

The Bankruptcy Act, 1892.

(55th Vict., No. 32).

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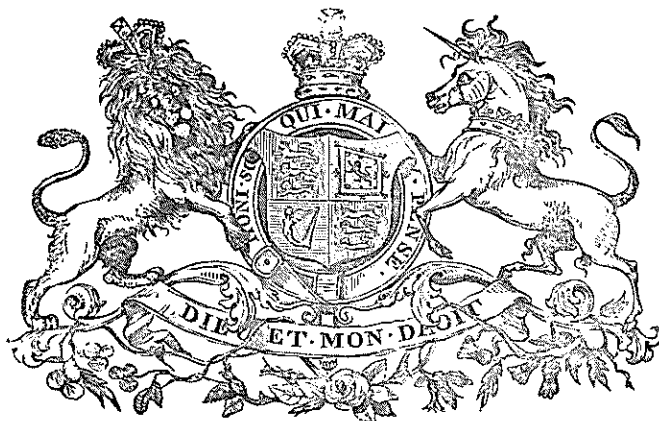
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Western Australia.

ANNO QUINQUAGESIMO QUINTO

VICTORIÆ REGINÆ.

No. XXXII.

AN ACT to amend and consolidate the Law of Bankruptcy.

[Assented to, 18th March, 1892.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Preamble.

Preliminary.

1. THIS Act may be cited as "The Bankruptcy Act, 1892," and is divided into Eight Parts, as follows:—

Short Title and
arrangement.

PART I.—SECTIONS 4 TO 29: PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE.

II.—SECTIONS 30 TO 34: DISQUALIFICATIONS OF BANKRUPT.

III.—SECTIONS 35 TO 62: PROOF OF DEBTS.

IV.—SECTIONS 63 TO 68: OFFICIAL RECEIVERS AND OFFICERS OF THE COURT IN BANKRUPTCY.

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VII.—SECTIONS 110 AND 111: SMALL BANKRUPTCIES.

VIII.—SECTIONS 112 TO 146: SUPPLEMENTAL PROVISIONS.

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Interpretation of
Terms.

2. (1.) IN this Act, unless the context otherwise requires—

“The Court” means the Supreme Court in its bankruptcy jurisdiction:

“Affidavit” includes statutory declarations and affirmations:

“Available act of Bankruptcy” means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made:

“Debt provable in Bankruptcy” or “Provable debt” includes any debt or liability by this Act made provable in bankruptcy:

“Full Court” means the Full Court, under “The Supreme Court Act, 1880”:

“Gazetted” means published in the *Government Gazette*:

“General Rules” include forms:

“Goods” includes all chattels personal:

“Oath” includes affirmation and statutory declaration:

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

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

“Prescribed” means prescribed by general rules within the meaning of this Act:

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

“Registrar” means the Registrar of the Supreme Court in Bankruptcy:

“Resolution” means ordinary resolution:

“Secured Creditor” means a person holding a mortgage charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor:

“Schedule” means schedule to this Act:

“Sheriff” includes any officer charged with the execution of a writ or other process:

“Special Resolution” means a resolution decided by a majority in number and three-fourths in value of the

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creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution:

“Treasurer” means the Colonial Treasurer for the time being:

“Trustee” means the trustee in bankruptcy of a debtor’s estate:

(2.) The schedules to this Act shall be construed and have effect as part of this Act.

3. THIS Act shall, except as by this Act otherwise provided, commence and come into operation from and immediately after the first day of May, One thousand eight hundred and ninety-two.

Commencement of Act.

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

Acts of Bankruptcy.

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

Acts of bankruptcy.

(a.) If in Western Australia or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally:

(b.) If in Western Australia or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof:

(c.) If in Western Australia or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon which would under this or any other Act be void as a fraudulent preference if he were adjudged bankrupt:

(d.) If with intent to defeat or delay his creditors he does any of the following things, namely: departs out of Western Australia, or being out of Western Australia remains out of Western Australia, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house:

(e.) If execution against him has been levied by seizure of his goods under process in an action in any Court, or in any civil proceeding in the Supreme Court, and the goods have been either sold or held by the sheriff for twenty-one days:

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the sheriff is ordered to withdraw, or any interpleader issue ordered thereon is finally disposed of, shall not be taken into account in calculating such period of twenty-one days:

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(f.) If he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself:

(g.) If a creditor has obtained a final judgment against him for any amount, and execution thereon not having been stayed, has served on him in Western Australia, or, by leave of the Court, elsewhere, a bankruptcy notice under this Act, requiring him to pay the judgment debt in accordance with the terms of the judgment, or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not, within seven days after service of the notice, in case the service is effected in Western Australia, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice, or satisfy the Court that he has a counter-claim, set-off, or cross demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained:

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 this section.

(h.) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend payment of his debts.

(2.) A bankruptcy notice under this Act shall be in the prescribed form, and shall state the consequences of non-compliance therewith, and shall be served in the prescribed manner.

Receiving Order.

Jurisdiction to make receiving order.

5. SUBJECT to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a receiving order, for the protection of the estate.

Conditions on which creditor may petition.

6. (1.) A CREDITOR shall not be entitled to present a bankruptcy petition against a debtor unless—

(a.) The debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to Fifty pounds, and

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- (b.) The debt is a liquidated sum, payable either immediately or at some certain future time, and
- (c.) The act of bankruptcy on which the petition is grounded has occurred within six months before the presentation of the petition, and
- (d.) The debtor is domiciled in Western Australia, or, within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in Western Australia.

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

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

Proceedings and order on creditor's petition.

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

(3.) If the Court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the Court may dismiss the petition.

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

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

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

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

Debtor's petition and order thereon.

8. (1.) A DEBTOR'S petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the Court shall thereupon make a receiving order.

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

Effect of receiving order.

9. (1.) ON the making of a receiving order an official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings unless with the leave of the Court, and on such terms as the Court may impose.

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

Discretionary powers as to appointment of receiver and stay of proceedings.

10. (1.) THE Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition, and before a receiving order is made, appoint the official receiver to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

(2.) The Court may at any time after the presentation of a bankruptcy petition stay any action, execution, or other legal process against the property or person of the debtor, and any Court in which civil proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

Service of order staying proceedings.

11. WHERE the Court makes an order staying any action or proceeding, or staying proceedings generally, the order may be served

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by sending a copy thereof, under the seal of the Court, by prepaid post letter to the address for service of the plaintiff or other party prosecuting such proceeding.

12. (1.) THE official receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver.

Power to appoint special manager.

(2.) The special manager shall give security and account in such manner as may be prescribed.

(3.) The special manager shall receive such remuneration as the creditors may, by resolution at an ordinary meeting, determine, or in default of any such resolution, as may be fixed by the official receiver.

13. NOTICE of every receiving order, stating the name, address, and description of the debtor, the date of the order, and the date of the petition, shall be gazetted and advertised in a local paper in the prescribed manner.

Advertisement of receiving order.

Proceedings consequent on Order.

14. (1.) AS soon as may be after the making of a receiving order against a debtor a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be entertained, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

First and other meetings of creditors.

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

15. (1.) WHERE a receiving order is made against a debtor, he shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names, residences, and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

Debtor's statement of affairs.

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

(i.) If the order is made on the petition of the debtor, within three days from the date of the order:

(ii.) If the order is made on the petition of a creditor, within seven days from the date of the order :

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

(3.) If the debtor fails without reasonable excuse to comply with the requirements of this section, the Court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt.

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

Public Examination of Debtor.

Public examination
of debtor.

16. (1.) WHERE the Court makes a receiving order it shall hold a public sitting, on a day to be appointed by the Court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings, and property.

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

(3.) The Court may adjourn the examination from time to time.

(4.) Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.

(5.) The official receiver shall take part in the examination of the debtor ; and for the purpose thereof, if specially authorised by the Court, may employ a solicitor with or without counsel.

(6.) If a trustee is appointed before the conclusion of the examination he may take part therein.

(7.) The Court may put such questions to the debtor as it may think expedient.

(8.) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over either to or by the debtor and signed by him, and may thereafter be used in evidence against him ; they shall also be open to the inspection of any creditor at all reasonable times.

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(9.) When the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors.

(10.) Where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, the Court may make an order dispensing with such examination, or directing that the debtor be examined on such terms, in such manner, and at such place as to the Court seems expedient.

Composition or Scheme of Arrangement.

17. (1.) WHERE a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs, or within such time thereafter as the official receiver may fix, lodge with the official receiver a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the consideration of his creditors, and setting out particulars of any sureties or securities proposed.

Compositions and schemes of arrangement.

