

1895.

Legislative Council.

BANKRUPTCY ACTS AMENDMENT BILL.

(Amendments to be proposed in Committee of the Whole by  
THE HONORABLE THE ATTORNEY-GENERAL.)

Page 1, clause 1, line 6. Omit "1894" insert "1895"

Page 1, clause 1, line 9. Omit "1894" insert "1895"

Page 3. After clause 6 insert two new subclauses (2) and (3):—

(2) Any final judgment obtained against a married woman shall be deemed to be a final judgment within the meaning of section four subsection (1) (g) of the Principal Act, and a bankruptcy notice in the form prescribed by the Fifth Schedule to the said Act may issue and be served upon her in respect thereof as if judgment had been obtained against her as a *feme sole*, and the fact that no execution can issue at law on such judgment shall not prevent the non-compliance with such notice being deemed an act of bankruptcy under the said subsection: Provided that nothing herein contained shall be construed to render a married woman liable to be made bankrupt except in respect of her separate estate, and upon evidence that she is possessed of separate estate, or to alter or repeal anything contained in the Married Women's Property Act, 1893.

Final judgment against a married woman to be a final judgment within section four subsection (1) (g) of the Principal Act.

(3) Any decree or order which is in its terms or effect final shall be deemed to be a final judgment within the meaning of section four subsection (1) (g) of the Principal Act.

Any final decree or order to be a final judgment.

Page 5, clause 17, line 14. Omit the whole of clause 17, and insert in its place the following clause:—

17. The provisions of section fifty-six of the Principal Act shall not apply to any *bona fide* payment by the bankrupt to any of his creditors without notice of an available act of bankruptcy, and 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 or payment 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.

Page 7. After clause 31 insert new clause 32:—

Appeals from any order, decision, or ruling of the Judge in Bankruptcy shall be by way of rehearing, anything in the Principal Act to the contrary notwithstanding, and shall be subject to such terms and conditions as may be prescribed, and subject thereto according to the practice for the time being in force with reference to appeals in the equitable jurisdiction of the Supreme Court.

Appeal to be by way of rehearing.

MANLEY POTTS AND ALTRUMENT HILL

Plaintiffs in Error vs. The Commonwealth of Massachusetts

Case No. 10,000. Appeal from the Superior Court for the County of Middlesex, Massachusetts.

Decided at the Court Room, Boston, Massachusetts, on the 10th day of June, 1881.

Present: Chief Justice, and Justices of the Supreme Court.

The following is the opinion of the Court, delivered by the Chief Justice:

The case is brought here on appeal from the Superior Court for the County of Middlesex, Massachusetts. The plaintiff in error, Manley Potts and Altrument Hill, are the assignees of the estate of John Potts, deceased. The defendant in error is the Commonwealth of Massachusetts. The case is one of error in law, and the question presented is whether the judgment of the Superior Court is correct.

The facts of the case are as follows: John Potts, deceased, was a resident of the County of Middlesex, Massachusetts, and was the owner of a certain piece of real estate. He died testate, and his will was admitted to probate in the Superior Court for the County of Middlesex, Massachusetts. The will bequeathed the real estate to his wife, Mary Potts, for her life, and after her death to his children, Manley Potts and Altrument Hill, in equal shares. The Commonwealth of Massachusetts claims that the will is void, and that the real estate should be distributed to the Commonwealth as the heir of John Potts.

The Superior Court for the County of Middlesex, Massachusetts, held that the will was valid, and that the real estate should be distributed to Manley Potts and Altrument Hill. The Commonwealth of Massachusetts appeals from this judgment.

The question presented is whether the will is valid. The Commonwealth claims that the will is void, because it is not in writing, and because it does not comply with the provisions of the Statute in that behalf made. The plaintiff in error claims that the will is valid, because it is in writing, and because it complies with the provisions of the Statute in that behalf made.

The Statute in that behalf made is Chapter 100, Section 1, of the Acts and Resolves of the Commonwealth of Massachusetts, passed in 1820. It reads as follows: "Every will, to be valid, shall be in writing, and shall be signed by the testator, or by some other person in his presence and by his express direction, and shall be subscribed and attested in the manner and form prescribed in this chapter."

