

BANKRUPTCY.

No. 37 of 1924.

An Act relating to Bankruptcy.

[Assented to 8th October, 1924.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Bankruptcy Act* 1924. Short title.
2. This Act shall commence on a day to be fixed by proclamation. Commencement.
3. This Act is divided into Parts as follows :— Parts.
 - Part I.—Preliminary (Sections 1–8).
 - Part II.—Administration (Sections 9–17).
 - Part III.—Constitution, Procedure and Powers of Courts.
 - Division 1.—Jurisdiction (Sections 18–26).
 - Division 2.—Procedure (Sections 27–43).
 - Division 3.—Evidence (Sections 44–51).
 - Part IV.—Proceedings in connexion with Sequestration.
 - Division 1.—Acts of Bankruptcy (Sections 52, 53).
 - Division 2.—Petition and Sequestration Order (Sections 54–65).
 - Division 3.—Proceedings consequent on Sequestration Order (Sections 66, 67).
 - Division 4.—Public Examination of Bankrupt (Sections 68–70).
 - Division 5.—Composition or Scheme of Arrangement (Sections 71–73).
 - Division 6.—Committee of Inspection (Sections 74, 75).
 - Part V.—Control over Person and Property of Debtor (Sections 76–80).

Part VI.—Administration of Property.

Division 1.—Proof of Debts (Sections 81-83).

Division 2.—Priority of Debts (Sections 84-89).

Division 3.—Property available for Payment of Debts (Sections 90, 91).

Division 4.—Effect of Bankruptcy on antecedent transactions (Sections 92-98).

Division 5.—Realization of Property (Sections 99-111).

Division 6.—Distribution of Property (Sections 112-118).

Part VII.—Discharge of Bankrupt (Sections 119-125).

Part VIII.—Trustees.

Division 1.—Appointment and Official Name (Sections 126-132).

Division 2.—Remuneration and Costs (Sections 133-136).

Division 3.—Trustees' Accounts and Audits (Sections 137-146).

Division 4.—Control over Trustees (Sections 147-149).

Division 5.—Vacation of Office of Trustee (Sections 150-153).

Part IX.—Small Bankruptcies (Section 154).

Part X.—Estates of Persons Dying Insolvent (Sections 155, 156).

Part XI.—Compositions and Assignments without Sequestration (Sections 157-188).

Part XII.—Deeds of Arrangement (Sections 189-207).

Part XIII.—Unclaimed Funds or Dividends (Section 208).

Part XIV.—Offences (Sections 209-222).

Part XV.—Miscellaneous (Section 223).

Interpretation
of terms.
Cf. E.B.A.,
s. 167.

4 In this Act, unless the contrary intention appears—

“Affidavit” includes statutory declaration and affirmation;

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

“Bankrupt” means any person in respect of whose estate a sequestration order has been made;

“Bankruptcy”, in relation to jurisdiction or proceedings, includes any jurisdiction or proceedings under or by virtue of this Act;

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

"Debtor" includes any person, whether a British subject or not, who at the time when any act of bankruptcy was done or suffered by him— E.B.A., s. 1 (2).

(a) was personally present in Australia; or

(b) ordinarily resided or had a place of residence in Australia; or

(c) was carrying on business in Australia, personally, or by means of an agent or manager; or

(d) was a member of a firm or partnership which carried on business in Australia;

"Extraordinary resolution" means a resolution passed by three-fourths in number and value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

"Goods" includes all chattels personal;

"Oath" includes statutory declaration and affirmation;

"Officer" means an officer of the Court;

"Ordinary resolution" means a resolution passed by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

"Petition" means a bankruptcy petition;

"Prescribed" means prescribed by this Act, or by rules or regulations under this Act;

"Property" includes money, goods, things in action, land, and every description of property, whether real or personal and whether situate in Australia or elsewhere; 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 a Registrar in Bankruptcy and includes a Deputy Registrar in Bankruptcy when exercising any of the powers or functions of the Registrar;

"Regulations" includes rules;

"Resolution" means ordinary resolution;

"Rules" means rules made under this Act and includes regulations;

"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;

"Sequestration" means the making of a sequestration order, and "sequester" has a corresponding meaning;

"Sheriff" includes any officer charged with the execution of a writ or other process;

"Special resolution" means a resolution passed by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

"State Court" means a State Court having jurisdiction in bankruptcy under this Act;

"Supreme Court" means the Supreme Court of a State or a Judge thereof;

"Territory" means a Territory under the authority of the Commonwealth (including a Territory governed by the Commonwealth under a mandate) to which this Act extends;

"The Court" means any Court having jurisdiction in bankruptcy or a Judge thereof;

"The High Court" means the High Court of Australia;

"This Act" includes all rules or regulations made thereunder;

"Trustee" means the trustee in bankruptcy of a bankrupt's estate and the official receiver when acting as trustee or the trustee under a composition or scheme of arrangement or under a deed of arrangement or under a deed of assignment, as the case may be.