(2.) In such case the official receiver shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting, a copy of the debtor's proposal with a report thereon; and if at that meeting a majority in number and three-fourths in value of all the creditors who have proved resolve to accept the proposal, the same shall be deemed to be duly accepted by the creditors, and when approved by the Court shall be binding on all the creditors.

(3.) The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the official receiver, calculated to benefit the general body of creditors.

(4.) Any creditor who has proved his debt may assent to or dissent from the proposal by a letter, in the prescribed form, addressed to the official receiver so as to be received by him not later than the day preceding the meeting, and any such assent or dissent shall have effect as if the creditor had been present and had voted at the meeting.

(5.) The debtor or the official receiver may, after the proposal is accepted by the creditors, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(6.) The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the Court in opposition to the applica-

tion, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

(7.) The Court shall, before approving the proposal, hear a report of the official receiver as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

(8.) If the Court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the Court is required where the debtor is adjudged bankrupt to refuse his discharge, the Court shall refuse to approve the proposal.

(9.) If any facts are proved on proof of which the Court would be required either to refuse, suspend, or attach conditions to the debtor's discharge were he adjudged bankrupt, the Court shall refuse to approve the proposal, unless it provides reasonable security for payment of not less than seven shillings and sixpence in the pound on all the unsecured debts provable against the debtor's estate.

(10.) In any other case the Court may either approve or refuse to approve the proposal.

(11.) If the Court approves the proposal, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the proposed composition or scheme, or by the terms being embodied in an order of the Court.

(12.) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability.

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

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

(15.) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or

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to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by the official receiver or the trustee, or by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.

(16.) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section twenty-five and Part V. of this Act shall apply as if the trustee were a trustee in a bankruptcy, and as if the terms "bankruptcy," "bankrupt," and "order of adjudication," included respectively a composition or scheme of arrangement, a compounding or arranging debtor, and order approving the composition or scheme.

(17.) Part III. of this Act shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "trustee," "bankruptcy," "bankrupt," and "order of adjudication," as in the last preceding sub-section.

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

(19.) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by an order of discharge if the debtor had been adjudged bankrupt.

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

Effect of composition or scheme.

Adjudication of Bankruptcy.

19. (1.) WHERE a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not accepted or approved in pursuance of this Act within fourteen days after the conclusion of the examina-

Adjudication of bankruptcy where composition not accepted or approved.

tion of the debtor or such further time as the Court may allow, the Court shall adjudge the debtor bankrupt; and thereupon the property of the bankrupt shall become divisible among his creditors, and shall vest in a trustee.

(2.) Notice of every order adjudging a debtor bankrupt, stating the name, address, and description of the bankrupt, and the date of the adjudication, shall be gazetted and advertised in a local paper in the prescribed manner, and the date of the order shall for the purposes of this Act be the date of the adjudication.

Appointment of trustee.

20. (1.) WHERE a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may, by ordinary resolution, appoint the official receiver or some other fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt. A person shall be deemed not fit to act as trustee of the property of a bankrupt where he has been previously removed from the office of trustee of a bankrupt's property for misconduct or neglect of duty.

(2.) The person so appointed other than the official receiver shall give security in manner prescribed to the satisfaction of the Court, and the Court, if satisfied with the security, shall certify that his appointment has been duly made, unless one-sixth in value of the creditors shall notify to the Court that they object to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally: Provided that where any such objection is made the Court may decide on its validity.

(3.) In the event of the official receiver being appointed the trustee of the property of the bankrupt, the official receiver shall notwithstanding perform his duties as such receiver under this Act as if some other person than himself had been appointed the trustee. The Court shall certify the appointment of the official receiver as trustee on the receipt by the Registrar of a certified copy of the resolution of the creditors as prescribed.

(4.) The appointment of a trustee shall take effect as from the date of the certificate.

(5.) If a trustee is not appointed by the creditors within four weeks from the date of the adjudication, or, in the event of negotiations for a composition or scheme being pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the Court to approve, the composition or scheme, the official receiver shall

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report the matter to the Court, and thereupon the Court shall appoint the official receiver to be trustee of the bankrupt's property, and shall certify the appointment.

(6.) When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the official receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee.

21. (1.) WHERE a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, resolve to entertain a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication. The resolution required for accepting a proposal for a composition or scheme under this section shall be the like resolution as is required for accepting a like proposal before an adjudication.

Power to accept composition or scheme after bankruptcy adjudication.

(2.) If the Court approves the composition or scheme it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the Court may appoint, on such terms, and subject to such conditions, if any, as the Court may declare.

(3.) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the bankruptcy.

Control over Person and Property of Debtor.

22. (1.) EVERY debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

Duties of debtor as to discovery and realisation of property.

(2.) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his

property or his creditors, attend such other meetings of his creditors, wait at such times on the official receiver, special manager, or trustee, execute such powers of attorney, conveyances, transfers, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official receiver, special manager, or trustee, or may be prescribed by general rules, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official receiver, special manager, trustee, or any creditor or person interested.

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

(4.) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property, which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, to the official receiver or to the trustee, or to any person authorised by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court, and may be punished accordingly.

Arrest of debtor
under certain
circumstances.

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

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

(b.) If, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official receiver or trustee, or that there is probable ground for believing that he has concealed, or is about to

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conceal, or destroy any of his goods, or any books, documents, or writings, which might be of use to his creditors in the course of his bankruptcy.

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

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

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

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

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

Re-direction of
debtor's letter.

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

Discovery of debtor's
property.

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

(3.) The Court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings, or property.

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(4.) If any person on examination before the Court admits that he is indebted to the debtor, the Court may, on the application of the official receiver or trustee, order him to pay to the receiver or trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination and arrest.

(5.) If any person on examination before the Court admits that he has in his possession any property belonging to the debtor, the Court may, on the application of the official receiver or trustee, order him to deliver to the official receiver or trustee such property, or any part thereof, at such time, and in such manner, and on such terms as to the Court may seem just.

Discharge of bankrupt.

26. (1.) A BANKRUPT may, at any time after being adjudged bankrupt, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall be heard in open Court.

(2.) On the hearing of the application the Court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his bankruptcy), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property : Provided that the Court shall refuse the discharge in all cases where the bankrupt has committed any misdemeanor under "The Debtors Act, 1871," or this Act, or any other misdemeanor connected with his bankruptcy, or any felony connected with his bankruptcy, unless for special reasons the Court otherwise determines, and shall, on proof of any of the facts hereinafter mentioned, either—

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- (1.) refuse the discharge ; or
- (II.) suspend the discharge for a period of not less than two years ; or
- (III.) suspend the discharge until a dividend of not less than Ten shillings in the pound has been paid to the creditors ; or
- (IV.) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official receiver or trustee for any balance, or part of any balance, of the debts provable under the bank-

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ruptcy which is not satisfied at the date of the discharge, such balance, or part of any balance, of the debts to be paid out of the future earnings or after-acquired property of the bankrupt in such manner and subject to such conditions as the Court may direct; but execution shall not be issued on the judgment without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available towards payment of his debts.

Provided that, if at any time after the expiration of two years from the date of any order made under this section the bankrupt shall satisfy the Court that there is no reasonable probability of his being in a position to comply with the terms of such order, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

(3.) The facts hereinbefore referred to are:—

- (a.) That the bankrupt's assets are not of a value equal to Ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to Ten shillings in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible:
- (b.) That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him, and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy:
- (c.) That the bankrupt has continued to trade after knowing himself to be insolvent:
- (d.) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it:
- (e.) That the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities:
- (f.) That the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or wagering, or by culpable neglect of his business affairs:

- (g.) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him :
- (h.) That the bankrupt has within three months preceding the date of the receiving order incurred unjustifiable expense by bringing a frivolous or vexatious action :
- (i.) That the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors :
- (j.) That the bankrupt has within three months preceding the date of the receiving order incurred liabilities with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities :
- (k.) That the bankrupt has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his creditors :
- (l.) That the bankrupt has been guilty of any fraud or fraudulent breach of trust.

(4.) A bankrupt against whom any of the matters or facts stated in paragraphs (b.), (d.), (f.), (g.), (h.), (j.), or (l.) of the preceding sub-section may be proved shall be guilty of a misdemeanor and may be dealt with and punished as if he had been guilty of a misdemeanor under "The Debtors Act, 1871," and the provisions of that Act shall apply to proceedings under this sub-section.

(5.) If on the hearing of the application for an order of discharge any of the matters or facts stated in paragraphs (b.), (d.), (f.), (g.), (h.), (j.), or (l.) of sub-section (3) are proved to the satisfaction of the Court it may, without prejudice to the exercise at the same time of any of the powers of the Court under sub-section (2), convict the bankrupt and adjudge him to be imprisoned with or without hard labor for any term not exceeding Two years, and no appeal shall lie against any such conviction.