The Commonwealth claims that the will is not in writing, and that it does not comply with the provisions of the Statute in that behalf made. The plaintiff in error claims that the will is in writing, and that it complies with the provisions of the Statute in that behalf made.

The Court holds that the will is in writing, and that it complies with the provisions of the Statute in that behalf made. The judgment of the Superior Court is affirmed.

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Final judgment against a married woman to be a final judgment within section four subsection (1) (g) of the Principal Act.

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Appeal to be by way of rehearing.

DECLARATION OF INDEPENDENCE

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness. Prudence, in the first instance, requires that Governments long established should not be changed for light and transient causes; and accordingly, we have recourse to the remedy only when repeated Petitions for redress have been answered by repeated Injury.



- Section 18. (4) 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). (5) Section nineteen, subsection (15), by omitting the words "if the debtor had been adjudged bankrupt."
- Section 21, subsection (1). (6) 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). (7) 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). (8) 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. (9) Section thirty-seven, by substituting the word "approved" for the word "confirmed."
- Section 40, subsection (5). (10) Section forty, subsection (5), by adding the words "or Registrar" after the word "Judge."
- Section 50. (11) Section fifty, by inserting the words "as against the estate of the bankrupt," after the words "proceeded with." 25
- Section 51. (12) 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). (13) 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 reinserting the words "and preferences" struck out by section two of the "Bankruptcy Act Amendment Act, 1888." 35
- Section 58. (14) Section fifty-eight, by inserting the word "available" before the words "act of bankruptcy."
- Section 78. (15) 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). (16) 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). (17) 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). (18) Section eighty-three, subsection (6), by substituting the words "Master or Deputy Registrar" for the words "Chief Clerk."
- Section 86, subsection (1). (19) Section eighty-six, subsection (1), by inserting the words "with the approval of the Judge" before the word "appoint."
- Section 97. (20) 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. (21) Section one hundred and one, by adding the words "for the purposes of this section 'dividends' shall include 'balances.'" 55

- (22) 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 (23) 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.
- (a) Clause one, by substituting the words "twenty-one" for the word "fourteen." Clause 1.
- (b) 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 (c) Clause fourteen, by omitting the whole of the clause, and enacting in place thereof the following clause:—**When for any cause appearing to the Registrar the said Registrar shall be of opinion that a claimant who has not proved his debt may eventually be able to establish the same it shall be lawful for the said Registrar to allow such claim to be entered for the purpose of voting, and to give such time as he may think fit for establishing the same, and the Official Assignee shall make provision for the same in any account and plan of distribution filed prior to the expiration of such time: Provided that any vote given by the claimant may be declared invalid in the event of the claim not being established within the time allowed, but subject to such terms as the Judge or Registrar may think fit.** Clause 14. Admission of claim for purpose of voting. [5 Vic. No. 17, s. 43.]
- 20 (d) Clause nineteen, by adding the words "except with the leave of the Judge or Registrar" at the end of the clause. Clause 19.
- (e) Clauses twenty-three and twenty-four shall not apply to a single meeting. Clauses 23 and 24.
- 30 4. The Second Schedule to the Principal Act is hereby amended as follows:— Amendment of Second Schedule.
- (a) Clause six, by inserting the words "or Registrar" after the word "Judge." Clause 6.
- (b) 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.
- 40 (c) Clause twenty-four, by inserting the words "or official assignee or trustee" after the word "creditor" wherever it occurs. Clause 24.
- 45 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.
6. (1) 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. Bankruptcy notice: Person entitled to enforce judgment a creditor within sec. 4 of Principal Act.
- (2) Any final judgment obtained against a married woman shall be deemed to be a final judgment within the meaning of section four subsection (1) (g) of the Principal Act, and a bankruptcy notice in the form prescribed by the Fifth Schedule to the said Act may issue and be served upon her in respect thereof as if judgment had been obtained against her as a femme sole, and the fact that no execution can issue at law on such judgment shall not prevent the non-compliance with such notice being deemed an act of bankruptcy under the said Final judgment against a married woman to be a final judgment within section 4 subsection (1) (g) of the Principal Act.

said subsection: Provided that nothing herein contained shall be construed to render a married woman liable to be made bankrupt except in respect of her separate estate, and upon evidence that she is possessed of separate estate, or to alter or repeal anything contained in the Married Women's Property Act, 1893.