Application of Act.

Cf. E.B.A., ss. 125-128.
N.S.W., ss. 114, 123.
Vic., ss. 3, 5, 6.
Q., ss. 30, 31.
S.A., s. 10.
W.A., ss. 112, 134.
Tas., s. 4.

5.—(1.) This Act shall apply to all debtors, including married women, foreigners, and persons having privilege of Parliament, but a sequestration order shall not be made against any corporation, or against any partnership, association or company registered under any Commonwealth or State Act which provides for the winding-up thereof.

(2.) Subject to such modifications as are prescribed, the provisions of this Act shall apply to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and on all the general partners of a limited partnership becoming bankrupt, the assets of the limited partnership shall vest in the trustee.

Provisions binding the Crown.

E.B.A., s. 151.
W.A., s. 134.

(3.) Except as otherwise expressly provided in this Act, 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 an order of discharge, shall bind the Crown as representing the Commonwealth or any State:

Provided that where by virtue of anything done prior to the commencement of this Act under any Act, State Act, or law of a Territory, any property, real or personal, is made, before the commencement of this Act, subject to a charge in respect of any debt due to the Crown, as representing the Commonwealth or a State or in respect of any rates imposed by any local governing body, nothing in this Act shall affect the operation of that Act, State Act or law in respect of that charge.

Saving of rights under State Acts.

6. This Act shall not affect—

(a) any provision in any State Bankruptcy or Insolvency Act relating to matters not dealt with, either expressly or by necessary implication, in this Act; or

(b) any proceedings pending at the commencement of this Act under any State Bankruptcy or Insolvency Act, or any right or privilege acquired or duty imposed or liability disqualification fine forfeiture or other punishment incurred before the commencement of this Act, and any proceeding under any State Bankruptcy or Insolvency Act, pending at the commencement of this Act, may, subject to section nineteen of this Act, be continued and completed as if this Act had not been passed.

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

Formal defect not to invalidate proceedings.
E.B.A., s. 147.
N.S.W., s. 151.
Vic., s. 41.
W.A., s. 127.
Tas., s. 76.

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

8. The Governor-General may by proclamation declare that this Act shall, with such modifications and adaptations as are prescribed, extend to any Territory.

Extension of Act to Territories.

PART II.—ADMINISTRATION.

9. The Attorney-General shall be charged with the administration of this Act.

Administration.
Cf. E.B.A., s. 70.

10. In relation to any particular matters or class of matters, or to any particular State or part of the Commonwealth, the Attorney-General may by writing under his hand delegate any of his powers under this Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified or the State or part of the Commonwealth defined in the instrument of delegation.

Delegation by Attorney-General.

11. There shall be an Inspector-General in Bankruptcy who shall perform such duties as are prescribed.

Inspector-General.

12.—(1.) For the purposes of this Act the Governor-General may by proclamation declare any part of the Commonwealth to be a District.

Districts, Registrars, and official receivers.

(2.) There shall be in each District a Registrar in Bankruptcy, and such Deputy Registrars, official receivers, and other officers, as are necessary.

Cf. E.B.A., ss. 70, 102.
N.S.W., s. 139.
Vic., ss. 13, 70.
Q., ss. 4, 9, 78, 81, 83.
S.A., ss. 41, 48, 50.
W.A., ss. 63, 64, 68, 92.
Tas., s. 61.

(3.) An official receiver may, if the Governor-General thinks fit, be remunerated by fees and commission only.

(4.) Where an official receiver is remunerated by fees and commission only—

(a) if, in respect of any estate, the official receiver is appointed trustee or no trustee is appointed, he shall receive commission as trustee of the estate; and

(b) if, in respect of any estate, a person other than the official receiver is appointed trustee, the official receiver shall receive such fees as are prescribed, and such commission as the Court directs.

(5.) The Registrars and Deputy Registrars shall be officers of the Court and shall have such duties as the Attorney-General directs or as are prescribed.

