



Western Australia.

ANNO SEXAGESIMO SECUNDO

VICTORIÆ REGINÆ.

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No. XV.

AN ACT to amend the Bankruptcy Act, 1892.

[Assented to, 28th October, 1898.]

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:—

*Preliminary.*

1. THIS Act may be cited as the Bankruptcy Act Amendment Act, 1898.

Short title.

2. THIS Act shall come into operation on the 1st day of December, 1898.

Commencement.

3. IN and for the purposes of this Act only the following terms have the meanings hereinafter respectively assigned to them, if not inconsistent with the context or subject-matter, that is to say:—

Interpretation.

“Trustee” means the trustee or trustees of any deed made in pursuance of this Act:

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“Extraordinary resolution” means a resolution carried by seven-eighths in value and three-fourths in number of the creditors present personally, by attorney or by proxy, at a meeting of creditors and voting on the resolution; every creditor for under Ten pounds being reckoned in value only:

“Special resolution” means a resolution carried by three-fourths in value and one-half in number of the creditors present personally, by attorney or by proxy, at a meeting of creditors and voting on the resolution; every creditor for under Ten pounds being reckoned in value only:

“Prescribed form” means in the appropriate form given in the Schedule hereto, or prescribed by rule or a form to the like effect, or as near thereto as circumstances will permit.

“Court” means the Bankruptcy Court established by the Principal Act.

### *Composition and Assignments without Bankruptcy.*

Meeting of creditors.

4. A MEETING of creditors may be called by a debtor, his solicitor or agent, by circulars delivered at or posted to the residence or place of business of each of the creditors not less than seven nor more than fourteen days before the day of meeting. Such meeting shall be held at a time convenient to and at the place where a majority in value of the creditors reside, or carrying on business, have their head office in the Colony. Notice of such meeting shall also within the like time be published in the *Government Gazette*, and in at least one newspaper circulating in the district.

Stay of proceedings.

5. THE Court may, after the delivery or posting of the said circulars, or any of them, and either before or after the meeting, on the application of any creditor whose debt is not less than Thirty pounds, order a stay of proceedings in any action, execution, or other legal process in respect of any debt or liability which would be provable under bankruptcy if the debtor were adjudged bankrupt, and may at any time, in its discretion, set aside such order. Such order, while in force, shall have the effect of staying such proceedings until after such meeting and any adjournment thereof.

1. In the event of a resolution for a composition or scheme of arrangement being duly passed at such meeting or adjournment, in pursuance of the provisions hereinafter contained, the order shall have the effect of further staying such proceedings until the composition or scheme shall become binding on the creditors, or shall fail to be confirmed, or shall be rejected by the Court:

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- II. In the event of a resolution for a deed being duly passed at such meeting or adjournment, such order shall have the effect of further staying such proceedings until the expiration of twenty-one days from the passing of such resolution.

6. THE following provisions shall be observed at all meetings of creditors held under this part of this Act:—

- I. The majority in number and value of the creditors present at such meeting in person, by proxy or by attorney, shall elect a chairman. The debtor shall attend such meeting and submit a statement, in writing, signed by him, of his assets and liabilities: Provided that if the debtor shall be in prison at the time of such meeting it shall not be necessary for him to attend the same:
- II. Every creditor may vote at such meeting, except in respect of an unliquidated or contingent debt, or any debt the value of which is not ascertained. Any certain debt payable *in futuro* shall, for the purpose of enabling the creditor to vote, be deemed payable at once:
- III. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in writing 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, in the event of a composition, deed of assignment, or bankruptcy resulting from the meeting, 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:
- IV. A creditor shall not vote in respect of any current bill of exchange or promissory note, held by him, unless he is willing to treat the liability of every person who is liable thereon antecedently to the debtor, and who has not made a composition, or deed of assignment, or been adjudicated bankrupt, as security in his hands, and to estimate the value thereof and deduct the same from his proof; in which case he shall, on application being made by any person interested, give up such security for the benefit of the creditors of the debtor upon payment of such estimated value: Provided always, that such estimate (except so far as the creditor may receive any payment as aforesaid in respect thereof)

Provisions as to meeting.

Election of chairman.

Sub-sections 3 and 4. Statement of assets and liabilities.

Persons entitled to vote.

Secured creditor.

Creditor on current bill must treat as security the liability of person antecedently liable to debtor.

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shall not prejudice the right of such creditor to receive from the estate of the debtor a dividend upon the whole amount of such bill or note :

Chairman may admit or reject claim to vote.

v. The chairman of the meeting shall have power to admit or reject a claim to vote, and may, for the purpose of such meeting and any resolution proposed thereat, in the event of any dispute as to the amount of a debt in respect of which any creditor claims a vote, determine such amount :

Attorney or proxy may vote.

vi. A creditor may vote either in person or by attorney, appointed by deed or by proxy, such proxy to be appointed by instrument in writing in the prescribed form, signed by the creditor and attested :

Chairman's decision as to time of meeting being convenient.

vii. The chairman shall at the meeting determine whether the meeting has been held at a time convenient to the majority in value of the creditors, and his decision shall be final :

If chairman decide meeting not held at time and place convenient to creditors, meeting to lapse.

viii. If the chairman shall decide that the meeting has not been held at a time convenient to such majority, the meeting shall lapse: Provided that the creditors may pass a resolution that such meeting shall not be deemed an act of bankruptcy.

Meeting may resolve to accept composition or scheme of arrangement.

