terms and subject to such conditions as he may think fit. Sequestration of the estates of persons under imprisonment for debt.

- 27. Wherever it is made to appear to the Judge that a District Registrar is prevented by illness or any other cause from holding any meeting or examination which under the provisions of the Principal Act or any Act amending the same is required to be held before such District Registrar, the Judge may appoint a person to act as District Registrar for the purpose of holding such meeting or examination who shall have for the purpose all the same powers and duties as a District Registrar.
- 28. After the expiration of five years from the date of the appointment order or two years from the date of the death of the District Registrar, the Judge may cause the books and papers of the District Registrar to be examined and if it appears to him that the books and papers are in such a state as to require to be corrected or amended, he may cause the books and papers to be corrected or amended and may cause the books and papers to be re-arranged and may cause the books and papers to be bound up in such a manner as he may think fit.
- 29. After a plan of distribution has been approved of by the Judge no credit shall be called for out of the debt to which the plan of distribution applies, unless the Judge is satisfied that the assets of the estate have proved to be insufficient to meet the claims of the creditors, and in any order allowing a distribution of the plan of distribution the Judge may make such orders as to costs or charges as he may think fit.
- 30. If an order is made for the distribution of the assets of an estate under section twenty of the Principal Act, any creditor who has proved his debt before the Judge may direct that such distribution shall be subject to such conditions as the Judge may think fit.
- 31. The District Registrar shall cause a copy of the plan of distribution of the assets of the estate to be sent to the creditor and to the trustee or creditor of the estate, and the value of the property to be distributed shall be stated in the plan of distribution, and the value of the property to be distributed shall be stated in the plan of distribution, and the value of the property to be distributed shall be stated in the plan of distribution.
- 32. Any person now or hereafter appointed as trustee or creditor of an estate may apply to the Judge for an order that the plan of distribution of the assets of the estate should be subject to such conditions as the Judge may think fit.
- 33. The Judge may, if he thinks fit, order that the plan of distribution of the assets of an estate should be subject to such conditions as he may think fit.



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- 45 until the official assignee or trustee intervenes, all transactions by a bankrupt after his bankruptcy with any person dealing with him *bona fide* and for value in respect of his after-acquired property of any kind whatsoever, and whether real or personal, and whether with or without knowledge of the bankruptcy, shall be valid as against any such official
- 50 assignee or trustee, and all such transactions heretofore entered into by a bankrupt and not hitherto impeached shall be also valid. Any order made for the sequestration of the estate of an undischarged bankrupt or insolvent shall be deemed a transaction *bona fide* and for value within the meaning of this section. All transactions valid till intervention of assignee or trustee.
- 55 8. The Judge may at any time, on the motion of the official assignee, and on being satisfied that an act of bankruptcy has been committed by the bankrupt within the six months next preceding the date of the presentation of the petition upon which the sequestration order was made, order and declare that the bankruptcy shall be deemed to
- 60 have relation back to and commence on the date of such act of bankruptcy; and such order or declaration shall be *prima facie* evidence of the fact of the alleged act of bankruptcy, and of the commencement of the bankruptcy on such date as aforesaid. Judge may make order antedating commencement of bankruptcy.
- 9.

Allowance to bankrupt of personal property.

9. Subsections (2) and (3) of section sixteen of the Principal Act are hereby repealed, and in lieu thereof it is enacted that the official assignee may, with the consent of the creditors given by resolution at the first or any other meeting of creditors and with the approval of the Judge or Registrar, allow the bankrupt to retain any of his personal property, and such approval shall have the effect of vesting the said property in the bankrupt as from the date of such resolution: Provided that notice of the intention to allow a bankrupt to retain any of his personal property shall be given to all proved creditors two days at least before a vote is taken on the resolution. 5 10

Distribution of assets where creditors give indemnity for costs.

10. In cases where assets in any estate have been recovered by means of an indemnity for costs of litigation given by certain creditors, the Judge may make such order as he may deem just with reference to the distribution of such assets, with a view to giving the indemnifying creditors an advantage over others in consideration of the risk run by them in giving such indemnity. 15

Grounds for refusing or suspending certificate.

11. The facts referred to in section thirty-seven of the Principal Act shall, in addition to those set out in section thirty-eight of the said Act, include the following:—

Frivolous or vexatious action.