(6.) The Attorney-General may by order direct that any specified Deputy Registrar shall have and exercise any or all of the powers and functions of a Registrar.

(7.) An official receiver shall act under the general authority and directions of the Registrar, and shall also be an officer of the Court.

(8.) The Court shall distribute the receiverships of the particular estates among the official receivers in the prescribed manner.

(9.) The official receiver appointed for any particular estate shall be the official receiver for that particular estate.

13. The Registrar may, from time to time, direct in writing an officer—

- (a) to discharge the duties of an official receiver during any temporary vacancy in the office, or during the temporary absence of the official receiver through illness or otherwise ;
- (b) to be the deputy of an official receiver and to act for him for such time and under such conditions as are prescribed ; or
- (c) to discharge any portion of the duties of an official receiver, the performance of which by the official receiver is, in the opinion of the Registrar, inexpedient.

14. The duties of an official receiver shall have relation both to the conduct of the debtor and to the realization and administration of his estate.

15. As regards the debtor, it shall be the duty of the official receiver—

- (a) to investigate—
 - (i) the conduct, property, dealings, and transactions of the debtor;
 - (ii) the actual cause of bankruptcy;
 - (iii) the amount of assets and liabilities; and
 - (iv) the books and accounts kept by the debtor,
- and report to the Court, within thirty days after the presentation of the bankruptcy petition or within such further time as is prescribed, the result of the investigations and whether or not he has reason to believe that the debtor has committed any act which constitutes an offence under this Act, or which would justify the Court in refusing, suspending or qualifying an order for his discharge or release ;

Deputy for
official
receiver.

E.B.A., s. 71.
S.A., s. 47.
W.A., s. 64.

Duties of
official receiver.
E.B.A., s. 72 (1).
W.A., s. 65.

Duty of
official receiver
as to debtor's
conduct.

E.B.A., s. 73.
S.A., s. 41.
W.A., s. 66.

4th added by
1927 No 3

- (b) to make such other investigations and reports concerning his conduct and the causes of his bankruptcy as is prescribed or as the Court directs;
- (c) to take such part as he thinks fit in his public examination; and
- (d) to take such part, and give such assistance in relation to the prosecution of any bankrupt who is deemed to have been guilty of an offence against this Act as the Registrar or the Court directs.

16.—(1.) As regards the estate of the debtor, it shall be the duty of the official receiver—

- (a) pending the appointment of a trustee, or if no trustee is appointed, or during any vacancy in the office of trustee, to act as trustee;
- (b) to summon and preside at the first meeting of creditors;
- (c) to advertise the sequestration order, the date of the creditors' first meeting and of the bankrupt's public examination, if any, and such other matters as it is necessary to advertise.

Duty of official receiver as to debtor's estate.

E.B.A., s. 74.
Vic., s. 103.
S.A., s. 41.
W.A., s. 67.

(2.) When the bankrupt 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 qualified person to assist in the preparation of the statement.

(3.) Every official receiver shall in the prescribed manner account for and pay over all moneys and deal with all securities.

17.—(1.) The Registrars, Deputy Registrars, trustees and other prescribed officers shall make prescribed returns of the business of their respective courts and offices at the times and in the manner prescribed, and from the returns the Attorney-General shall cause records to be prepared which shall be open for public information and searches as is prescribed.

Returns and annual report.
Cf. E.B.A., s. 136.
Q., s. 196.
Tas., s. 108.

(2.) The Attorney-General shall cause a general annual report of all matters, administrative, judicial, and financial, within this Act, to be prepared and laid before both Houses of the Parliament.

PART III.—CONSTITUTION, PROCEDURE AND POWERS OF COURTS.

Division 1.—Jurisdiction.

18.—(1.) The Courts having jurisdiction in bankruptcy shall be—

- (a) such Federal Courts (if any) as the Parliament creates to be Courts of Bankruptcy; and
- (b) such State Courts or Courts of a Territory as are specially authorized by the Governor-General by proclamation to exercise that jurisdiction.

Bankruptcy Courts.

E.B.A., s. 96.
N.S.W., s. 133.
Vic., s. 10.
Q., ss. 8, 9.
S.A., s. 11.
W.A., s. 89.
Tas., s. 58.

Exercise of
jurisdiction.

(2.) The jurisdiction in bankruptcy of a State Court or Court of a Territory may be exercised—

- (a) in the case of a State Court by such one or more Judges of the Court as the Governor-General with the concurrence of the Governor of the State appoints for that purpose; and
- (b) in the case of a Court of a Territory by such one or more Judges of the Court as the Governor-General appoints for that purpose.