7. THE creditors may at such meeting, or any adjournment thereof, by an extraordinary resolution, resolve to accept a proposal for a composition in satisfaction of the debts due to them from the debtor, or a proposal for a scheme of arrangement of the debtor's affairs,—

Composition or scheme not binding unless confirmed.

i. The composition or scheme shall not be binding on the creditors unless the resolution for the same is confirmed by an extraordinary resolution passed at a subsequent meeting of creditors, or some adjournment thereof, nor until after a lapse of seven days from such confirmation; and, in the event of the Court appointing a day to consider the composition or scheme, the same shall not be binding on the creditors until the Court has approved it :

Subsequent meeting to be held.

ii. The subsequent meeting shall be held not less than five nor more than fourteen days after the passing of such resolution, at a time and place to be appointed by the chairman of the first meeting, and shall be called by the debtor, his solicitor or agent, by circulars delivered at or posted to the residence or place of business of each of his creditors within three days of the passing of the resolution :

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- III. The chairman of each meeting shall sign a certificate in the prescribed form of the resolution passed at such meeting, and such certificates shall, within three days of the date of the last resolution, be filed in the Court, and shall, in the absence of fraud, be conclusive evidence that the meetings were duly convened and held, and the resolutions duly carried:
- Certificates of resolutions, signed by chairman, to be filed in Court.
- IV. Any creditor may, within seven days from the filing of such certificate, apply to the Court to appoint a day to consider the composition or scheme, which day shall not be earlier than fourteen days from such filing, and notice of such appointment shall be given by advertisement in the *Government Gazette* and one newspaper circulating in the district where the business of the debtor has been carried on or where he resides, as well as one daily metropolitan newspaper:
- Creditor may apply to Court to appoint a day to consider composition or scheme.
- V. Any creditor may, on filing in Court, three days at least before the day appointed, a notice of his intention to oppose the composition or scheme, giving the grounds of objection, be heard against the same; but the debtor and any creditor may, without notice, be heard in favour thereof:
- Any creditor, on giving notice, may oppose.
- VI. If the Court shall be of opinion that the terms of the composition or scheme are not reasonable, or are not calculated to benefit the general body of creditors, or if any such facts are proved as would under this Act justify the Court in the case of bankruptcy in refusing or suspending the debtor's order of discharge, or in adjudging the debtor to be imprisoned at the suit of the trustee, the Court may, in its discretion, reject the composition or scheme:
- Court may reject composition or scheme.
- VII. The Court may approve the composition or scheme, and in such event, or if no creditor shall within the time limited for that purpose apply to the Court to appoint a day to consider the same, the composition or scheme shall be binding on all creditors so far as relates to any provable debts:
- Court may approve composition or scheme.
- VIII. If default be 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, in consequence of legal difficulties or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, on the application of
- Court may annul composition or scheme.

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any creditor or of the debtor, 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 same :

Order of rejection or annulment to take effect, if adjudication obtained.

ix. In the event of any composition or scheme being rejected or annulled under the preceding provisions, the order of rejection or annulment shall not take effect unless a receiving order be applied for by or against the debtor within seven days from the date of the order :

Persons deemed creditors.

x. Every person who would be entitled to prove in bankruptcy shall be deemed a creditor within the meaning of this section, and in case there shall be any dispute as to the right of any person to be deemed a creditor, or as to the amount of his debt, or the value of his security, the Court may settle such dispute.

Creditors may resolve that debtor execute a deed of assignment.

8. THE creditors may, by special resolution at any meeting under this Act or any adjournment thereof, resolve that the debtor execute a deed of assignment under this Act to a trustee to be named in such resolution.

Chairman's certificate of resolution to be filed in Court.

9. IF such resolution be carried, a certificate thereof, in the prescribed form, signed by the chairman, shall be filed in the Supreme Court, and such certificate, provided that the provisions of this Act in respect to the convening and holding of such meeting have been duly complied with, shall, in the absence of fraud, be conclusive evidence that such meeting was duly convened and held and such resolution duly passed.

Chairman may grant warrant to seize debtor's personal estate.

10. THE chairman signing the certificate mentioned in the last preceding section may, from time to time, after the same shall have been issued, grant a warrant, under his hand, in the prescribed form, authorising the person therein named and his assistants to seize all the personal estate of the debtor ; and such warrant shall have the same force and effect and confer the same powers and authorities as a warrant of the Court to seize the personal estate of a debtor, and continue in force till superseded by a fresh warrant, or by the order of the trustee under the deed, or by a receiving order being made against the debtor.

Debtor may convey to trustee.

11. THE debtor shall, upon the passing of such resolution, forthwith convey and assign his real and personal estate by deed, for the benefit of his creditors, to the trustee named in such resolution. In default of his so doing, the Court may order him to be imprisoned for any term not exceeding three months.

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12. EVERY such deed shall comply with the following provisions:—