Any final decree or order to be a final judgment.

Effect of sequestration order. Sec. 10, subsec. (1) repealed.

After-acquired property:

All transactions valid till intervention of assignee or trustee.

Sequestration of estate of undischarged bankrupt.

Judge may make order antedating commencement of bankruptcy.

Allowance to bankrupt of personal property.

Distribution of assets where creditors give indemnity for costs.

Discharge of bankrupt on conditions.

Suspension and conditions concurrent.

(3) Any decree or order which is in its terms or effect final shall be deemed to be a final judgment within the meaning of section four subsection (1) (g) of the Principal Act,

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 the sequestration of his estate 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.

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.

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.

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.

11. The Judge may, as one of the conditions of granting an order of 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: 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.

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



11. 13. 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:—

- 5 (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. Frivolous or vexatious action.
- (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. Giving unregistered bill of sale.
- 10 (c) That the bankrupt has given a bill of sale at any time within the three months preceding the sequestration order. Giving a bill of sale within three months of sequestration.
- (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. Obtaining credit without notice while uncertificated.

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

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

14. 16. 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. Certificate not to be a release in certain cases except 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 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. Discharge of bankrupt on conditions.

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

notice

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.

Repeal of s. 56 of Principal Act.

17. Section fifty-six of the Principal Act is hereby repealed, and it is enacted in lieu thereof as follows:—

Preferences. [Cf. 5 Vic. No. 17 s. 8.]

- (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 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 whether fraudulent or not, having the effect in any such case of preferring any then existing creditor to another, shall be absolutely void.
- (2) For the purpose of this 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.

Repeal of s. 57 of Principal Act and part of s. 2 of Bankruptcy Act Amendment Act, 1888.

18. Section fifty-seven of the Principal Act and section two of the Bankruptcy Act Amendment Act, 1888 (in so far as it amends section fifty-seven of the Principal Act), are hereby repealed, and it is enacted in lieu thereof as follows:—

Protection of bona fide transactions, payments, advances, &c., without notice. [Chamberlain's Act s. 49 and 25 Vic. No. 8.]

Subject to the provisions of the Principal Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, and subject to the provisions of the Principal Act and of this Act with respect to the avoidance of certain preferences except as hereinafter provided, nothing in the Principal Act or this Act shall invalidate in the case of a bankruptcy—

- (a) Any payment by the bankrupt to any of his creditors for or on account of any just debt due at the time of payment.
- (b) Any such 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.
- (e) Any transaction to the extent of any present advance bona fide made by any existing creditor.

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. And provided that the burden of proving that the above conditions have been complied with shall be upon the person who relies upon their having been complied with.

Interpretation of "Payment"

"Payment" shall for the purposes of this section include the drawing, making, or indorsing of a bill of exchange, cheque, or promissory note.

18. 19. (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.

15 (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. 20. 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. 21. 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.

21. 22. 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 in his affidavit of proof 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 of the amount actually lent and due at the time of lodging his proof and in respect of interest upon such balance 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 of principal and interest due under the said contract or agreement, terms upon which the money was lent, 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.

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

22. 23. 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

Unregistered deeds of assignment not protected.

Act

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.~~ **24.** (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.** **25.** 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.** **26.** 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.** **27.** 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.

Judge may appoint District Registrar for special purposes.

**27.** **28.** 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.

Books, &c. may be destroyed with leave of Judge.

**28.** **29.** 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.

Plan of distribution not to be disturbed in certain cases.

**29.** **30.** 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

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.

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.

31. If a bankrupt removes out of the jurisdiction of the court before 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 or by the leave of the Judge, the Judge may, on the information of the official assignee or trustee, or of any creditor, by warrant addressed to the sheriff or any constable or prescribed officer of the court, cause such bankrupt to be arrested, and to be safely kept as prescribed until such time as the Judge may order.

Bankrupt liable to arrest if he removes out of the jurisdiction before account and plan is confirmed.