(6.) For the purposes of this section a bankrupt's assets shall be deemed of a value equal to ten shillings in the pound on the amount of his unsecured liabilities when the Court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to ten shillings in the pound on his unsecured liabilities, and a report by the official receiver or the trustee shall be *prima facie* evidence of the amount of such liabilities.

(7.) For the purposes of this section the report of the official receiver shall be *prima facie* evidence of the statements therein contained.

(8.) Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the Court may hear the official receiver and the trustee, and may also hear any creditor. At the hearing the Court may put such questions to the debtor and receive such evidence as it may think fit.

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

(10.) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee, and if he fails to do so he shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition, or payment duly made or thing duly done subsequent to the discharge but before its revocation.

27. IN either of the following cases; that is to say,—

- (1.) In the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or
- (2.) In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

Fraudulent settlements.

If the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

28. (1.) AN order of discharge shall not release the bankrupt from any debt on a recognizance nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any per-

Effect of order of discharge.

son for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence: and he shall not be discharged from such excepted debts unless the Treasurer certify in writing his consent to his being discharged therefrom. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party, nor from any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability.

(2.) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

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

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

Undischarged bankrupt obtaining credit to extent of £20 to be guilty of misdemeanor.

29. WHERE an undischarged bankrupt who has been adjudged bankrupt under this Act obtains credit to the extent of twenty pounds or upwards from any person without informing such person that he is an undischarged bankrupt, he shall be guilty of a misdemeanor, and may be dealt with and punished as if he had been guilty of a misdemeanor under "The Debtors Act, 1871," and the provisions of that Act shall apply to proceedings under this section.

PART II.—DISQUALIFICATIONS OF BANKRUPT.

Disqualifications of bankrupt.

30. (1.) WHERE a debtor is adjudged bankrupt he shall, subject to the provisions of this Act, be disqualified for—

- (a.) Being elected to, or sitting or voting in, the Legislative Council or Legislative Assembly, or on any Committee thereof respectively;
- (b.) Being appointed or acting as a justice of the peace;

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(c.) Being elected to or holding or exercising the office of mayor, alderman, or councillor ;

(d.) Being elected to or holding or exercising the office of member of a school board, road board, or board of health.

(2.) No such disqualification shall exceed a period of five years from the date of any discharge which may be granted under this Act.

(3.) The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when,—

(a.) the adjudication of bankruptcy against him is annulled ;
or

(b.) he obtains from the Court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune, without any misconduct on his part.

The Court may grant or withhold such certificate as it thinks fit, but any refusal of such certificate shall be subject to appeal.

(4.) Section thirty-two of “The Constitution Act, 1889,” shall be read and construed as if the disqualification imposed by this section was mentioned in that Act.

31. IF a member of the Legislative Council or a member of the Legislative Assembly is adjudged bankrupt, and the disqualifications arising therefrom under this Act are not removed within six months from the date of the order, the Court shall, immediately after the expiration of that time, certify the same to the President or Speaker of the House of which the bankrupt is a member, and thereupon the seat of the member shall be vacant, and the like proceedings shall be taken under “The Constitution Act, 1889,” for supplying such vacancy as in the case of a vacancy caused by death or resignation.

Vacating of seat in Parliament.

32. IF a person is adjudged bankrupt whilst holding the office of mayor, alderman, councillor, member of a school board, road board, or board of health, his office shall thereupon become vacant.

Vacating of municipal and other offices.

33. (1.) WHERE in the opinion of the Court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may, on the application of any person interested, by order, annul the adjudication.

Power for Court to annul adjudication in certain cases.

(2.) Where an adjudication is annulled under this section all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official receiver, trustee, or other person acting under their authority, or by the Court, shall be valid, but the

property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the Court may declare by order, and subject, always, to the provisions of this sub-section.

(3.) Notice of the order annulling an adjudication shall be forthwith gazetted and published in a local paper.

Meaning of payment
of debts in full.

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

PART III.—ADMINISTRATION OF PROPERTY.

Proof of Debts.

Description of debts
provable in bank-
ruptcy.

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

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

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

(4.) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid, which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

(5.) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court.

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

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

(8.) "Liability" shall for the purposes of this Act include any compensation for work or labor done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement, or undertaking, to pay, or capable of resulting in the payment of money, or money's worth, whether the payment is, as respects amount fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation capable of being ascertained by fixed rules, or as matter of opinion.

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

Mutual credit and set-off.

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

Rules as to proof of debts.

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

Priority of debts.

(a.) All municipal or other local rates and all public taxes due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next before such time;

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(b.) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding fifty pounds; and

(c.) All wages of any laborer or workman, not exceeding fifty pounds, whether payable for time or piece-work, in respect of services rendered to the bankrupt during four months before the date of the receiving order.

(2.) The foregoing debts shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

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

Interest on debts.

(4.) Where a debt has been proved which includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding ten per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

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

(6.) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of eight pounds per centum per annum on all debts proved in the bankruptcy.

Preferential claim in case of apprenticeship.

39. (1.) WHERE at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articulated clerk to the bankrupt, the adjudication of bankruptcy shall, if the apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard

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being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

(2.) The trustee shall, on the application of any apprentice or articted clerk to the bankrupt, or any person acting on behalf of such apprentice or articted clerk, transfer the indenture of apprenticeship or articles of agreement to some other person.

40. (1.) THE landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy it shall be available only for six months' rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

Power to landlord to distrain for rent.

(2.) For the purposes of this section the term "order of adjudication" shall be deemed to include an order for the administration of the estate of a debtor whose debts do not exceed fifty pounds, or of a deceased person who dies insolvent.

Property available for Payment of Debts.

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

Relation back of trustee's title.

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

Description of bankrupt's property divisible amongst creditors.

(1.) Property held by the bankrupt on trust for any other person:

(2.) The tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife and children,

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to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole:

But it shall comprise the following particulars:

- (I.) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and
- (II.) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and
- (III.) All goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed goods within the meaning of this section.

Effect of Bankruptcy on antecedent Transactions.

Restriction of rights of creditor under execution or attachment.

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

(2.) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed as to land under the operation of "The Transfer of Land Act, 1874," by lodging a copy of the writ of execution with the Registrar of Titles; and as to land not under the operation of the said Act, by registering the writ under the provisions of the Ordinance passed in the nineteenth year of the Reign of Her present Majesty, and numbered 14, or in the case of an equitable interest, by the appointment of a receiver.

Duties of sheriff as to goods taken in execution.

44. (1.) WHERE any goods of a debtor are taken in execution and before the sale thereof, or the completion of the execution

by the receipt or recovery of the full amount of the levy, notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the official receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the official receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

(2.) Where under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official receiver or, as the case may be, to the trustee, who shall be entitled to retain the same as against the execution creditor.

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

45. (1.) ANY settlement of property not being a settlement made before and in consideration of marriage, or made in favor of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.

Avoidance of voluntary settlements.

(2.) Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the

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property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the trustee in the bankruptcy.

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

Avoidance of preferences in certain cases.

46. (1.) EVERY conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favor of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors shall, if the person making, taking, paying, or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy. Nothing in this sub-section shall affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

(2.) Every bill of sale of personal chattels within the meaning of "The Bills of Sale Act, 1879," for securing money, given by any person who is adjudged bankrupt on a bankruptcy petition presented within six months after the date of giving the same, shall be void as against the trustee except as a security for money advanced and paid or the actual money value of goods sold and delivered by the grantee to the grantor at the time of the giving of such bill of sale: Provided that the words "personal chattels" shall not mean or include sheep, wool, cattle or horses, nor any station plant, machinery, implements, agricultural produce, or goods on or belonging to any sheep, cattle, or horse station, or any farm for the purposes of this sub-section.

Protection of *bond fide* transactions without notice.

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

- (a.) Any payment by the bankrupt to any of his creditors,
- (b.) Any payment or delivery to the bankrupt,
- (c.) Any conveyance, transfer, or assignment by the bankrupt for valuable consideration,
- (d.) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration:

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

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

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

Realisation of Property.

48. (1.) THE trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery. Possession of property by trustee.

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

(3.) Where any part of the property of the bankrupt consists of stock, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

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

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

49. ANY person acting under warrant of the Court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt, or of any other person, and with a view to such seizure may break open any house, building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search warrant to any constable or officer of the Court, who may execute it according to its tenor. Seizure of property of bankrupt.

Appropriation of
portion of pay or
salary to creditors.