- Provisions relating to deed.
- In pursuance of "The Bankruptcy Act, 1892, Amendment Act." Schedule of property.
- Schedule of creditors.
- Debtor's declaration verifying schedules.
- Trustee to execute deed within seven days of debtor.
- Notice of deed to be given to the Registrar of the Court.
- i. It shall purport to be made "in pursuance of The Bankruptcy Act Amendment Act, 1898":
  - ii. It shall contain, in a first schedule annexed, a true and particular account of all the property of which the debtor, or any person in trust for him, is possessed, or to which he, or any such person, is entitled legally or equitably in possession, reversion, remainder, or expectancy, so far as the debtor can set forth the same, except such articles of household furniture, wearing apparel of the debtor and his family, tools, or implements of his trade, not exceeding in the whole the value of Twenty pounds, as the debtor shall select:
  - iii. It shall contain, in a second schedule, the names of the several creditors of the debtor, and the several amounts due, or supposed to be due, to them respectively: Provided that, with respect to any debt due on an outstanding bill of exchange or promissory note, the actual holder of which shall then be unknown to the debtor, it shall be sufficient if that fact be stated in such schedule with the amount of such bill or note, and the date when the same will fall due, and if the name of the last holder thereof be given, and the names of the parties thereto, so far as known to the debtor:
  - iv. A declaration by the debtor, in the prescribed form, verifying the contents of such schedules, shall be attached to the deed:
  - v. The deed shall be executed by the trustee within seven days of the debtor's execution thereof, and the execution by the debtor and trustee shall be respectively attested by an Official Receiver, Registrar, Practitioner of the Supreme Court, Justice of the Peace for the said Colony, or clerk of a Local Court; and each witness shall specify the date on which the execution so attested was made:
  - vi. Forthwith after the execution of the deed by the debtor, a notice of the deed, containing the name, residence, and description of the debtor, and the name of the trustee, and specifying where the deed is lying for inspection and execution, shall be given to the Registrar of the Court and to the Official Receiver; and the cost of advertising the same in the *Government Gazette* shall at the same time be paid:

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Must be assented to by three-fourths in value and one-half in number.

Secured creditors.

Assents to be obtained from resident creditors within ten days; from others, six months.

Assent by signature to deed or written document.

Partner may assent for firm, or agent for principal.

Sub-section (a) of section six of 55 Vict., No. 32, amended.

Deed a release of all provable debts.

All persons bound by deed liable to provisions of Act as if debtor adjudged insolvent.

VII. The deed shall be assented to by three-fourths in value and one-half in number of the creditors, every creditor for under Ten pounds being reckoned in value only:

VIII. Every creditor, for the purpose of this section, shall be accounted a creditor for value for such sum only as upon an account fairly stated, after allowing the value of securities or liens held by such creditor, and the amount of any debt or set-off owing from the creditor to the debtor shall appear to be the balance due to such creditor:

IX. The assents shall be given as regards creditors resident in the said Colony, or having therein a known duly authorised agent, within twenty-one days from the execution of the deed by the debtor, and as regards other creditors within three months from such execution:

X. Every assent shall be given by signature to the deed, or by written document, and shall be accompanied by a statement in the prescribed form attested by one witness, which shall be deemed equivalent to a proof of debt in bankruptcy, and such statement shall be prepared by and at the cost of the creditor making the same:

XI. Any partner of a firm of creditors may sign or assent to the deed, and supply the requisite statement on behalf of the firm, and any agent duly authorised in writing may sign or assent to the deed and supply such statement on behalf of a creditor, and such partner or agent shall aver in such statement that he is such partner or agent, as the case may be.

**13.** SUB-SECTION (a) of Section six of the Bankruptcy Act, 1892, shall be amended by inserting therein £30 in lieu of £50 as therein provided.

**14.** EVERY such deed, until the same shall be set aside as herein provided, shall release the debtor from all provable debts, and shall vest in the trustee all the property of the debtor (except such necessaries as aforesaid) upon the trusts and for the purposes in and by such deed declared or deemed to be declared; and the trustee may recover the property, including choses in action in his own name, as trustee for the estate of the debtor, in like manner as a trustee in bankruptcy.

**15.** FROM and after the execution of every such deed by the debtor and the trustee thereof, all parties to such deed, and all persons bound thereby, shall, in all matters relating to the property

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conveyed and assigned by such deed, or belonging to or vested in the debtor prior to such deed, be subject to the jurisdiction of the Court, and shall, except where the contrary shall be declared or provided for by this Act or the deed respectively, have the benefit and be liable to all the provisions of this Act in the same or like manner as if the debtor had been adjudged bankrupt, and the creditors had proved, and the trustee had been appointed trustee under such bankruptcy; and the existing or future trustee of any such deed, and the creditors under the same, shall, as between themselves and the debtor, and against third persons, have the same powers, rights, and remedies with respect to the debtor and the property aforesaid as are possessed or may be used or exercised by a trustee in bankruptcy or creditors with respect to a debtor or his acts and property in bankruptcy.

**16.** AFTER the execution of the deed by the debtor the Court may, on his finding sufficient surety or sureties to enter into a recognisance to the Official Receiver, in the prescribed form, grant an order protecting the debtor from arrest from all process for such period as the Court may see fit, and the Court shall have power from time to time to renew such protection or to withdraw the same; and if any debtor, on the granting of such order, shall be in prison or custody, or shall thereafter be imprisoned or taken into custody on civil process, having been arrested or committed to prison for debt or damages, or upon any attachment or order, or commitment for or respecting the non-payment of money, or for contempt of Court, and from which imprisonment he might be discharged upon payment of money, the Court may, by warrant, order his immediate release: Provided that such release shall in nowise affect the right of any creditor against the debtor except the right of detaining him in prison so long as he shall have the protection of the Court.

Protection to debtor.

**17.** IF any debtor shall be arrested for debt, or while protected by order of the Court, he shall, on producing such protection order to the person arresting him, and giving him a copy thereof, be immediately discharged; and if any person shall detain any debtor after he shall have shown such protection order to him, except for so long a time as shall be necessary for obtaining a copy of the same, such person shall forfeit to such debtor, for his own use, the sum of Five pounds for every day he shall detain such debtor, to be recovered, with costs, summarily in the name of the debtor before any two Justices of the Peace.

On production of protection order debtor to be discharged.