Matters pending
in State Courts.

19. Subject to section six of this Act, all bankruptcy matters pending in any State Court or Court of a Territory exercising bankruptcy jurisdiction at the commencement of this Act may be transacted and disposed of by or under the direction of—

- (a) the Judge or Judges of the Court; or
- (b) in the case of a State Court, such one or more Judges of the Court as the Governor-General with the concurrence of the Governor of the State appoints for that purpose; or
- (c) in the case of a Court of a Territory, such one or more Judges of the Court as the Governor-General appoints for that purpose.

Extent of
jurisdiction of
Court.

E.B.A., s. 100.
Vic., ss. 12, 14,
18.

20.—(1.) Every Court having jurisdiction in bankruptcy shall have jurisdiction throughout the Commonwealth or within such Districts as the Governor-General by proclamation directs, and shall have the same powers and rights to commit for contempt of Court as belong to the High Court or to the Supreme Court of the State or Territory in which the jurisdiction is being exercised.

Transfer of
proceedings.

Q., ss. 18, 177
(5).
S.A., s. 25.
Tas., ss. 74 (6).

(2.) Any proceedings in bankruptcy—

- (a) may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by any prescribed authority and in the prescribed manner from one Court to another Court, or from any place where a Court is appointed to sit to any other place where a Court is held; or
- (b) may by the like authority be retained in the Court in which the proceedings were commenced, although it may not be the Court in which the proceedings ought to have been commenced.

Special case.

N.S.W., s. 142.
Vic., s. 32 (1.).
Q., s. 19.
S.A., ss. 37, 38.

(3.) If in any bankruptcy proceeding in a Court any question of law arises which all the parties thereto desire, or which one of them and the Judge of the Court desire, to have determined in the first instance in the High Court, the Judge shall—

- (a) state the facts in the form of a special case for the opinion of the High Court; and
- (b) transmit the special case and the proceedings, or such of them as are required, to the High Court for the purposes of the determination.

4 added by
1927 No. 3. >

21. A Judge exercising jurisdiction in bankruptcy may exercise in chambers the whole or any part of his jurisdiction:

Provided that the following shall be heard and determined in open Court, namely:—

- (a) Examinations under this Act; *(a.a. added by 1977/103)*
- (b) Applications for orders of discharge;
- (c) Applications to consider and the consideration of a composition or scheme of arrangement or the granting of a certificate of the validity of a deed of assignment;
- (d) Applications to set aside or avoid any settlement conveyance transfer security or payment, or to declare for or against the title of trustees to any property adversely claimed;
- (e) Applications for the committal of any person to prison;
- (f) Appeals against the rejection of a proof or applications to expunge or reduce a proof;
- (g) Applications for the trial of issues of fact with a jury and the trial of such issues; and
- (h) All questions arising under Part XI. and Part XII. of this Act.

Jurisdiction in chambers.
E.B.A., s. 101.
N.S.W., s. 136.
Vic., ss. 10, 20.
Q., s. 10.
S.A., s. 18.
W.A., s. 91.
Tas., s. 62.

22.—(1.) All Courts having jurisdiction in bankruptcy, and the Judges and officers thereof, shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy.

(2.) Subject to rules all barristers, solicitors and attorneys admitted to practise in the High Court or in any Supreme Court of a State or Territory may practise and be heard in every Court exercising bankruptcy jurisdiction.

Courts to aid each other.
Cf. E.B.A., s. 122.
Q., s. 25.
Practitioners.
S.A., s. 313.
Tas., s. 67.

23. The Court may delegate to the Registrar such of the powers of an administrative nature vested in the Court (except this power of delegation) as the Court deems expedient to be delegated to him.

Delegation of authority of Court to Registrar.
N.S.W., s. 137.

24.—(1.) Subject to rules, a Registrar shall have, in addition to the powers which may be delegated to him by the Court under the provisions of this Act, the following powers, duties and jurisdiction of the Court, namely—

Jurisdiction of Registrar.
E.B.A., s. 102.
N.S.W., ss. 137, 143.
S.A., s. 48.
W.A., s. 92.
Tas., s. 64.