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

(2.) Where a bankrupt is in the receipt of a salary or income other than as aforesaid, or entitled to any half pay, or pension, or to any compensation granted by the Treasury (Imperial or Colonial) the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half pay, pension, or compensation, or of any part thereof, to the trustee to be applied by him in such manner as the Court may direct: Provided, however, that no such order shall be made in reference to any half pay, pension, or compensation, payable by the Commissioners of Her Majesty's Imperial Treasury, without the consent of the chief officer of the department under which the half pay, pension, or compensation is enjoyed.

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

Vesting and transfer
of property.

51. (1.) UNTIL a trustee is appointed the official receiver shall be the trustee for the purposes of this Act, and immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee.

(2.) On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed.

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

(4.) The certificate of appointment of a trustee shall be deemed to be a transfer, conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly.

Disclaimer of
onerous property.

52. (1.) WHERE any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of

shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavored to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may by writing signed by him, at any time within twelve months after the first appointment of a trustee, disclaim the property: Provided that where any such property shall not have come to the knowledge of the trustee within one month after such appointment, he may disclaim such property at any time within twelve months after he first became aware thereof.

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

(3.) A trustee shall not be entitled to disclaim a lease without the leave of the Court, except in any cases which may be prescribed by general rules, and the Court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements, and other matters arising out of the tenancy as the Court thinks just.

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

(5.) The Court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

(6.) The Court may, on application by any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance, transfer, or assignment for the purpose: Provided always, that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favor of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise except upon the terms of making such person—

- (I.) Subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed; or
- (II.) Subject only to the same liabilities and obligations as if the lease had been assigned to him at the date when the bankruptcy petition was filed; and (if the case so requires) as if the lease had comprised only the property comprised in the vesting order:

And any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there shall be no person claiming under the bankrupt who is willing to accept an order upon such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

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

53. SUBJECT to the provisions of this Act, the trustee may do all or any of the following things:—

Powers of trustee to deal with property.

- (1.) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to

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transfer the whole thereof to any person or company, or to sell the same in parcels:

- (2.) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof:
- (3.) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt:
- (4.) Exercise any powers the capacity to exercise which is vested in the trustee under this Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Act:
- (5.) Deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it; and Section 5 of the Ordinance passed in the second year of the reign of King William the Fourth (which Ordinance is No. 7, and intituled "*An Act to facilitate and simplify the Transfer of Real Property*"), shall extend and apply to proceedings under this Act, as if the said section was here re-enacted and made applicable in terms to such proceedings.

54. THE trustee may, with the permission of the Court, do all or any of the following things:—

Powers exercisable by trustee with permission of the Court.

- (1.) Carry on the business of the bankrupt, so far as may be necessary for the beneficial winding up of the same:
- (2.) Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt:
- (3.) Employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the Court:
- (4.) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the Court may think fit:
- (5.) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts:
- (6.) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt

and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on :

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

The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

Distribution of Property.

Declaration and
distribution of
dividends.

55. (1.) SUBJECT to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

(2.) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the Court that there is sufficient reason for postponing the declaration to a later date.

(3.) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.

(4.) Before declaring a dividend the trustee shall cause notice of his intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

(5.) When the trustee has declared a dividend he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

Joint and separate
dividends.

56. (1.) WHERE one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other

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partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

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

57. IN the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy, the subject of claims not yet determined. He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he shall distribute as dividend all money in hand.

Provision for creditors residing at a distance, &c.

58. ANY creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Right of creditor who has not proved debt before declaration of a dividend.

59. WHEN the trustee has realised all the property of the bankrupt, or so much thereof as can be realised without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims. After the expiration of the time so limited, or, if the Court on application by any such claimant grant him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

Final dividend.

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No action for dividend.

60. NO action for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

Power to allow bankrupt to manage property.

61. (1.) THE trustee, with the sanction of the creditors by resolution at any general meeting, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the trustee may direct.

Allowance to bankrupt for maintenance or service.

(2.) The trustee may from time to time, with the like sanction, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the Court.

Right of bankrupt to surplus.

62. THE bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Act provided, and of the costs, charges, and expenses of the proceedings under the bankruptcy petition.

PART IV.—OFFICIAL RECEIVERS AND STAFF OF THE SUPREME COURT.

Appointment by Governor in Council of official receivers of debtors' estates.

63. (1.) THE Governor in Council may, at any time after the passing of this Act, and from time to time, appoint one or more persons to be an official receiver or official receivers of debtors' estates, and may remove any person so appointed from such office. An official receiver shall act under the general authority and directions and shall also be an officer of the Court.

(2.) Where more than one official receiver is attached to the Court, such one of them as is for the time being appointed by the Court for any particular estate shall be the official receiver for the purposes of that estate. The Court shall distribute the receiverships of the particular estates among the official receivers in the prescribed manner.

Deputy for official receiver.

64. (1.) THE Court may from time to time, by order direct that any of its officers mentioned in the order shall be capable of discharging the duties of any official receiver during any temporary vacancy in the office, or during the temporary absence of any official receiver through illness or otherwise.

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(2.) The Court may, on the application of an official receiver, at any time by order nominate some fit person to be his deputy and to act for him for such time not exceeding two months as the order may fix, and under such conditions as to remuneration and otherwise as may be prescribed.

(3.) The Court may by order, for reasons to be stated therein, direct in any special case that any of its officers mentioned in the order shall be capable of discharging any portion of the duties of the official receiver for the performance of which it is, in the opinion of the Court, expedient that some person other than the official receiver be appointed, provided that no additional expense be thereby incurred.

65. (1.) THE duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of his estate.

Status of official receiver.

(2.) An official receiver may, for the purpose of affidavits verifying proofs, petitions, or other proceedings under this Act, administer oaths.

(3.) All expressions referring to the trustee under a bankruptcy shall, unless the context otherwise requires, or the Act otherwise provides, include the official receiver when acting as trustee.

(4.) The trustee shall supply the official receiver with such information, and give him such access to, and facilities for inspecting the bankrupt's books and documents, and generally shall give him such aid as may be requisite for enabling the official receiver to perform his duties under this Act.

66. AS regards the debtor, it shall be the duty of the official receiver—

Duties of official receiver as regards the debtor's conduct.

(1.) To investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanor under "The Debtors Act, 1871," or any amendment thereof, or under this Act, or which would justify the Court in refusing, suspending, or qualifying an order for his discharge.

(2.) To make such other reports concerning the conduct of the debtor as the Court may direct.

(3.) To take such part as he may think fit in the public examination of the debtor, subject to the control of the Court.

(4.) To institute, take such part, and give such assistance in relation to the prosecution of any fraudulent debtor as the Court may direct.

Duties of official receiver as to debtor's estate.

67. (1.) AS regards the estate of a debtor it shall be the duty of the official receiver—

- (a.) Pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof :
- (b.) To authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do :
- (c.) To summon and preside at the first meeting of creditors :
- (d.) To issue forms of proxy for use at the meetings of creditors :
- (e.) To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs :
- (f.) To advertise the receiving order, the date of the creditors first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise :
- (g.) To act as trustee during any vacancy in the office of trustee.

(2.) For the purpose of his duties as interim receiver or manager, the official receiver shall have the same powers as if he were a receiver and manager appointed by the Supreme Court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the Court otherwise order, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods: Provided that when the debtor cannot himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

(3.) Every official receiver shall account and pay over all moneys and deal with all securities in such manner as may be prescribed.

Power for Governor in Council to appoint officers.

68. THE Governor in Council may, at any time after the passing of this Act, and from time to time, appoint such additional officers, including official receivers, clerks, bailiffs, and servants (if any) as may be required for the execution of this Act, and may dismiss any person so appointed.

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PART V.—TRUSTEES IN BANKRUPTCY.

Remuneration of Trustee.

69. (1.) WHERE the creditors appoint any person other than the official receiver to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised, by the trustee, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend. Remuneration of Trustee.

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

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

(4.) Where a trustee acts without remuneration he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the Court, approve.

(5.) A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee to the bankrupt, or any solicitor or other person that may be employed about a bankruptcy.

(6.) The official receiver, if appointed the trustee of the property of the bankrupt, shall not be entitled to any remuneration under this section as such trustee.

Costs.

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

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

(3.) All bills and charges of solicitors, managers, accountants, auctioneers, brokers, and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts, without proof of such taxation having been made. The taxing master shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned before the employment, except in cases of urgency, and in such case it must be shown that no undue delay took place in obtaining the sanction.

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

Trustee's Accounts and Audit.

Trustee to pay
moneys into bank.

71. (1.) THE trustee shall pay all sums from time to time received by him into such bank as the majority of the creditors in number and value at any general meeting shall appoint, and failing such appointment, into such bank as the official receiver may approve to the credit of an account to be opened and kept by the trustee in the name of the debtor's estate; and if he at any time keep in his hands any sum exceeding Twenty-five pounds for more than ten days, he shall be subject to the following liabilities; that is to say—

(a.) He shall pay interest at the rate of Twenty pounds per centum per annum on the excess of such sum above Twenty-five pounds as he may retain in his hands.