**18.** ANY property, which in the event of the debtor's bankruptcy would have been available to the trustee by reason of the same having been in the possession, order, or disposition of the debtor, and of his having been reputed owner thereof, or having taken upon himself the sale, alteration, or disposition thereof as owner, or for any other

Property in reputed ownership of debtor deemed property passing by deed.

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reason, shall be deemed to be property conveyed and assigned by the deed.

Effect of execution of deed.

**19.** AS long as any such deed shall remain in force, the execution thereof by the debtor shall, so far as consistent with the other provisions hereof, be deemed for all purposes equivalent to—

- (1.) An act of bankruptcy committed by the debtor on the date of the meeting of creditors at which such deed was resolved upon :
- (2.) The filing of a petition for a receiving order against him :
- (3.) An adjudication of bankruptcy against him.

Creditors to have same rights as in insolvency.

**20.** THE creditors of every such debtor shall have the same rights respectively as to set-off, mutual credit, lien, and priority, and joint and separate assets shall be distributed as in bankruptcy, and the right or remedy of any creditor against any person other than the debtor shall not be prejudiced or affected by his being a party to any such deed as aforesaid, or by the same being obligatory upon him ; and every person who would be entitled to prove in bankruptcy shall be deemed a creditor within the meaning of this Act, and the trustee of any deed under this Act shall, except as in cases by this Act, definitely provided have the same powers and duties as a trustee under a bankruptcy, under the principal Act, and in case there shall be any dispute as to the right of any person to rank as a creditor, or as to the amount of his debt, the Court shall have jurisdiction to settle such dispute.

Creditor not appearing in Schedule may obtain benefit of deed.

**21.** ANY creditor who shall not appear as such in the Schedule to the deed may obtain the benefit of such deed, by sending to the trustee particulars of his debt and a statement of account between him and the debtor, with a declaration verifying the same, in like manner as in bankruptcy, and by signing the deed or assenting thereto in writing.

Creditor entitled to inspect deed, &c.

**22.** ANY person stating himself in writing to be a creditor of the debtor shall be entitled personally or by his attorney or agent, at all reasonable times on application to the trustee of the deed, or his attorney or agent at the place where such deed may be lying for inspection and execution, to inspect such deed and the schedules thereof, and the assents of creditors and all statements and accounts furnished by creditors, and any books, accounts, papers, or documents relating to the property of the debtor which may be in the custody, control, possession, or power of the trustee, and may make copies of or take extracts therefrom.

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**23.** ANY creditor or trustee may upon making affidavit that he suspects the debtor has not fully disclosed his estate and effects, or had within four calendar months prior to the execution of the deed made a fraudulent preference to any creditor, or that the debtor has concealed, or is making away with, or improperly or fraudulently dealing with the property of the debtor or any part thereof, cause the debtor to appear and be examined in the Court.

Trustee or creditor may cause debtor to be examined in Court.

**24.** THE debtor or any creditor may, upon making affidavit that the trustee has concealed, or is making away with, or improperly or fraudulently dealing or improperly carrying out his duties in connection with the estate and effects of the debtor, cause the trustee to appear and be examined in the Court.

Debtor or creditor may cause trustee to be examined in Court.

**25.** NOTHING in the two preceding sections contained shall take away or abridge any jurisdiction or authority belonging to the Court independently thereof.

Preservation of other powers in Court.

**26.** THE trustee of every deed shall comply with the following provisions:—

Trustee shall :

- i. He shall, with all convenient speed after he has executed the same, cause notice of such deed, and of the place where the same is lying for inspection and execution, to be given to the several creditors whose names appear in the second schedule to the deed, by the like means and in the like manner as is required to be given by the Official Receiver before the sitting appointed for the public examination of a debtor :
- ii. He shall, within fourteen days from the execution of such deed by the debtor, file in the Court a true copy of such deed, with the schedules and debtor's declaration, and all assents and statements relating thereto, which shall be open to public inspection :
- iii. He shall once in every four months, if ordered by the Court, until the estate be finally wound up, file in the Court a statement of the whole estate of the debtor as then ascertained, of the property recovered, and of the property outstanding, specifying the cause of its being so outstanding, and of all receipts and all payments made (which shall be audited by the Auditor General) or to be made, and of the amount in the pound, if any, proposed to be divided amongst the creditors, and the amount, if any, proposed to be retained for further contingencies ; and the trustee shall forthwith cause notice of the filing of such account, and of the amount in the pounds, if any, proposed to be paid, to be given by advertisement

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in the *Government Gazette* and one newspaper circulating in the district where the business of the debtor has been carried on, or where he resides, as well as one daily metropolitan newspaper:

- iv. He shall open a banking account in the name of the trust estate with some incorporated bank, and shall pay into such account all moneys received by him on account of the estate, and shall pay all moneys payable by such trustee on account of the estate by cheques drawn on such account; and no trustee shall at any time keep in his hands any sum exceeding Twenty pounds for more than ten days:
- v. The trustee of every deed hereafter to be made under this Act shall, at the expiration of twelve months from the date of the deed, on the application of the Official Receiver at the request of not less than three creditors, forthwith pay into Court all moneys in his hands, or to his credit, belonging to the assigned estate; and every trustee retaining any such moneys in his hands, or under his control, in contravention of this sub-section for a period of one month after such application, and every trustee retaining money in his hands in contravention of the last sub-section, shall suffer the following the consequences, that is to say—

He shall pay interest at the rate of Twenty pounds per centum per annum on the amount of such moneys so retained by him, to be computed from the time, or respective times, of his receipt of such moneys; and such interest shall be deemed portion of the estate for which such trustee is liable to account:

The Court may also, unless he can show to the Court a sufficient reason for such retention of money, failure to furnish accounts or information, as the case may be, remove him from his office, and he shall then have no claim for remuneration:

The Court may also order him—

To pay to such creditors or the Official Receiver all costs and expenses incurred through such misconduct, default or removal:

To pay into Court, to the credit of the estate, a sum not exceeding One hundred pounds for every such misconduct or default:

- vi. Out of the moneys so paid in, the Official Receiver shall make any payments that the trustee shall direct on account of the estate:

On application of Official Receiver, pay moneys belonging to estate into court.