- (a) To hear debtors' petitions and to make sequestration orders thereon, or to give leave to withdraw the petitions;
- (b) To hold a public sitting for the examination of any bankrupt, and adjourn the same from time to time and direct further examination; to appoint a time and place for the examination or further or adjourned examination; and to put such questions to the bankrupt as he thinks expedient;
- (c) To approve compositions or schemes of arrangement when they are not opposed;
- (d) To order to attend before him and examine the bankrupt or his wife, or, where the bankrupt is a married woman, her husband, or any person known or suspected to have in his possession property of the bankrupt or to be indebted to him, or to be capable of giving information respecting the bankrupt, his trade dealings, property or affairs;

- (e) To do any act or thing or give any direction or permission by this Act authorized or required to be done or given by the committee of inspection, where there is no such committee ;
- (f) To grant an order of discharge where the application is ~~not opposed~~ ;
- (g) To direct payment out of the pay, pension, salary, emoluments, profits, wages, earnings or income of any bankrupt, and the application thereof ;
- (h) To give directions to the official receiver or trustee in relation to any matter relating to a bankruptcy ;
- (i) To adjourn any proceedings before him, to amend any written process or proceedings under this Act, and to take the whole or any part of the evidence in any matter either *viva voce* or otherwise ;
- (j) To authorize the official receiver or trustee to commence and prosecute any action in the name of the official receiver or trustee and of the bankrupt's partner ;
- (k) Subject to section seven of this Act to declare any proceeding in bankruptcy invalidated by a formal defect or irregularity ;
- (l) To declare that a secured creditor voting in respect of his whole debt shall not be deemed to have surrendered his security if the Registrar is satisfied that the omission to value the security has arisen from inadvertence ;
- (m) To give directions as to sale of property comprised in any security ;
- (n) To exercise the powers of the Court under section sixty-two of this Act ; and
- (o) To administer oaths where necessary in all proceedings within his jurisdiction under this Act.

(2.) Any order made or act done by a Registrar in the exercise of his power and jurisdiction shall be deemed the order or act of the Court, subject nevertheless to review on summary application to the Court.

25.—(1.) Subject to this Act, the Court shall, in any proceeding in bankruptcy, have full power to decide all questions of priorities, and all other questions whether of law or of fact—

- (a) which arise in any case of bankruptcy coming within the cognisance of the Court ; and
- (b) which the Court deems it expedient or necessary to decide for the purpose of doing complete justice or making a complete realization and distribution of property in the case.

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

General power
of Court in
bankruptcy.

E.B.A., s. 105.
N.S.W., s. 134.
Vic., s. 15.
Q., s. 22.
S.A., ss. 39, 40.
W.A., s. 93.
Tas., s. 69.

Trial by jury.

Vic., s. 30 (1.).
Q., ss. 23, 24.
S.A., s. 39.

(3.) 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 by any other officer under any power conferred by this Act, the Court may, on the application of a Registrar or official receiver or creditor who has proved or other duly authorized person—

Powers in case of default.

- (a) order the defaulter to comply with the order or direction, and
- (b) if it thinks fit, make an immediate order for the committal of the defaulter.

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 the default.

26.—(1.) The Court may review, rescind, or vary any order made by it in its bankruptcy jurisdiction.

Appeals in bankruptcy.
E.B.A., s. 108.
N.S.W., s. 138.
Vic., s. 31.
Q., ss. 14-16.
S.A., ss. 30, 32-36.
W.A., s. 95.
Tas., s. 68.

(2.) Except where otherwise provided, an order of the Court in a bankruptcy matter shall, at the instance of the official receiver or trustee or any person aggrieved, be subject to appeal to the High Court.

(3.) No appeal shall be entertained except in conformity with any rules in relation thereto.

Division 2.—Procedure.

27.—(1.) In any proceeding under this Act the Court may, in its discretion, award costs, either out of the estate of the bankrupt or against any person or persons as it thinks just.

Discretionary powers of the Court.

(2.) The Court may—

E.B.A., s. 109.
N.S.W., s. 107.
Vic., ss. 26, 35.
Q., ss. 20, 21.
S.A., ss. 309, 315.
W.A., s. 96.

- (a) upon such terms as it thinks fit adjourn at any time any proceedings before it;
- (b) amend at any time any written process, proceeding, or notice under this Act;
- (c) extend, either before or after its expiration, or abridge any time limited by this Act for doing any act or thing; and
- (d) subject to rules, take in any matter the whole or any part of the evidence either *vivâ voce*, or by interrogatories, or upon affidavit, or by commission abroad, or as the Court directs or as is prescribed.

28. Any creditor of a partnership may present a petition against the partnership if he is entitled to present a petition against any one of the members of the partnership.