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

(2.) The official receiver shall be entitled, from time to time, to demand from the manager of any bank or branch bank where the trustee's account may be kept, a copy of such account; and any such manager neglecting to furnish such copy within three days after such demand shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the official receiver.

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72. NO trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account.

Trustee not to pay
into private account.

73. WHENEVER the cash balance standing to the credit of the Debtor's Estate Account is in excess of the amount which in the opinion of the trustee is required for the time being to answer demands in respect of the estate, the trustee may invest the said sum or any part thereof on fixed deposit in some bank and for such term as may be approved by the Court and any interest received in respect of the account shall be part of the assets of the estate.

Investment of
surplus funds.

74. (1.) EVERY trustee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, transmit to the Registrar of the Court, an account of his receipts and payments as such trustee.

Audit of trustee's
accounts.

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

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

(4.) When any such account has been audited one copy thereof shall be filed and kept by the auditor, and the other copy shall be filed with the Court, and each copy shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

75. THE trustee or official receiver shall, whenever required by any creditor so to do, and on payment by such creditor of a fee of threepence per folio of seventy-two words, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt of each of such creditors, and distinguishing the debts proved, not yet proved, and those rejected.

The trustee or official
receiver to furnish
list of creditors.

76. IT shall be lawful for any creditor, with the concurrence of one-sixth of the creditors (including himself), at any time to call upon the trustee or official receiver to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the trustee shall, upon receipt of such notice, furnish and transmit such statement of the accounts: Provided, the person at whose instance the accounts are furnished shall deposit with the trustee or official receiver, as the case may be, a sum sufficient to pay the costs of furnishing and transmitting the accounts, such sum to be repaid to him out of the estate if the creditors or the Court so direct.

Statement of
accounts.

Books to be kept by trustee.

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

Annual statement of proceedings.

78. (1.) EVERY trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year during the continuance of the bankruptcy, transmit to the Registrar a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form.

(2.) The Registrar shall cause the statements so transmitted to be examined, and shall report to the Court any misfeasance, neglect, or omission which may appear on the said statements or in the trustee's accounts or otherwise, and the Court may order the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

Release of Trustee.

Release of trustee.

79. (1.) WHEN the trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the Court shall, on his application, cause a report on his accounts to be prepared by the Registrar, and on the trustee complying with all the requirements of the Registrar, shall take into consideration the report, and any objection which may be urged by the Registrar, Official Receiver, or by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the Full Court.

(2.) Where the release of a trustee is withheld the Court may, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

(3.) An order of the Court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

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(4.) Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the official receiver shall be the trustee.

Official Name.

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

Official name of trustee.

Appointment and Removal.

81. THE creditors may, if they think fit, appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or not being approved of by the Court.

Power to appoint successive trustees.

82. IF a receiving order is made against a trustee he shall thereby vacate his office of trustee.

Office of trustee vacated by insolvency.

83. (1.) THE creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee (other than the official receiver) appointed by them, and may at the same or any subsequent meeting appoint another person to fill the vacancy as herein-after provided in case of a vacancy in the office of trustee.

Removal of trustee.

(2.) If the Court is of opinion that a trustee appointed by the creditors is guilty of misconduct, or fails to perform his duties under this Act, or is, by reason of lunacy, or continued sickness, or absence, incapable of performing his duties, or that his connection with or relation to the bankrupt, or his estate, or any particular creditor, might make it difficult for him to act with impartiality in the interests of the creditors generally, or where in an other matter he has been removed from office on the ground of misconduct, the Court may remove him from his office of trustee, but if the creditors, by ordinary resolution, disapprove of his removal, he or they may appeal against it to the Full Court.

84. (1.) IF a vacancy occurs in the office of a trustee the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.

Proceedings in case of vacancy in office of trustee.

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

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(3.) If the creditors do not within three weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the official receiver shall report the matter to the Court, and the Court shall thereupon appoint the official receiver trustee, and shall certify the appointment.

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

Voting powers of Trustee.

Limitation of voting powers of trustee.

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

Control over Trustee.

Discretionary powers of trustee and control thereof.

86. (1.) SUBJECT to the provisions of this Act the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting.

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

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

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

Appeal to Court against trustee.

87. IF the bankrupt or any of the creditors, or any other person, is aggrieved by any act or decision of the trustee, he may apply to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of Court over trustees.

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

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(2.) The official receiver or one-sixth in value of the creditors may at any time require any trustee to answer any inquiry made by them in relation to any bankruptcy, composition, or scheme of arrangement, in which the trustee is engaged, and may apply to the Court to examine on oath the trustee or any other person concerning the bankruptcy, composition, or scheme of arrangement.

(3.) The Court may also at any time direct a local investigation to be made of the books and vouchers of the trustee.

PART VI.—THE COURT; ITS PROCEDURE AND POWERS.

Jurisdiction.

89. THE Supreme Court shall continue to have and exercise jurisdiction in bankruptcy.

Supreme Court to have jurisdiction in bankruptcy.

90. (1.) SUBJECT to General Rules—

(a.) All matters pending in the Supreme Court in bankruptcy at the commencement of this Act; and

Transaction of bankruptcy business by special Judge.

(b.) All matters in respect of which jurisdiction is given to the Court by this Act

shall be ordinarily transacted and disposed of by or under the direction of one of the Judges of the Supreme Court, and the Judges of the Supreme Court shall from time to time assign a Judge for that purpose.

(2.) Provided that during vacation, or during the illness of the Judge so assigned, or during his absence or for any other reasonable cause such matters, or any part thereof, may be transacted and disposed of by or under the directions of any Judge of the Supreme Court named for that purpose by the Chief Justice or by the Chief Justice himself.

(3.) Subject to General Rules, all bankruptcy matters shall be entitled "In Bankruptcy."

91. SUBJECT to the provisions of this Act and to General Rules, the Judge of the Supreme Court exercising jurisdiction in bankruptcy may exercise in chambers the whole or any part of his jurisdiction.

Exercise in chambers of Supreme Court jurisdiction.

92. (1.) THE Registrar in bankruptcy of the Supreme Court shall have the powers and jurisdiction in this section mentioned, and any order made or act done by such Registrar in the exercise of the said powers and jurisdiction shall be deemed the order or act of the Court.

Jurisdiction in bankruptcy of Registrar.

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(2.) Subject to General Rules limiting the powers conferred by this section, a Registrar shall have power—

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

(3.) A Registrar shall not have power to commit for contempt of Court.

General power of
Supreme Court in
bankruptcy.

93. (1.) SUBJECT to the provisions of this Act, the Court in its bankruptcy jurisdiction shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2.) If in any proceeding in bankruptcy there arises any question of fact which either of the parties desire to be tried before a jury instead of by the Court itself, or which the Court thinks ought to be tried by a jury, the Court may if it thinks fit direct the trial to be had with a jury, and the trial may be had accordingly, in the Supreme Court in the same manner as if it were the trial of an issue of fact in an action.

(3.) Where a receiving order has been made, the Judge by whom such order was made shall have power, if he sees fit, without any further consent, to order the transfer to such Judge of any pending action brought or continued by or against the bankrupt in the Supreme Court.

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(4.) Where default is made by a trustee, debtor, or other person in obeying any order or direction given by the Registrar or by the official receiver or any other officer under any power conferred by this Act, the Court may, on the application of the Registrar or official receiver or other duly authorised person, order such defaulting trustee, debtor, or person to comply with the order or direction so given; and the Court may also, if it shall think fit, upon any such application make an immediate order for the committal of such defaulting trustee, debtor, or other person: Provided that the power given by this sub-section shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

Judgment Debtors.

94. (1.) IT shall be lawful for the Judges of the Supreme Court by order to direct that the jurisdiction and powers under section three of "The Debtors Act, 1871," now vested in the Supreme Court, shall be assigned to and exercised by the Judge to whom bankruptcy business is assigned.

Judgment debtor's summons to be bankruptcy business.

(2.) It shall be lawful also for the said Judges in like manner to direct that the whole or any part of the said jurisdiction and powers shall be delegated to and exercised by the Registrar of the Supreme Court in bankruptcy.

(3.) Any order made under this section may, at any time, in like manner, be rescinded or varied.

(4.) Where, under section three of "The Debtors Act, 1871," application is made by a judgment creditor to the Supreme Court, for the committal of a judgment debtor, the Court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor, and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made, and the bankruptcy of the debtor shall be deemed to have relation back to and to commence at the time of the order, or, if the bankrupt is proved to have committed any previous act of bankruptcy, then to have relation back to and to commence at the time of the first of the acts of bankruptcy proved to have been committed by the debtor within twelve months next preceding the date of the order; and section forty-six shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order.