Official Receiver to make payment as directed by trustee.

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VII. Previously to declaring a dividend out of the money paid into Court the trustee shall file in Court a dividend-sheet, showing the amount of the dividends due to the respective creditors, and the Official Receiver shall pay such dividend out of the moneys so paid in :

File dividend-sheet.

VIII. He shall, at least one month before the final winding up of the estate, which shall not be later than twelve months from the date of the deed, unless by leave of the Court, cause notice to be given, by letter through a post office, to each person appearing to be a creditor who shall not have assented to the deed, stating the amount of the dividend appearing due to him, and that unless he shall assent to the deed and claim the said dividend within one month from the posting of such notice, if resident in the Colony, he shall be excluded from all benefit of the said dividend, and the trustee shall afterwards cause the amount of the said dividend to be divided amongst the remaining creditors: Provided that, if there shall be any creditor residing beyond the jurisdiction of the Court, such notice shall be given not less than four months before the final winding up of the estate :

Give notice to creditors who have not assented to deed prior to final winding up.

IX. He shall, when the estate is finally wound up, make out a full and true account, verified upon oath by the trustee, of the gross amount of all moneys which shall have come to his hands, showing how the same has been disposed of, and the amount in the pounds paid to the creditors, and forthwith file the same, with the verifying affidavit, in Court :

Make a final account when estate wound up.

x. He shall, within one month after demand furnish to the Official Receiver an account of the estate in the prescribed form.

Account to Official Receiver on demand.

27. THE Court may at any time, within four months from the execution of the deed by the debtor, declare such deed to be void on the ground that the provisions of Section twelve of this Act, or some or one of them, have not been complied with, or on the ground of fraud, or of any wilful and material error or omission in either of the schedules annexed to the deed, and thereupon the debtor shall be declared a bankrupt by the Court.

Court may declare deed void.

28. IN considering any application for an order declaring any such deed void, and in considering any application for a certificate under Section thirty-five, the Court shall not make any such order or abstain from granting any such certificate merely because the declaration required to be made by the debtor, or any schedule to the deed, or

Technical objections not to be considered when Court asked to grant certificate of validity or to declare deed void.

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all or any of the statements required to be furnished by creditors are not in the prescribed form, or do not contain the particulars required by this Act, if the Court shall be of opinion that any omission or irregularity in any such declaration or statement was not wilful and material; nor shall such order be made or certificate refused if the Court shall consider that the grounds of objection to the deed are not substantial.

Indemnity to trustee under deed declared void.

**29.** WHEN any deed shall be declared void, all acts *bonâ fide* done under it by the trustee thereof, before service upon the trustee of a copy of the order declaring it void, shall be valid and effectual. Service of the copy order may be effected either personally or by leaving the same with the trustee's solicitor, or at the place mentioned in the notice as the place where the deed is lying for inspection and execution.

Court to make just allowance to trustee.

**30.** THE Court shall make all just allowances to the trustee, and further, may make order that such trustee shall be indemnified, in such manner as the Court shall provide, from and against all actions and other proceedings to be brought against him for or arising out of any act or omission in relation to his trusteeship.

Power of appointment and removal of trustee.

**31.** THE Court may, from time to time, on the application of a creditor, or debtor, or trustee, remove from his office any trustee under a deed made under this Act, and may appoint a new trustee or trustees, either solely or jointly, with the continuing trustee or trustees; and upon such appointment all property belonging to the assigned estate shall vest in the new trustee or trustees solely or jointly with the continuing trustee or trustees, as the case may be, and the new trustee or trustees shall have the same rights and powers, and perform the same rights and powers, and perform the same duties, and be subject to the same liabilities, as if he or they have been the trustee or trustees to whom the original assignment was made.

Deed *prima facie* evidence of execution and attestation.

**32.** EVERY deed purporting to be executed by the debtor and trustee, and attested as hereinbefore provided, shall be *prima facie* evidence of such execution and attestation respectively; and every debtor's declaration attached to the deed in pursuance of the provisions of this Act, and every statement accompanying a creditor's assent to such deed, shall be *prima facie* evidence of the making thereof and of the truth of the matters therein declared to or stated, and no such deed made in pursuance of a resolution, as mentioned in Section seven, shall be liable to be impeached or disturbed except in manner hereinbefore provided.

Court may grant certificate of validity of deed.

**33.** THE trustee of a deed or the debtor may at any time apply to the Court to appoint a meeting to inquire into the validity of the

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deed, of which meeting the trustee or the debtor shall give at least nine days' notice to the creditors whose names appear in the schedule to the deed, by the like means and in like manner as is required to be given by the Official Receiver, before the sitting for the public examination of a bankrupt; and at such meeting the Court shall inquire whether the provisions of Section twelve of this Act, affecting the validity of the deed, have been complied with, and if the Court finds such provisions have been complied with, the Court shall thereupon grant a certificate of such finding, in the prescribed form, and such certificate shall, in all Courts, be conclusive evidence of the due execution and validity of such deed.