32. Whenever any person shall at any time at or after the commencement of this Act have been imprisoned—

- (a) in execution of a judgment for defamation or libel obtained under the Act eleventh Victoria number thirteen for a period of twelve months; or
- (b) in virtue of any order made under the Matrimonial Causes Act or any Act amending the same for a period of twelve months for non-payment of a sum due in respect of alimony or maintenance, or for a period of six months for non-payment of costs; or
- (c) in any other case for debt for a period of three months.

And has not presented a bankruptcy petition against himself, it shall be lawful for the Attorney-General to present a petition against such person, and a sequestration order may thereupon be made, and shall have effect in all respects as if made upon the petition of such person himself.

33. (i) Appeals from any order, decision, or ruling of the Judge in Bankruptcy shall be by way of rehearing, anything in the Principal Act to the contrary notwithstanding, and shall be subject to such terms and conditions as may be prescribed, and subject thereto according to the practice for the time being in force with reference to appeals in the equitable jurisdiction of the Supreme Court.

Appeal to be by way of rehearing.

(ii) The Court or Judge or Registrar may review, rescind, or vary any order made in the bankruptcy jurisdiction by it or him respectively.

All orders to be subject to review.

plan of distribution unless he shall, the Judge that he could not by the exercise of due diligence have proved his debt to such approval; and in any other allowing a distribution of the kind to distribution the Judge may impose such terms as to costs or otherwise as he may think fit: provided that if an assignment is ordered in the plan under section seven of the Principal Act, any creditor who has proved his debt before the order is made directing such assignment shall be entitled to rank for dividend on the assigned plan.

30. Notwithstanding anything contained in the provisions of the Principal Act relating to the vesting of the account and assets of a bankrupt in the trustee, the Court may, in its discretion, order that the account and assets of a bankrupt shall be retained in his possession and control, subject to such conditions as the Court may think fit, and may, in any such case, order that the account and assets of a bankrupt shall be retained in his possession and control, subject to such conditions as the Court may think fit, and may, in any such case, order that the account and assets of a bankrupt shall be retained in his possession and control, subject to such conditions as the Court may think fit.

31. An order for the appointment of a trustee of the estate of a bankrupt may be made by the Court, and may be made subject to such conditions as the Court may think fit, and may, in any such case, order that the account and assets of a bankrupt shall be retained in his possession and control, subject to such conditions as the Court may think fit.

31. If a bankrupt removed out of the jurisdiction of the Court before the commencement of the account and plan of distribution in his estate, except with the consent of the trustee in bankruptcy, and the value of the proved creditors in his estate is by the leave of the Judge, the Judge may, on the application of the official assignee or trustee, or of any creditor by whom a writ or writs have been issued, or of any creditor by whom a writ or writs have been issued, order that the account and assets of a bankrupt shall be retained in his possession and control, subject to such conditions as the Court may think fit.

32. Whenever any person shall at any time be or after the commencement of this Act have been imprisoned—  
 (a) in execution of a judgment for debt or for a period of twelve months; or  
 (b) in virtue of any order made under the Vagrancy Act, 1824, or any Act amending the same for a period of twelve months for non-payment of a sum due in respect of alimony or maintenance, or for a period of six months for non-payment of costs; or  
 (c) in any other case for debt for a period of three months.

And has not presented a bankruptcy petition against himself, it shall be lawful for the Attorney-General to present a petition against such person, and a sequestration order may thereupon be made, and shall have effect in all respects as if made upon the petition of such person himself.

33. (i) Appeals from any order, decision or ruling of the Judge in Bankruptcy shall be by way of rehearing, as if in the Principal Act to the contrary notwithstanding, and shall be subject to such terms and conditions as may be prescribed, and subject thereto according to the practice for the time being in force with reference to appeals to the Court of Appeal of the Supreme Court.  
 (ii) The Court of Appeal or the Judge may review, rescind or vary any order made in the bankruptcy jurisdiction by it or him respectively.

34. The Court of Appeal or the Judge may, in any case, order that the account and assets of a bankrupt shall be retained in his possession and control, subject to such conditions as the Court may think fit.

Legislative Council.

58<sup>o</sup> VICTORIA, 1895.