Relation back in case of receiving order against judgment debtor.

(5.) General Rules under this Act may be made for the purpose of carrying into effect the provisions of "The Debtors Act, 1871."

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Appeals in bankruptcy.

95. (1.) THE Court may review, rescind, or vary any order made by it under its bankruptcy jurisdiction.

(2.) Orders in bankruptcy matters shall (except where otherwise provided), at the instance of any person aggrieved, including the trustee and official receiver, be subject to appeal to the Full Court.

(3.) No appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal.

Procedure.

Discretionary powers of the Court.

96. (1.) SUBJECT to the provisions of this Act and to general rules, the costs of and incidental to any proceeding in Court under this Act shall be in the discretion of the Court: Provided that where any issue is tried by a jury the costs shall follow the event, unless upon application made at the trial, for good cause shown, the judge before whom such issue is tried shall otherwise order.

(2.) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

(3.) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it may think fit to impose.

(4.) Where by this Act or by general rules, the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court may think fit to impose.

(5.) Subject to general rules, the Court may in any matter take the whole or any part of the evidence either *viva voce*, or by interrogatories, or upon affidavit, or by commission abroad.

(6.) For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the official receiver that it is expedient so to do, dispense with the public examination of one of such joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

Consolidation of petitions.

97. WHERE two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as the Court thinks fit.

Power to change carriage of proceedings.

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

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99. IF a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Continuance of proceedings on death of debtor.

100. THE Court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court may think just.

Power to stay proceedings.

101. ANY creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

Power to present petition against one partner.

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

Power to dismiss petition against some respondents only.

103. WHERE a receiving order has been made on a bankruptcy petition against or by one member of a partnership, and any other bankruptcy petition against or by a member of the same partnership is presented, the same trustee or receiver shall be appointed as may have been appointed in respect of the property of the first-mentioned member of the partnership, unless the Court otherwise directs, and the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Property of partners to be vested in same trustee.

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

Actions by trustee and bankrupt's partners.

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

Actions on joint contracts.

106. ANY two or more persons, being partners, or any person carrying on business under a partnership name, may take proceed-

Proceedings in partnership name.

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ings, or be proceeded against under this Act in the name of the firm, but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise as the Court may direct.

Orders and Warrants of Court.

Enforcement of
orders of Court
throughout the
Colony.

107. ANY order made by the Court in bankruptcy shall be enforced throughout the Colony, and all peace officers and constables shall aid the enforcement of any such order.

Warrants of the
Court.

108. (1.) ANY warrant of the Court in Bankruptcy may be enforced throughout the Colony in the same manner and subject to the same privileges in and subject to which a warrant issued by any justice of the peace against a person for an indictable offence may be executed.

(2.) A search warrant issued by the Court in Bankruptcy for the discovery of any property of a debtor may be executed in manner prescribed or in the same manner and subject to the same privileges in and subject to which a search warrant for property supposed to be stolen may be executed according to law.

Commitment to
prison.

109. WHERE the Court commits any person to prison, the commitment may be to such convenient prison as the Court thinks expedient, and if the gaoler of any prison refuses to receive any prisoner so committed he shall be liable for every such refusal to a fine not exceeding One hundred pounds.

PART VII.—SMALL BANKRUPTCIES.

Summary adminis-
tration in small
cases.

110. WHEN a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the official receiver reports to the Court that the property of the debtor is not likely to exceed in value two hundred pounds, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications:

- (1.) If the debtor is adjudged bankrupt the official receiver shall be the trustee in the bankruptcy:
- (2.) Other modifications may be made in the provisions of this Act as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.

111. (1.) WHERE a judgment has been obtained in a local court and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding fifty pounds, inclusive of the debt for which the judgment is obtained, the local court may make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to the local court, under the circumstances of the case, appears practicable, and subject to any conditions as to his future earnings or income which the Court may think just.

Power for local court to make administration order instead of order for payment by instalments.

(2.) The order shall not be invalid by reason only that the total amount of the debts is found at any time to exceed fifty pounds, but in such case the local court may, if it thinks fit, set aside the order.

(3.) Where, in the opinion of the local court in which the judgment is obtained, it would be inconvenient that that Court should administer the estate, it shall cause a certificate of the judgment to be forwarded to the local court in the district of which the debtor or the majority of the creditors resides or reside, and thereupon the latter local court shall have all the powers which it would have under this section, had the judgment been obtained in it.

(4.) Where it appears to the clerk of the local court that property of the debtor exceeds in value ten pounds, he shall, at the request of any creditor, and without fee, issue execution against the debtor's goods, but the household goods, wearing apparel, and bedding of the debtor or his family, and the tools and implements of his trade to the value in the aggregate of twenty pounds, shall to that extent be protected from seizure.

(5.) When the order is made no creditor shall have any remedy against the person or property of the debtor in respect of any debt which the debtor has notified to a local court, except with the leave of that local court, and on such terms as that court may impose; and any local court or inferior court in which proceedings are pending against the debtor in respect of any such debt shall, on receiving notice of the order, stay the proceedings, but may allow costs already incurred by the creditor, and such costs may, on application, be added to the debt notified.

(6.) If the debtor makes default in payment of any instalment payable in pursuance of any order under this section, he shall, unless the contrary is proved, be deemed to have had since the date of the order the means to pay the sum in respect of which he has made default and to have refused or neglected to pay the same.

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(7.) The order shall be carried into effect in such manner as may be prescribed by General Rules.

(8.) Money paid into court under the order shall be appropriated first in satisfaction of the costs of the plaintiff in the action, next in satisfaction of the costs of administration (which shall not exceed two shillings in the pound on the total amount of the debts) and then in liquidation of debts in accordance with the order.

(9.) Notice of the order shall be posted in the office of the local court of the district in which the debtor resides, and sent to every creditor notified by the debtor, or who has proved.

(10.) Any creditor of the debtor, on proof of his debt before the clerk, shall be entitled to be scheduled as a creditor of the debtor for the amount of his proof.

(11.) Any creditor may in the prescribed manner object to any debt scheduled, or to the manner in which payment is directed to be made by instalments.

(12.) Any person who after the date of the order becomes a creditor of the debtor, shall, on proof of his debt before the clerk, be scheduled as a creditor of the debtor for the amount of his proof, but shall not be entitled to any dividend under the order until those creditors who are scheduled as having been creditors before the date of the order have been paid to the extent provided by the order.

(13.) When the amount received under the order is sufficient to pay each creditor scheduled to the extent thereby provided, and the costs of the plaintiff and of the administration, the order shall be superseded, and the debtor shall be discharged from his debts to the scheduled creditors.

PART VIII.—SUPPLEMENTAL PROVISIONS.

Application of Act.

Exclusion of
partnerships and
companies.

112. A RECEIVING order shall not be made against any corporation, or against any partnership or association, or company registered under the provisions of any statute which provides for the winding-up thereof.

Privilege of
Parliament.

113. IF a person having privilege of Parliament commits an act of bankruptcy, he may be dealt with under this Act in like manner as if he had not such privilege.

Administration in
bankruptcy of estate
of persons dying
insolvent.

114. (1.) ANY creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against such debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the Law of Bankruptcy

(2.) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may upon cause shown dismiss such petition with or without costs.

(3.) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in the Supreme Court for the administration of the deceased debtor's estate, but the Supreme Court may in such case, on proof that the estate is insufficient to pay its debts, transfer the proceedings to the bankruptcy side of the Court, and thereupon the Court may, in the prescribed manner, make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(4.) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver of the Court, as trustee thereof, and he shall forthwith proceed to realise and distribute the same in accordance with the provisions of this Act, and such provisions shall apply to him as if he were the trustee in bankruptcy of a debtor's estate.

(5.) With the modifications hereinafter mentioned, all the provisions of Part III. of this Act, relating to the administration of the property of a bankrupt, shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act.

(6.) In the administration of the property of the deceased debtor under an order of administration, the official receiver shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(7.) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of bankruptcy, such surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

(8.) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made

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thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the official receiver; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.

(9.) Unless the context otherwise requires, "creditor," in this section, means one or more creditors qualified to present a bankruptcy petition, as in this Act provided.

(10.) General rules for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in bankruptcy.

General Rules.

Power to make
general rules.

115. (1.) THE Chief Justice may from time to time make, revoke, and alter general rules for carrying into effect the objects of this Act, and the regulation of all matters relating to the costs of proceedings thereunder and the taxation thereof.

(2.) All general rules made under the foregoing provisions of this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(3.) Such general rules as may be required for purposes of this Act may be made at any time after the passing of this Act.