**34.** THE trustee of any deed may retain out of the estate, as a remuneration for his care and trouble in and about the execution of the trusts thereof, such a sum of money or percentage as may be allowed by the Court or fixed by the deed and approved by the Court, not exceeding ten per centum on book debts collected and five per centum on other assets realised.

**35.** WHEN the trustee shall declare any dividend, the sum proposed to be divided shall, except in the case of a final dividend, be apportioned ratably amongst all the persons appearing to be creditors of the debtor; but the dividend shall be paid to such creditors only as have assented, or shall assent thereto in writing, and no dividend shall be declared until fourteen days after the publication of the intention of the trustee to pay such dividend in the *Government Gazette* and one newspaper circulating in the district where the debtor has been carrying on business or residing, and one daily metropolitan newspaper.

Persons to whom  
dividend to be paid.

**36.** NO action for any dividend shall be brought against any trustee by any creditor; but if such trustee shall refuse to pay such dividend, the Court may order payment thereof, with interest for the time the same shall have been withheld, and may also order the costs of the application.

Enforcing payment  
of dividend.

**37.** IF, during the period of twenty-one days after the debtor's execution of such deed as before-mentioned, and before such deed shall have been assented to by the requisite majority of creditors, the goods and chattels of such debtor shall be seized or sold by virtue of any sequestration, execution, or other process at the suit of any creditor, the sheriff or bailiff charged with the execution of such process shall, after notice of such deed, pay the same into the Court out of which such process shall have issued; and the creditor at whose suit such process shall have issued shall not be entitled to the proceeds thereof, or any part thereof, until the expiration of the said period of twenty-one days, when, if such deed has then been assented to by the

Officer seizing  
debtor's property to  
pay proceeds into  
Court.

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requisite majority of such creditors, the proceeds shall be paid to the trustee of such deed as part of the general estate of the debtor, or may be recovered by such trustee on summary application to the Court in which the same has been paid, and on proof of the requisites in that behalf.

Corporation or body corporate. **38.** NO corporation or body corporate shall make any composition or deed of assignment under this Act.

His duties. **39.** THE duties of the Official Receiver shall be as follows:—

Publish notices of deed. I. To publish in the *Government Gazette* all notices received by him of any deed under this Act:

Enforce observance of duties by trustees. II. To enforce the observance by trustees of all deeds of assignment hereunder:

Other duties. III. To perform all other duties imposed on him by this Act.

If at meeting of creditors special resolutions accepting composition or scheme of arrangement, or that debtor execute deed not carried, or if debtor do not execute deed. **40.** NOTWITHSTANDING anything to the contrary contained in "The Bankruptcy Act, 1892." if, at a meeting of creditors, under Section four, or some adjournment thereof, a resolution accepting a proposal for a composition or scheme, or for the execution by the debtor of a deed of assignment under this Act, or a resolution by a majority in value of the creditors present personally, by attorney or by proxy, that such meeting shall not be deemed an act of bankruptcy, be not duly passed, or if the debtor shall not execute a deed of assignment pursuant to a resolution therefor within seven days from the passing of such resolution, or if a resolution accepting a proposal for a composition or scheme be not duly confirmed, as provided by Section seven, Sub-section one, but not otherwise, the debtor shall be deemed to have committed an act of bankruptcy on the date of the first meeting of creditors: Provided that a petition for a receiving order in respect of the estate of the debtor be filed within two months from the date of such first meeting.

If composition or scheme rejected or annulled by Court. **41.** IF any composition or scheme of arrangement shall be rejected or annulled under Section seven, Sub-section six or eight, the first meeting of creditors shall be deemed an act of bankruptcy on the part of the debtor: Provided a petition for a receiving order be filed against him within seven days from the date of the order of rejection or annulment.

Trustee to consult wishes of creditors as to realisation. **42.** THE trustee, in realising the estate, shall, as far as practicable, consult the wishes of the creditors thereon, and for that purpose may summon meetings of the persons claiming to be

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creditors, and shall at all times furnish the Official Receiver with such information and particulars relating to the estate as the Official Receiver shall require.

**43.** IN any criminal proceeding instituted by or under this Act, the production or proof of a deed purporting or expressed to be made in pursuance of this Act, and proof that the same was executed by the debtor shall be *prima facie* evidence of such deed and the contents thereof for all purposes of such criminal proceeding, notwithstanding any alleged defect in such deed or non-compliance with the provisions of this Act.

Deed to be evidence in criminal proceedings.

**44.** ANY deed of assignment or other proceeding or order in bankruptcy purporting to have been filed in bankruptcy, or purporting to have been taken in any matters in bankruptcy or purporting to be signed by a Judge and appearing to be sealed with the seal of the Court, or any writing purporting to be a copy of any such document or proceeding as aforesaid and so sealed, shall at all times, and on behalf of all persons, and whether for the purpose of this Act or otherwise, be admitted in all Courts whatever, as evidence of such documents respectively, and of such proceedings and orders having respectively taken place or been made, and be deemed respectively records of the Court, without any further proof thereof.

Proceedings purporting to be verified to be evidence.

**45.** ALL Courts, and all persons judicially acting, shall take judicial notice of the signature of any Judge or Official Receiver, and of the seal of the Court subscribed or attached to any judicial or official proceeding or document under the provisions of this Act.

Judicial notice to be taken of signature of Judge, &c.