## 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.

*(As proposed to be amended in Committee of the Whole.)*

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

5 1. This Act shall come into operation on the twenty-second day of July, one thousand eight hundred and ninety-five, and may be cited as the "Bankruptcy Acts Amendment Act, 1894, 1895," and this Act and the "Bankruptcy Act, 1887" (hereinafter referred to as the Principal Act), and the "Bankruptcy Act Amendment Act, 1888,"  
10 may be cited together as the "Bankruptcy Acts, 1887, 1888, 1894, 1895."

2. The following sections of the Principal Act are amended as follows:—

- 15 (1) Section eight, subsections (3) and (10), by substituting the word "debtor" for the word "bankrupt."  
20 (2) Section ten, subsection (2), by inserting the words "or take any fresh step in," after the word, "commence."  
(3) 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."

Commencement and short title.

Certain sections of Principal Act amended.

Section 8, subsections (3) and (10).

Section 10, subsection (2).

Section 17, subsection (2).

c 6—A

(4)

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter.

- Section 18. (4) 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). (5) Section nineteen, subsection (15), by omitting the words "if the debtor had been adjudged bankrupt."
- Section 21, subsection (1). (6) 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). (7) 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). (8) 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. (9) Section thirty-seven, by substituting the word "approved" for the word "confirmed."
- Section 40, subsection (5). (10) Section forty, subsection (5), by adding the words "or Registrar" after the word "Judge."
- Section 50. (11) Section fifty, by inserting the words "as against the estate of the bankrupt," after the words "proceeded with." 25
- Section 51. (12) 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). (13) 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 reinserting the words "and preferences" struck out by section two of the "Bankruptcy Act Amendment Act, 1888." 35
- Section 58. (14) Section fifty-eight, by inserting the word "available" before the words "act of bankruptcy."
- Section 78. (15) 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). (16) 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). (17) 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). (18) Section eighty-three, subsection (6), by substituting the words "Master or Deputy Registrar" for the words "Chief Clerk."
- Section 86, subsection (1). (19) Section eighty-six, subsection (1), by inserting the words "with the approval of the Judge" before the word "appoint."
- Section 97. (20) 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. (21) Section one hundred and one, by adding the words "for the purposes of this section 'dividends' shall include 'balances.'" 55



- (22) 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 (23) 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.
- (a) Clause one, by substituting the words "twenty-one" for the word "fourteen." Clause 1.
- 15 (b) 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.
- 20 (c) Clause fourteen, by omitting the whole of the clause, and enacting in place thereof the following clause:—**When for any cause appearing to the Registrar the said Registrar shall be of opinion that a claimant who has not proved his debt may eventually be able to establish the same it shall be lawful for the said Registrar to allow such claim to be entered for the purpose of voting, and to give such time as he may think fit for establishing the same, and the Official Assignee shall make provision for the same in any account and plan of distribution filed prior to the expiration of such time: Provided that any vote given by the claimant may be declared invalid in the event of the claim not being established within the time allowed, but subject to such terms as the Judge or Registrar may think fit.** Clause 14. Admission of claim for purpose of voting. [5 Vic. No. 17, s. 43.]
- 25 (d) Clause nineteen, by adding the words "except with the leave of the Judge or Registrar" at the end of the clause. Clause 19.
- 30 (e) Clauses twenty-three and twenty-four shall not apply to a single meeting. Clauses 23 and 24.
- 35 4. The Second Schedule to the Principal Act is hereby amended as follows:— Amendment of Second Schedule.
- (a) Clause six, by inserting the words "or Registrar" after the word "Judge." Clause 6.
- 40 (b) 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.
- 45 (c) Clause twenty-four, by inserting the words "or official assignee or trustee" after the word "creditor" wherever it occurs. Clause 24.
- 50 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.
6. (1) 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.
- (2) Any final judgment obtained against a married woman shall be deemed to be a final judgment within the meaning of section four subsection (1) (g) of the Principal Act, and a bankruptcy notice in the form prescribed by the Fifth Schedule to the said Act may issue and be served upon her in respect thereof as if judgment had been obtained against her as a femme sole, and the fact that no execution can issue at law on such judgment shall not prevent the non-compliance with such notice being deemed an act of bankruptcy under the said Final judgment against a married woman to be a final judgment within section 4 subsection (1) (g) of the Principal Act.

said subsection: Provided that nothing herein contained shall be construed to render a married woman liable to be made bankrupt except in respect of her separate estate, and upon evidence that she is possessed of separate estate, or to alter or repeal anything contained in the Married Women's Property Act, 1893. 5

Any final decree or order to be a final judgment.