(4.) Provided always that the said general rules, so made, revoked, or altered, shall not extend the jurisdiction of the Court.

(5.) After the commencement of this Act no general rule under the provisions of this section shall come into operation until the expiration of one month after the same has been made and issued.

Fees, Salaries and Returns.

Fees and remuneration.

116. (1.) THE Chief Justice may, with the sanction of the Treasurer, from time to time prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Act; and the Treasurer shall direct by whom and in what manner the same are to be collected, accounted for, and to what account they shall be paid.

(2.) This section shall come into operation on the passing of this Act.

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117. (1.) THE Treasurer shall direct whether any and what remuneration is to be allowed to any person performing any duties under this Act, and may from time to time vary, increase, or diminish such remuneration as he may think fit.

Judicial and other salaries.

(2.) This section shall come into operation on the passing of this Act.

Evidence.

118. (1.) A COPY of the *Government Gazette* containing any notice inserted therein in pursuance of this Act shall be evidence of the facts stated in the notice.

Gazette to be evidence.

(2.) The production of a copy of the *Government Gazette* containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

119. (1.) A MINUTE of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting, by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

Evidence of proceedings at meetings of creditors.

(2.) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

120. ANY petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by any Court having any jurisdiction under this Act, any instrument or copy of any instrument, affidavit, or document made or used in the course of any bankruptcy proceedings, or other proceedings had under this Act, shall, if it appears to be sealed with the seal of any Court having jurisdiction under this Act, or purports to be signed by any Judge thereof, or is certified as a true copy by any Registrar or clerk thereof, be receivable in evidence in all legal proceedings whatever.

Evidence of proceedings in bankruptcy.

121. SUBJECT to general rules, any affidavit to be used in any proceedings under this Act may be sworn before any person authorised to administer oaths in the Supreme Court, or before the Registrar in bankruptcy, or before any Judge of the Court, or justice of the peace, or, in the case of a person who is out of the Colony, before a magistrate or justice of the peace or other person qualified to administer oaths in the country where he resides (he being certified to be a magistrate or justice of the peace, or qualified as

Swearing of affidavits.

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aforesaid by a British minister or British consul, or by a notary public of the country or of Western Australia).

Death of witness.

122. IN case of the death of the debtor or his wife, or of a witness whose evidence has been received by any Court in any proceeding under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

Supreme Court in bankruptcy to have seal.

123. THE Supreme Court in its bankruptcy jurisdiction under this Act shall have a seal describing the Court in such manner as may be directed by order of the Chief Justice, and judicial notice shall be taken of the seal, and of the signature of the Judge or Registrar of the Court, in all legal proceedings.

Certificate of appointment of trustee.

124. A CERTIFICATE under the provisions of this Act that a person has been appointed trustee under this Act, shall be conclusive evidence of his appointment.

Time.

Computation of time.

125. (1.) WHERE by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day; and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a Sunday, Christmas Day, Good Friday, or a Bank holiday, or a day appointed for public fast, humiliation, or thanksgiving, or a day on which the Court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified.

(2.) Where by this Act any act or proceeding is directed to be done or taken on a certain day, then if that day happens to be one of the days in this section specified, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, which shall not be one of the days in this section specified.

Notices.

Service of notices.

126. ALL notices and other documents for the service of which no special mode is directed may be sent by prepaid post letter to the last known address of the person to be served therewith.

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Formal Defects.

127. (1.) NO proceeding under this Act shall be invalidated by any formal defect or by any irregularity, unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

Formal defect not to invalidate proceedings.

(2.) No defect or irregularity in the appointment or election of a receiver or trustee shall vitiate any act done by him in good faith.

Stamp Duty.

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

Exemption of deeds, &c., from stamp duty.

Executions.

129. WHERE the sheriff sells the goods of a debtor under an execution for a sum exceeding Twenty pounds (including legal incidental expenses), the sale shall, unless the Court from which the process issued otherwise orders, be made by public auction, and not by bill of sale or private contract, and shall be publicly advertised by the sheriff on and during three days next preceding the day of sale.

Sales under executions to be public.

130. (1.) THE sheriff shall not under a writ of *elegit* deliver the goods of a debtor nor shall a writ of *elegit* extend to goods.

Writ of *elegit* not to extend to goods

(2.) No writ of *levari facias* shall hereafter be issued in any civil proceeding.

Bankrupt Trustee.

131. WHERE a bankrupt is a trustee within the meaning of the Ordinance passed in the seventeenth year of Her present Majesty and numbered ten, section twenty of that Ordinance shall have effect so as to authorise the appointment of a new trustee in

Application of Trustee Act to bankruptcy of trustee.

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substitution for the bankrupt (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that Ordinance, and of any other Act relative thereto, shall have effect accordingly.

Corporations, &c.

Acting of corporations, partners, &c.

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

Construction of former Acts, &c.

Construction of Acts mentioning commission of bankruptcy, &c.

133. (1.) WHERE in any Ordinance or Act, instrument, or proceeding passed, executed, or taken before the commencement of this Act mention is made of a commission of bankruptcy or fiat in bankruptcy, the same shall be construed, with reference to the proceedings under a bankruptcy petition, as if a commission of or a fiat in bankruptcy had been actually issued at the time of the presentation of such petition.

(2.) Where by any Ordinance, Act, or instrument, reference is made to "The Bankruptcy Act, 1871," the Ordinance, Act, or instrument shall be construed and have effect as if reference were made therein to the corresponding provisions of this Act.

Certain provisions to bind the Crown.

134. SAVE as herein provided the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Crown.

Transfer of estates on vacancy of office of trustee in liquidation under "The Bankruptcy Act, 1871."

135. IN every liquidation by arrangement under "The Bankruptcy Act, 1871," pending at the commencement of this Act, if at any time after the commencement of this Act there is no trustee acting in the liquidation by reason of death, or for any other cause, the Court shall appoint the official receiver to be the trustee in the liquidation, and the property of the liquidating debtor shall pass to and vest in him accordingly; but this provision shall not prejudice the right of the creditors in the liquidation to appoint a new trustee, in manner directed by "The Bankruptcy Act, 1871," or the rules thereunder; and on such appointment the property of the liquidating debtor shall pass to and vest in the new trustee.

The provisions of this Act with respect to the duties and responsibilities of and accounting by a trustee in a bankruptcy under this Act shall apply, as nearly as may be, to a trustee acting under the provisions of this section.

Bankruptcy Act, 1892.

136. WHERE a bankruptcy or liquidation by arrangement under "The Bankruptcy Act, 1871," has been or is hereafter closed, any property of the bankrupt or liquidating debtor which vested in the trustee and has not been realised or distributed shall vest in the official receiver to be appointed by the Court for that purpose, and he shall thereupon proceed to get in, realise, and distribute the property in like manner and with and subject to the like powers and obligations as far as applicable, as if the bankruptcy or liquidation were continuing, and he were acting as trustee thereunder.

Transfer of out-
standing property on
close of bankruptcy
or liquidation.

137. IN every bankruptcy under "The Bankruptcy Act, 1871," pending at the commencement of this Act, where the clerk or Registrar of any local court is or would hereafter but for this enactment become the trustee under the bankruptcy, the official receiver to be appointed by the Court for that purpose shall from and after the commencement of this Act be the trustee in the place of the clerk or registrar, and the property of the bankrupt shall pass to and vest in the official receiver accordingly.

Transfer of estates
from clerks of local
courts to official
receiver.

Unclaimed Funds or Dividends.

138. (1.) WHERE the trustee, under any bankruptcy, composition or scheme pursuant to this Act, shall have under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, such trustee shall have in his hands or under his control any unclaimed or undistributed moneys arising from the property of the debtor, he shall forthwith pay the same to such Account and at such bank as may be prescribed. The Registrar of the Court shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

Unclaimed and un-
distributed dividends
or funds under this
and former Act.

(2.) (a.) Where, after the passing of this Act, any unclaimed or undistributed funds or dividends in the hands or under the control of any trustee under "The Bankruptcy Act, 1871," have remained or remain unclaimed or undistributed for six months after the same became claimable or distributable, or in any other case for two years after the receipt thereof by such trustee, it shall be the duty of such trustee forthwith to pay the same to such account and at such bank as may be prescribed. The Registrar shall furnish such trustee with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(b.) The Court may at any time order any such trustee to submit to it an account verified by affidavit of the sums received and paid by him as such trustee, and may direct and enforce an audit of the account.

(c.) The Chief Justice, with the concurrence of the Treasurer, may from time to time appoint a person to collect and get in all such

Bankruptcy Act, 1892.

unclaimed or undistributed funds or dividends, and for the purposes of this section the Court shall have, and may exercise all the powers conferred by this Act with respect to the discovery and realisation of the property of a debtor, and the provisions of Part I. of this Act with respect thereto shall, with any necessary modifications, apply to proceedings under this section.