**46.** A COPY of the *Government Gazette* containing any advertisement by this Act directed or authorised to be made therein shall be evidence of any matter contained in such advertisement. All proceedings or notices required by this Act to be inserted in the *Government Gazette* shall be sealed with the seal of the Court.

*Gazette* evidence.

**47.** ANY debtor shall, in any examination in the Court, be compellable to answer any question put to him, and in regard to any question having for its object the discovery of any part of the debtor's property, notwithstanding such answer may tend to criminate him.

To answer all questions, even when answer criminales.

**48.** NO person intending to become bankrupt shall sell or dispose of any portion of his estate for the purpose of enabling such person to pay his costs of and incidental to such bankruptcy, and any solicitor or agent receiving the proceeds of any estate, knowing the same has been sold for the purpose aforesaid, in payment of

Not to sell estate to pay costs.

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such costs, shall be liable to refund the same to the Official Receiver or trustee in such estate. In every case the costs of the bankrupt's solicitor shall be liable to taxation, and such solicitor shall refund to the trustee or Official Receiver any amount received by him from the bankrupt in excess of the amount allowed on such taxation, or receive from the estate of such bankrupt any amount so allowed in excess of the sum which he shall have so received.

Solicitor's or agent's charges.

**49.** ANY solicitor acting under instructions of the debtor, for the purpose of enabling the debtor to obtain the protection of this Act, shall be allowed fair and reasonable charges out of the first proceeds of the estate, and any agent acting under instructions of the debtor in the calling of the first meeting and preparing a statement of affairs shall be allowed a fair and reasonable charge (to be fixed by the Official Receiver) for so doing, out of the first proceeds of the estate.

Forms.

**50.** THE forms in the First Schedule may be used until altered by rule, and shall be deemed sufficient for the purposes for which they are prescribed.

Fees.

**51.** THERE shall be paid, in respect of the registration of deeds under this Act, the sum of Ten shillings.

Amendment 55  
Vict., No. 34, s. 41.

**52.** THE word "three" shall be, and is hereby substituted for the word "twelve" in the eighth line of Section forty-one of the Bankruptcy Act, 1892.

Amendment 55  
Vict., No. 34, s. 46.

**53.** SUB-SECTION two of Section forty-six of the Bankruptcy Act, 1892, shall not apply to a bill of sale of personal chattels, given as a security for the drawing, accepting, indorsing, making, or giving of any bill of exchange, promissory note, or guarantee, or other matter or thing by the grantee to, for, or on behalf of the grantor on the security of any bill of sale, and contemporaneously with the giving thereof.

Rules.

(1.) Rules for carrying this Act into effect may be made, revoked, and altered from time to time by the Chief Justice, in the like manner in which rules may be made under or for the purposes of the Bankruptcy Act, 1892.

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

Public officials not to receive fees.

**54.** NOTWITHSTANDING any thing in the Bankruptcy Act, 1892, to the contrary, no Official Receiver or other person holding office under the Government shall hereafter be entitled to

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charge or receive any fee or reward for instituting, conducting, or defending any proceedings at any stage thereof in any Court of Law, or in connection with any meeting of creditors, or proceedings thereat, or consequent thereon.

55. ALL public officers now or hereafter to be appointed for the purposes of the Bankruptcy Act, 1892, and this Act, shall in all things concerning the performance and carrying out of their respective duties and powers thereunder, and respecting expenses chargeable by them against estates, be under and subject to the control and direction of the Attorney General, anything in the Bankruptcy Act, 1892, and this Act, to the contrary notwithstanding.

Bankruptcy officers  
to be under control  
of Attorney General.

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

ALEX. C. ONSLOW, Governor's Deputy.

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### First Schedule.

#### CHAIRMAN'S CERTIFICATE OF EXTRAORDINARY RESOLUTION FOR ACCEPTANCE OF COMPOSITION OR SCHEME OF ARRANGEMENT, OR FOR CONFIRMATION.

##### No. 1.

I HEREBY certify that at a meeting of the creditors of \_\_\_\_\_, of \_\_\_\_\_, duly convened and held at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, the following extraordinary resolution was duly passed (copy resolution).

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 189\_\_\_\_.

Chairman.

##### No. 2.

#### *Chairman's Certificate of Special Resolution for Deed of Assignment.*

I HEREBY certify that, at a meeting of the creditors of \_\_\_\_\_ of \_\_\_\_\_, duly convened and held at \_\_\_\_\_ on the \_\_\_\_\_ day of 18\_\_\_\_, a special resolution was duly carried that the said \_\_\_\_\_ do execute a deed of assignment in pursuance of the Bankruptcy Act Amendment Act, 1898 to \_\_\_\_\_ of \_\_\_\_\_ as trustee.

Chairman.

##### No. 3.

#### *Warrant to Seize Personal Estate of Debtor.*

WHEREAS at a meeting of the creditors of \_\_\_\_\_ of \_\_\_\_\_, duly convened and held at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_, a special resolution was duly carried that the said \_\_\_\_\_ do execute a deed of assignment in pursuance of the Bankruptcy Act Amendment Act, 1898, to \_\_\_\_\_ of \_\_\_\_\_ as trustee. This is to authorise you to sieze all the personal estate of the said

To A.B., of \_\_\_\_\_, and his assistants.

Chairman of the said meeting.

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No. 4.