(a) That the bankrupt has within the three months preceding the sequestration order incurred unjustifiable expense by bringing a frivolous or vexatious suit or action. 20

Giving unregistered bill of sale.

(b) That the bankrupt has given a bill of sale which, at the date of the sequestration order, was in existence and had not been registered in accordance with the law then in force dealing with the registration of bills of sale. 25

Giving a bill of sale within three months of sequestration.

(c) That the bankrupt has given a bill of sale at any time within the three months preceding the sequestration order.

Obtaining credit without notice while uncertificated.

(d) That the bankrupt has while an uncertificated bankrupt or insolvent obtained credit to the amount of twenty pounds or upwards from any person without having first informed such person that he was an uncertificated bankrupt or insolvent. 30

Definition of terms in section thirty-eight, subsection (h).

12. In section thirty-eight, subsection (h), of the Principal Act the word "bankrupt" shall include "insolvent," and the word "bankruptcy" shall include "insolvency," and the words "statutory composition or arrangement" shall include an assignment for the benefit of creditors either at Common Law or under the Act of Council fifth Victoria number nine. 35

Section 40, subsection (7) of Principal Act repealed.

13. Section forty, subsection (7), of the Principal Act is hereby repealed, and in lieu thereof it is enacted that the Court or Judge may review, rescind, and vary any order made, in the bankruptcy jurisdiction, by it or him respectively, or by the Registrar acting for the Judge: Provided that no application shall be made by any bankrupt with reference to his certificate of discharge within five years after the making of an order refusing or suspending the operation of such certificate, or granting the same subject to conditions, except with the consent of the majority, in number and value, of the creditors who have proved in his bankruptcy. 40 45

Certificate not to be a release in certain cases except on conditions.

14. In addition to the matters mentioned in section forty-two, subsection (1), of the Principal Act, a certificate of discharge shall not release the bankrupt from any order made under section sixty-one of the Principal Act, or any amendment thereof, or from any liability under a judgment against him as defendant in an action for seduction, libel, or slander, or from liability as a respondent or co-respondent in a suit in the divorce jurisdiction, or under an affiliation order, except to such extent and subject to such conditions as the Judge may think just. 50 55

Discharge of bankrupt on conditions.

15. The Judge may, as one of the conditions referred to in the last preceding section and as a condition of granting an order of discharge

discharge under section thirty-seven of the Principal Act, require the bankrupt to consent to judgment being entered against him by the official assignee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge; and in a matter arising under the last preceding section, the Judge may require the bankrupt to consent to a judgment being entered against him by any person who is a creditor in respect of any matter therein referred to for such unsatisfied balance as aforesaid or any part thereof: Provided that in no case shall execution be issued without leave of the Judge on a judgment consented to by the bankrupt under the provisions of this section.

16. The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.

Suspension and conditions concurrent.

17. The provisions of section fifty-six of the Principal Act shall not be held to invalidate any transaction thereunder to the extent of any present advance *bona fide* made by any existing creditor without notice of an available act of bankruptcy, but the burden of proving the fact of the advance and that it was made *bona fide* and without such notice shall be upon the person setting up the same.

Section 56 of the Principal Act not to invalidate certain transactions.

18. (I) Subsection (1) of section sixty-one of the Principal Act is hereby repealed, and in lieu thereof it is enacted that where the bankrupt is an officer of the army or navy, or of the Colonial Forces, or an officer or clerk or otherwise employed or engaged in the Civil Service of the Crown, the Judge or Registrar may, on the application of the official assignee or a trustee, make an order for the payment to such assignee or trustee for distribution among the creditors of the bankrupt of so much of the bankrupt's pay and salary then due or thereafter to become due as he shall think fit: Provided that before making any such order, the Judge or Registrar shall communicate with the chief officer of the Department under which the pay or salary is enjoyed as to the amount, times, and manner of such payment, and shall hear and give consideration to any report which such chief officer may make as to the circumstances of the case.

Power to direct payment by Civil Servant, &c., out of salary. Sec. 61 (1) repealed.

(II) Subsection (2) of section sixty-one of the Principal Act is hereby amended by substituting the word "may" for the words "shall from time to time."

19. Subsection (1) of section sixty-five of the Principal Act is repealed, and in lieu thereof it is enacted that the permission given for the purposes of section sixty-four of the Principal Act shall not be a general permission to do all or any of the things therein mentioned but only a permission to do the particular thing for which permission is sought in the specified case.