(3.) The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against such trustee or other person.

(4.) Any person claiming to be entitled to any moneys paid in to the prescribed account pursuant to this section may within six years from the date such moneys respectively are so paid in apply to the Court for payment to him of the same, and the Court, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due.

(5.) All such unclaimed or undistributed funds or dividends not paid out in pursuance of the last preceding sub-section shall, on the expiration of six years after the same respectively are paid into the prescribed account as aforesaid, be paid over to the Colonial Treasurer for the public use of the Colony.

Punishment of Fraudulent Debtors.

Extension of penal provisions of 34 Vict., No. 21.

139. (1.) SECTION seven of "The Debtors Act, 1871," relating to the punishment of fraudulent debtors, shall have effect as if there were substituted therein for the words, "if after the presentation of a bankruptcy petition against him," the words "if after the presentation of a bankruptcy petition by or against him," and for the words "if within four months next before the presentation of a bankruptcy petition against him," the words "if within four months next before the presentation of a bankruptcy petition by or against him, or in case of a receiving order made under section ninety-four of 'The Bankruptcy Act, 1892,' before the date of the order."

(2.) Section eight of "The Debtors Act, 1871," imposing a penalty for absconding with property, shall have effect as if there were substituted therein for the words "after the presentation of a bankruptcy petition against him, or the commencement of the liquidation or composition, or within four months before such presentation or commencement," the words "after the presentation of a bankruptcy petition by or against him, or the commencement of the liquidation or composition, or within four months next before such presentation or commencement, or in the case of a receiving order made under section ninety-four of 'The Bankruptcy Act, 1892,' before the date of the order."

Bankruptcy Act, 1892.

(3.) The provisions of "The Debtors Act, 1871," as to offences by bankrupts shall apply to any person whether a trader or not in respect of whose estate a receiving order has been made as if the term "bankrupt" in that Act included a person in respect of whose estate a receiving order had been made.

140. SECTION twelve of "The Debtors Act, 1871," shall be construed and have effect as if the term "a trustee in any bankruptcy" included the official receiver of a bankrupt's estate, and shall apply to offences under this Act as well as to offences under "The Debtors Act, 1871."

Power for Court to order prosecution on report of official receiver.

141. (1.) SO much of section eighty-five of the Act of the session of the Imperial Parliament, held in the twenty-fourth and twenty-fifth years of Her present Majesty, chapter 96, intituled "An Act to consolidate and amend the statute law of England and Ireland relating to larceny and other similar offences" (which Act is adopted in Western Australia by the Ordinance passed in the twenty-ninth year of the reign of Her present Majesty and numbered five), as provides that no person shall be liable to be convicted of any of the misdemeanors mentioned in sections seventy-five to eighty-four of that Act (being frauds by agents, bankers, or factors) if he shall have first disclosed the same in any compulsory examination or deposition before any Court on the hearing of any matter in bankruptcy or insolvency shall cease to apply or have any force in Western Australia.

Imperial Act 24 & 25 Vict., c. 96, s. 85, to cease to apply in Western Australia.

142. (1.) WHERE there is, in the opinion of the Court, ground to believe that the bankrupt or any other person has been guilty of any offence which is by this Act or any statute made a misdemeanor in cases of bankruptcy, the Court may commit the bankrupt or such other person for trial.

Power for Court to commit for trial.

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

Nothing in this sub-section shall be construed as derogating from the powers or jurisdiction of the Supreme Court.

143. WHERE the Court orders the prosecution of any person for any offence under "The Debtors Act, 1871," or Acts amending it, or for any offence arising out of or connected with any bankruptcy proceedings, it shall be the duty of the Attorney General to institute and carry on the prosecution.

Attorney General to act in certain cases.

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Criminal liability
after discharge or
composition.

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

Repeal.

Repeal of enactments.

145. (1.) THE enactments described in the Third Schedule are hereby repealed as from the commencement of this Act to the extent mentioned in the third column of that Schedule.

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

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

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

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

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

(3.) Notwithstanding the repeal effected by this Act, the proceedings under any bankruptcy petition, liquidation by arrangement, or composition with creditors under “The Bankruptcy Act, 1871,” pending at the commencement of this Act shall except so far as any provision of this Act is expressly applied to pending proceedings, continue, and all the provisions of “The Bankruptcy Act, 1871,” shall, except as aforesaid, apply thereto, as if this Act had not passed.

Proceedings by arrangement or composition with creditors under Act of 1871.

146. AFTER the passing of this Act no composition or liquidation by arrangement under sections 108 and 109 of “The Bankruptcy Act, 1871,” shall be entered into or allowed without the sanction of the Court; such sanction shall not be granted unless the composition or liquidation appears to the Court to be reasonable and calculated to benefit the general body of creditors.

In the name and on behalf of the Queen I hereby assent to this Act.

ALEX. C. ONSLOW, Administrator.

SCHEDULES.

The First Schedule.

Section 14.

MEETINGS OF CREDITORS.

1. The first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.
2. The official receiver shall summon the meeting by giving not less than seven days notice of the time and place thereof in the *Government Gazette* and in a local paper.
3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, together with a general and special form of proxy, and accompanied by a summary of the debtor's statement of affairs, including the causes of his failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice, form or summary not having been sent or received before the meeting.
4. The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of the creditors.
5. The official receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court, or so requested in writing by one-sixth in value of the creditors.
6. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting, together with a general and special form of proxy.
7. The official receiver, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint.
8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.
9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.
10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.
11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon, antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

12. It shall be competent to the trustee or to the official receiver, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum. Provided, that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of twenty per centum shall not be made if the trustee requires the security to be given up.

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

14. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

Proxies.

15. A creditor may vote either in person or by proxy.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official receiver of the debtor's estate, or by some other official receiver, or, after the appointment of a trustee, by the trustee.

17. General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the official receiver, or of any other person, shall be printed or inserted in the body of any instrument of proxy before it is so sent.

18. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters:—

- (a.) For or against any specific proposal for a composition or scheme of arrangement:
- (b.) For or against the appointment of any specified person as trustee at a specified rate of remuneration, or for or against the continuance in office of any specified person as trustee:
- (c.) On all questions relating to any matter, other than those above referred to arising at any specified meeting or adjournment thereof.

19. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

20. A proxy shall not be used unless it is deposited with the official receiver or trustee before the meeting at which it is to be used.

21. Where it appears to the satisfaction of the Court that any undue solicitation or influence has been used by or on behalf of a trustee or receiver in obtaining proxies, or in procuring the trusteeship or receivership, except by the direction of a meeting of creditors, the Court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the creditors to the contrary.

22. A creditor may appoint the official receiver of the debtor's estate to act in manner prescribed as his general or special proxy. Provided such official receiver is not himself the trustee.

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23. A meeting of creditors may, by ordinary resolution, adjourn from time to time, and from place to place.

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

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

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

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

The Second Schedule.

Section 37.

PROOF OF DEBTS.

Proof in Ordinary Cases.

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official receiver, or, if a trustee has been appointed, to the trustee, an affidavit verifying the debt.

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

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

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

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

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

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

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Proof by secured Creditors.

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

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

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

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

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

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

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

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

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

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

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

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Proof in respect of distinct Contracts.

18. If a debtor was at the date of the receiving order liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

Periodical Payments.

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

Interest.

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

Debt payable at a future time.

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

Admission or Rejection of Proofs.

22. The trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

23. If the trustee thinks that a proof has been improperly admitted, the Court may, on the application of the trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

24. If a creditor is dissatisfied with the decision of the trustee in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

25. The Court may also expunge or reduce a proof upon the application of a creditor if the trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

26. For the purpose of any of his duties in relation to proofs, the trustee may administer oaths and take affidavits.

27. The official receiver, before the appointment of a trustee, shall have all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

55° VICTORIÆ, No. 32.

Bankruptcy Act, 1892.

Section 145.

The Third Schedule.

ENACTMENTS REPEALED.

Session and Chapter or Number.	Title.	Extent of Repeal.
24 & 25 Vict., c. 96 (adopted by 29 Vict., No. 5).	<i>An Act to consolidate and amend the Statute law of England and Ireland relating to Larceny and other similar offences.</i>	In Section 85, the words: “or if he shall have first “disclosed the same in “any compulsory exam- “ination or deposition “before any Court upon “the hearing of any “matter in bankruptcy “or insolvency.”
34 Vict., No. 21 ...	<i>The Debtors Act, 1871.</i>	Section 16.
34 Vict., No. 20 ...	<i>The Bankruptcy Act, 1871.</i>	The whole.