### *Declaration by Debtor verifying Schedules.*

Western Australia }  
to wit. }

IN the matter of the deed hereto annexed, made in pursuance of the Bankruptcy Act Amendment Act, 1898, whereby (1) conveys and assigns his real and personal estate to (2) as trustee, for the benefit of his creditors, which deed is dated the (3) day of 18 , I, (1) of (4) hereby declare as follows:—

1. The foregoing First Schedule contains a true and particular account of all the property (except certain articles of household furniture, wearing apparel, and like necessaries of myself and my family, which are hereunder specified, and which I claim to retain) of which I am possessed, or of which any person or persons in trust for me is or are possessed, or to which I, or any such person or persons, am, is, or are entitled legally or equitably in possession, reversion, remainder, or expectancy, so far as I am able to set forth the same.

2. The foregoing Second Schedule contains the names of my several creditors, and the amounts respectively due to such creditors, so far as I am able to set forth the same.

3. The excepted articles referred to in the first paragraph of this Declaration, and which I claim to retain, are set forth hereunder (5):

4. The excepted articles mentioned in the last paragraph hereof do not exceed in value the sum of Thirty pounds.

Declared at (6) this (7) day of (9) 18 , before me, the undersigned, a (8) of the said Colony (10).

### *Directions to be observed in the use of the foregoing form.*

The blanks are to be filled up as follows:—

1. Name of debtor.
2. Name of trustee.
3. Date of deed.
4. Residence and occupation of debtor.
5. List of articles retained.
6. Place where declaration taken.
7. Date when declaration taken.
8. Official Receiver, Registrar, Practitioner of the Supreme Court, Commissioner for taking Affidavits in the Supreme Court, Justice of the Peace, or Clerk of Local Court, as the case may be.
9. Signature of debtor declaring.
10. Signature of person taking declaration.

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## *Bankruptcy Act—Amendment.*

No. 5.

### *Statement by Creditor assenting to Deed.*

In the matter of a Deed made in pursuance of the Bankruptcy Act Amendment Act, 1898, by \_\_\_\_\_, of \_\_\_\_\_, in the Colony of Western Australia, and dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_\_.

Christian and Surnames of creditor and his partners (if any).	Addresses and occupations of creditor and partners (if any).	Amount of debt.	Securities or liens, and value thereof.	Amount of set-off.	Amount of balance due to creditor where security or set-off.
		£ s. d.		£ s. d.	£ s. d.

I, the above-named \_\_\_\_\_, hereby state that the above particulars are true and correct (if Statement made by partner, add), and that I am a partner of the above-mentioned (names of other partners).

(If Statement made by agent) I, \_\_\_\_\_ of (residence, occupation), hereby state that the above particulars are true and correct, and that I am an agent of the said (names of creditor or creditors) and duly authorised to make this Statement and to sign or assent to the said deed.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_\_.

WITNESS

(Signature).

No. 6.

### *Recognisance under Deed of Assignment.*

(Name of Court)

In the matter of a deed made in pursuance of the Bankruptcy Act Amendment Act, 1898, by \_\_\_\_\_ of \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_\_.

Appeared personally \_\_\_\_\_ of \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ and severally acknowledged that they owed to \_\_\_\_\_, Esquire, the Official Receiver (or the Clerk of the Local Court of \_\_\_\_\_), the sum of \_\_\_\_\_ pounds sterling.

WHEREAS the above-named \_\_\_\_\_ has applied for an order protecting his person from all process.

Now the condition of the above recognisance is such that, if the said \_\_\_\_\_ shall personally appear before this Court during the currency of the said protection or any enlargement thereof, when lawfully required, the above recognisance shall be void, otherwise shall remain in full force and effect.

Entered into \_\_\_\_\_ and acknowledged by the said \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_\_, before me

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No. 7.

### *Protection under Deed of Assignment.*

(Name of Court and places of sitting) the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
In the matter of a deed made in pursuance of the Bankruptcy Act  
Amendment Act, 1898, by \_\_\_\_\_ of \_\_\_\_\_. Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
The above-named \_\_\_\_\_ having procured securities, is hereby protected  
from arrest till the \_\_\_\_\_ day of \_\_\_\_\_,  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 189\_\_\_\_.  
By the Court.

(If protection enlarged, add)  
Enlarged till the \_\_\_\_\_ day of \_\_\_\_\_ next.  
Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
By the Court.

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No. 8.

### *Warrant to Release Imprisoned Debtor.*

(Name of Court and place of sitting) the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
In the matter of a deed made in pursuance \_\_\_\_\_ the  
Bankruptcy Act Amendment Act, 1898.  
WHEREAS the above-mentioned \_\_\_\_\_ has executed a deed in pursuance of  
the Bankruptcy Act Amendment Act, 1898, and has found sufficient surety  
as by law required: These are to require and authorise you to discharge  
the said \_\_\_\_\_ out of your custody at the suit of whomsoever he may be  
detained by you in prison for debt or damages, or upon any attachment or order,  
or commitment for or respecting the non-payment of money, or for contempt of  
Court, if the said \_\_\_\_\_ might be discharged from your imprisonment upon pay-  
ment of money, and for so doing this shall be your sufficient warrant.

To the Keeper of H.M. Gaol, at \_\_\_\_\_

By the Court.

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No. 9.

*Certificate of due Execution and Validity of Deed of Assignment.*

(Name the Court and place of sitting)                      the                      day of                      , 18 .  
In the matter of a deed made in pursuance of the Bankruptcy Act  
Amendment Act, 1898, by                      of                      , dated the  
day of                      , 18 .

UPON the application of                      , the trustee of the above-mentioned deed (or of the above-mentioned name of debtor), this Court doth find that the above-mentioned deed was duly made and executed under the provisions of the Bankruptcy Act Amendment Act, 1898, and that the provisions of Section 12 of the said Act affecting the validity of the said deed have been complied with.

By the Court.