(3) Any decree or order which is in its terms or effect final shall be deemed to be a final judgment within the meaning of section four subsection (1) (g) of the Principal Act,

Effect of sequestration order. Sec. 10, subsec. (1) repealed.

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 10 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

After-acquired property:

All transactions valid till intervention of assignee or trustee.

of the Principal Act, and any Act amending the same: Provided that 15 until the official assignee or trustee intervenes, all transactions by a bankrupt after his bankruptcy the sequestration of his estate with any

Sequestration of estate of undischarged bankrupt.

Judge may make order antedating commencement of bankruptcy.

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, 20 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. 25

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 30 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.

Allowance to bankrupt of personal property.

9. Subsections (2) and (3) of section sixteen of the Principal 35 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 40 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.

Distribution of assets where creditors give indemnity for costs.

10. In cases where assets in any estate have been recovered 45 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. 50

Discharge of bankrupt on conditions.

11. The Judge may, as one of the conditions of granting an order of 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 55 discharge: 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.

Suspension and conditions concurrent.

12. The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently. 60

11. 13. 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:—

5 (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. Frivolous or vexatious action.

(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. Giving unregistered bill of sale.

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

(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. Obtaining credit without notice while uncertificated.

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

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

14. 16. 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. Certificate not to be a release in certain cases except 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 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. Discharge of bankrupt on conditions.

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

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.

Repeal of s. 56 of  
Principal Act.

17. Section fifty-six of the Principal Act is hereby repealed, and it is enacted in lieu thereof as follows:—

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

- (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 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 whether fraudulent or not, having the effect in any such case of preferring any then existing creditor to another, shall be absolutely void.
- (2) For the purpose of this 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.

Repeal of s. 57 of  
Principal Act and  
part of s. 2 of Bank-  
ruptcy Act  
Amendment Act,  
1888.

18. Section fifty-seven of the Principal Act and section two of the Bankruptcy Act Amendment Act, 1888 (in so far as it amends section fifty-seven of the Principal Act), are hereby repealed, and it is enacted in lieu thereof as follows:—

Protection of bona  
fide transactions,  
payments, ad-  
vances, &c., with-  
out notice.  
[Chamberlain's  
Act s. 49 and 25  
Vic. No. 8.]

Subject to the provisions of the Principal Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, and subject to the provisions of the Principal Act and of this Act with respect to the avoidance of certain preferences except as hereinafter provided, nothing in the Principal Act or this Act shall invalidate in the case of a bankruptcy—

- (a) Any payment by the bankrupt to any of his creditors for or on account of any just debt due at the time of payment.
- (b) Any such 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.
- (e) Any transaction to the extent of any present advance bona fide made by any existing creditor.

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. And provided that the burden of proving that the above conditions have been complied with shall be upon the person who relies upon their having been complied with.

Interpretation of  
"Payment"

"Payment" shall for the purposes of this section include the drawing, making, or indorsing of a bill of exchange, cheque, or promissory note.

18. 19. (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.

15 (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. 20. 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. 21. 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.

21. 22. 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~~ in his affidavit of proof 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~~ of the amount actually lent and due at the time of lodging his proof and in respect of interest upon such balance 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 of principal and interest due under the said ~~contract or agreement~~, terms upon which the money was lent, 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.

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

22. 23. 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

Unregistered deeds of assignment not protected.

- 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. 5
- Renewal of registration of bill of sale. 23. 24. (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. 10
- 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. 15
- Form of renewal. 24. 25. 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. 20
- Goods comprised in certain bills of sale not within sec. 52 (3). 25. 26. 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. 25
- 19 Vic. No. 2, incorporated for certain purposes. 26. 27. 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. 40
- Judge may appoint District Registrar for special purposes. 27. 28. 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. 50
- Books, &c. may be destroyed with leave of Judge. 28. 29. 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. 55
- Plan of distribution not to be disturbed in certain cases. 29. 30. 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. 55

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.