Permission under sec. 64 to be specific. Sec. 65 (1) repealed.

20. Section ninety-four of the Principal Act is hereby repealed, and in lieu thereof it is enacted as follows:—

Audit of accounts of official assignee and trustee. Sec. 94 repealed.

(I) Every official assignee and 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 and to the Colonial Treasurer an account of his receipts and payments as such assignee or trustee.

(II) The account shall be in the prescribed form, and shall be made in duplicate, and verified by affidavit in the prescribed form.

(III) The Colonial Treasurer shall cause the account so sent to be audited; and for the purpose of the audit the official assignee or trustee shall produce for the inspection of the Colonial Treasurer, or such officer of the Treasury as he may appoint for the purpose, such books, accounts, and vouchers, and shall furnish such information, as the Colonial Treasurer or such officer may require.

(IV) The Colonial Treasurer shall forthwith forward a report of such audit to the Judge.

Dividend payable on loans limited to amount actually advanced and interest at 8 p.c.

21. Any person proving against the estate of a bankrupt for a debt in respect of money lent under any contract or agreement shall state on oath the actual amount of the money lent as aforesaid and the amount repaid to him in respect thereof, and he shall be entitled as against the other creditors to receive a dividend only in respect of the balance then due upon the amount actually lent, and in respect of interest at a rate not exceeding eight pounds per centum per annum: Provided that such person shall be entitled to be ranked as a creditor for the full amount due under the said contract or agreement, and shall be paid the full amount so due as aforesaid out of any assets remaining after the payment in full of all other debts proved in the estate.

Unregistered deeds of assignment not protected.

22. No deed of conveyance or assignment for the benefit of creditors shall be taken to come within the proviso to section six, or the provisions of subsection (3) of section eight, or of section fifty-eight of the Principal Act, or within the protection of the Principal Act or any Act amending the same, unless such deed is duly registered, within one month from the execution of the same by the assignor, by filing in the office of the Registrar-General an examined copy signed by one or more of the parties to the original deed of assignment and certified by the oath of some credible person taken before a Judge or before the Registrar-General or his deputy, or before any Commissioner for Affidavits. And the Registrar-General shall register the said copy accordingly.

Renewal of registration of bill of sale.

23. (I) No bill of sale shall have any validity as against the official assignee or trustee of a bankrupt estate unless it is duly registered in accordance with and within the time prescribed by the law then in force dealing with the registration of bills of sale, and unless such registration is renewed by the grantee or his assignee once at least every twelve months.

Promise to give a bill of sale.

(II) No promise to give a bill of sale shall have any validity for any purpose against such assignee or trustee as aforesaid, unless it be in writing, stating the amount secured thereby, the names, residences, and occupations of the parties thereto, and signed by the person making the promise, and unless it be registered in accordance with and within the time prescribed by the law then in force dealing with the registration of bills of sale, and unless such registration is renewed by the promisee once at least every twelve months.

Form of renewal.

24. Such renewal of registration shall be effected by filing in the office of the Supreme Court an affidavit stating the date of the bill of sale or promise as aforesaid, the date of its registration, and the date of the last renewal of registration, and the names, residences, and occupations of the parties thereto, as stated therein, and that the bill of sale or promise as aforesaid is still an existing security, and stating what amount is then actually due thereon; and the fact of such renewal shall be noted by the Prothonotary in the book kept by him under the Act of Council nineteenth Victoria number two, or any Act amending the same or in substitution therefor.

Goods comprised in certain bills of sale not within sec. 52 (3).

25. The goods comprised in a bill of sale in respect of which the provisions of this Act have been duly complied with shall be exempt from the provisions of section fifty-two (3) of the Principal Act.

19 Vic. No. 2, incorporated for certain purposes.

26. The enactments from time to time in force with respect to keeping records and lists of bills of sale and making searches therein and extracts therefrom shall apply to renewals of registration and promises to give bills of sale, and for that purpose the provisions of the Act of Council nineteenth Victoria number two, and any other Act relating to bills of sale which may from time to time be in force shall be read with the last three preceding sections.