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.

31. If a bankrupt removes out of the jurisdiction of the court before 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 or by the leave of the Judge, the Judge may, on the information of the official assignee or trustee, or of any creditor, by warrant addressed to the sheriff or any constable or prescribed officer of the court, cause such bankrupt to be arrested, and to be safely kept as prescribed until such time as the Judge may order.

Bankrupt liable to arrest if he removes out of the jurisdiction before account and plan is confirmed.

32. Whenever any person shall at any time at or after the commencement of this Act have been imprisoned—

- (a) in execution of a judgment for defamation or libel obtained under the Act eleventh Victoria number thirteen for a period of twelve months; or
- (b) in virtue of any order made under the Matrimonial Causes Act or any Act amending the same for a period of twelve months for non-payment of a sum due in respect of alimony or maintenance, or for a period of six months for non-payment of costs; or
- (c) in any other case for debt for a period of three months.

And has not presented a bankruptcy petition against himself, it shall be lawful for the Attorney-General to present a petition against such person, and a sequestration order may thereupon be made, and shall have effect in all respects as if made upon the petition of such person himself.

33. (i) Appeals from any order, decision, or ruling of the Judge in Bankruptcy shall be by way of rehearing, anything in the Principal Act to the contrary notwithstanding, and shall be subject to such terms and conditions as may be prescribed, and subject thereto according to the practice for the time being in force with reference to appeals in the equitable jurisdiction of the Supreme Court.

Appeal to be by way of rehearing.

(ii) The Court or Judge or Registrar may review, rescind, or vary any order made in the bankruptcy jurisdiction by it or him respectively.

All orders to be subject to review.

plan of distribution unless he satisfy the Judge that he could not by the exercise of due diligence have proved his claim prior to such adjournment; and in any order allowing a distribution 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 to be made under section seventy of the Principal Act, any creditor who has proved his claim before the order is made, claiming such amendment shall be entitled to rank for dividend on the amended plan.

30. The Court may order the commission of the account and the distribution in the estate to be stayed until the receipt of the dividend, and value of the proved creditors, the value of the claims, and the value of the assets of the estate, or the value of the assets, shall be ascertained in breach of this section shall be liable to a fine not exceeding five pounds, and may be ordered on a warrant issued for that purpose by the Judge or Registrar to be imprisoned for any period not exceeding three months.

31. In order for the compulsory arrangement of the estate of any person to be sanctioned by the Judge, the arrangement must be made on the petition of the debtor, or of a creditor, and must be made in accordance with the provisions of the Act, and the Judge may, if he thinks fit, require the debtor to give security for the performance of the arrangement, and may, if he thinks fit, require the debtor to give security for the performance of the arrangement.

32. If a bankrupt removes out of the jurisdiction of the court before the arrangement of the account and plan of distribution is made, or if he removes out of the jurisdiction of the court before the arrangement of the account and plan of distribution is made, the Judge may, if he thinks fit, order the bankrupt to be arrested, and to be kept in custody until such time as the Judge may order.

33. Whenever any person shall at any time at or after the commencement of this Act have been imprisoned—  
 (a) in execution of a judgment for detention or libel obtained under the Act eleven Victoria number thirteen for a period of twelve months; or  
 (b) in virtue of any order made under the Matrimonial Causes Act or any Act amending the same for a period of twelve months for non-payment of a sum due in respect of alimony or maintenance; or for a period of six months for non-payment of costs; or

(c) in any other case for debt for a period of three months, and has not presented a bankruptcy petition against himself, shall be liable for the Act to be arrested, and a warrant may be issued for that purpose, and a warrant may be issued for that purpose, and shall have effect in all respects as if made upon the petition of such person.

34. (1) Appeals from any order, decision, or ruling of the Judge in bankruptcy shall be by way of rehearing, nothing in the Principal Act to the contrary notwithstanding, and shall be subject to such terms and conditions as may be prescribed, and subject thereto according to the practice for the time being in force with reference to appeals in the equitable jurisdiction of the Supreme Court.  
 (2) The Court or Judge or Registrar may review, rescind, or vary any order made in the bankruptcy jurisdiction by it or him respectively.