27. Whenever it is made to appear to the Judge that a District Registrar is prevented by illness, or any other cause, from holding any meeting or examination, which under the provisions of the Principal Act or any Act amending the same is required to be held before such District Registrar, the Judge may appoint a person to act as District Registrar for the purpose of holding such meeting or examination, who shall have for the purpose aforesaid the same powers and duties as a District Registrar. Judge may appoint District Registrar for special purposes.
28. After the expiration of five years from the date of the sequestration order, or two years from the date of the certificate of discharge, whichever shall first happen, the official assignee may, with the leave of the Judge, cause all or any of the books and other documents and papers lodged with him by a bankrupt or insolvent, to be destroyed. Books, &c. may be destroyed with leave of Judge.
29. After a plan of distribution has been approved of by the Judge, no creditor shall be entitled by proof of his debt to disturb the plan of distribution, unless he satisfy the Judge that he could not by the exercise of due diligence have proved his debt prior to such approval; and in any order allowing a disturbance of the plan of distribution the Judge may impose such terms as to costs or otherwise as he may think fit: Provided that if an amendment is ordered in the plan under section seventy of the Principal Act, any creditor who has proved his debt before the order is made directing such amendment shall be entitled to rank for dividend on the amended plan. Plan of distribution not to be disturbed in certain cases.
30. No bankrupt shall remove out of the jurisdiction of the Court until after the confirmation of the account and plan of distribution in his estate, except with the consent of three-fourths in number and value of the proved creditors in his estate, unless he has obtained either his certificate of discharge or the leave of the Judge; and any bankrupt acting in breach of this section shall be guilty of a misdemeanour, and may be arrested on a warrant issued for that purpose by the Judge or Registrar on the information of any official assignee, trustee, or creditor of his estate. Bankrupt removing out of the jurisdiction without lawful excuse guilty of a misdemeanour.
31. An order for the compulsory sequestration of the estate of any person now or hereafter under imprisonment for debt may be made on the petition of the Attorney-General, and upon proof that such person has been so imprisoned for twelve months in case of a judgment for defamation or for three months in all other cases, and has declined to petition for the sequestration of his own estate, and the Judge may thereupon order his discharge upon such terms and subject to such conditions as he may think fit. Sequestration of the estates of persons under imprisonment for debt.

27. Wherever it is made to appear to the Judge that a District Registrar is prevented by illness or any other cause from holding any meeting or examination which under the provisions of the Principal Act or any Act amending the same is required to be held before such District Registrar, the Judge may appoint a person to act as District Registrar for the purpose of holding such meeting or examination who shall have for the purpose all the same powers and duties as a District Registrar.

28. After the expiration of five years from the date of the registration order, or two years from the date of the certificate of discharge, whichever shall first expire, the official assignee may, with the leave of the Judge, cause all or any of the books and papers relating to the said papers lodged with him by a bankrupt or insolvent to be destroyed.

29. After a plan of distribution has been approved of by the Judge, no creditor shall be entitled to object to the plan or to demand any dividend thereon, unless he claims the right to such dividend by the exercise of his diligence, and he must prove his debt prior to such approval, and in any order allowing a distribution of the assets of the bankrupt the Judge may impose such terms as to costs or otherwise as he may think fit: provided that if an amendment is ordered in the plan under section twenty of the Principal Act, any creditor who has proved his debt before the order is made, including such amendment, shall be entitled to rank for dividend on the amended plan.

30. The Judge may, at any time, remove out of the jurisdiction of the Court and may cause the continuation of the account and plan of distribution in his estate, or any part thereof, to be referred to any other Judge, or to any other person, and may direct that the account and plan of distribution in his estate, or any part thereof, be referred to any other Judge, or to any other person, and may direct that the account and plan of distribution in his estate, or any part thereof, be referred to any other Judge, or to any other person.

31. An order for the compulsory registration of the estate of a deceased person may be made by the Judge, and may be made in any case where such person has been so adjudged, and may be made in any case where such person has been so adjudged, and may be made in any case where such person has been so adjudged, and may be made in any case where such person has been so adjudged.

32. The Judge may, at any time, remove out of the jurisdiction of the Court and may cause the continuation of the account and plan of distribution in his estate, or any part thereof, to be referred to any other Judge, or to any other person, and may direct that the account and plan of distribution in his estate, or any part thereof, be referred to any other Judge, or to any other person.

33. The Judge may, at any time, remove out of the jurisdiction of the Court and may cause the continuation of the account and plan of distribution in his estate, or any part thereof, to be referred to any other Judge, or to any other person, and may direct that the account and plan of distribution in his estate, or any part thereof, be referred to any other Judge, or to any other person.