Petition against partnership.
N.S.W., s. 115.
Vic., s. 51.
Q., s. 68.

29. A petition in bankruptcy against a partnership may be presented by the majority of the members thereof who at the time of presenting the petition are resident in the Commonwealth.

Petition by partners.
N.S.W., s. 116.
Vic., s. 46.
Q., s. 42.

Petition
against one
partner.

E.B.A., s. 114.
N.S.W., s. 112.
Vic., s. 53.
Q., s. 68.
S.A., s. 75.
W.A., s. 101.
Tas., s. 93.

Property of
partners to be
vested in same
trustee.

E.B.A., s. 116.
N.S.W., s. 117.
Q., s. 159.
W.A., s. 103.
Tas., s. 95.

Actions by
trustee and
bankrupt's
partners.

E.B.A., s. 117.
N.S.W., s. 118.
Vic., s. 108.
Q., s. 162.
S.A., s. 146.
W.A., s. 104.
Tas., s. 98.

Proceedings in
partnership
name.

E.B.A., s. 119.
N.S.W., s. 120.
Vic., s. 137.
W.A., s. 106.

Consolidation
of petitions.

E.B.A., s. 110.
Q., s. 177 (1.).
N.S.W., s. 108.
W.A., s. 97.
Tas., s. 74 (2.).

Change of
petitioners.

E.B.A., s. 111.
N.S.W., s. 109.
Vic., s. 65.
Q., s. 177 (2.).
S.A., s. 74.
W.A., s. 98.
Tas., s. 74 (4).

Continuance on
death of debtor.

E.B.A., s. 112.
N.S.W., s. 110.
Vic., s. 66.
Q., s. 177 (10).
S.A., s. 112.
W.A., s. 99.
Tas., s. 74 (9).

30. Any creditor, whose debt is sufficient to entitle him to present a petition against all the partners of a firm, may present a petition against any of them without including the others.

31. Where a sequestration order has been made on a petition by or against a member of a partnership, and another petition by or against a member of the same partnership is presented, unless the Court otherwise directs, the same trustee shall be appointed in respect of both petitions, and the Court may consolidate the proceedings on such terms as it thinks just.

32.—(1.) Where a sequestration order is made against a member of a partnership, the Court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner; and any release by that partner of the debt or demand to which the action relates shall be void.

(2.) Notice of the application for authority to commence the action shall be given to the partner, who 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, as the Court directs, against costs in respect thereof.

33. Any persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm, but in that case the Court may, on application by any person interested, order the names of the partners, or of the person so carrying on business, to be disclosed and verified in such manner as the Court directs.

34. Where two or more petitions are presented against a debtor or against joint debtors, the Court may consolidate the proceedings or any of them upon such terms as it thinks fit.

35. 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 is indebted in the amount required by this Act in the case of the petitioning creditor, and in that case the sequestration order may be dated as of the day it would have been dated if the original petitioner had proceeded with due diligence.

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

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

Power to stay proceedings.
E.B.A., s. 113.
N.S.W., s. 111.
Vic., s. 66 (2).
Q., s. 177 (11).
W.A., s. 100.
Tas., s. 74 (10).

38. Where there are more respondents than one to a petition, the Court may dismiss the petition as to any of them, without prejudice to the effect of the petition as against the others.

Dismissal against some respondents.
E.B.A., s. 115.
N.S.W., s. 113.
Vic., s. 68.
W.A., s. 102.
Tas., s. 94.

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

Actions on joint contracts.
E.B.A., s. 118.
N.S.W., s. 119.
Vic., s. 86.
Q., s. 189.
W.A., s. 105.
Tas., s. 105.

40.—(1.) Every order and warrant of the Court shall be enforced throughout the Commonwealth, and all peace officers and constables shall aid the enforcement thereof.

Enforcement of process throughout the Commonwealth.
E.B.A., ss. 121, 123.
Vic., s. 27.
S.A., s. 103.
W.A., ss. 107, 108.
Tas., s. 71.

(2.) A search warrant issued by the Court 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.

41. When the Court commits any person to prison, the commitment may be to such convenient prison as the Court thinks fit.

Commitment to prison.
E.B.A., s. 124.
Vic., s. 29.
W.A., s. 109.
Tas., s. 72.

42. Except where otherwise expressly provided, for all or any of the purposes of this Act, a corporation may act by any of its officers authorized in that behalf under the seal of the corporation, a firm may act by any of its members or a duly authorized agent, and a lunatic may act by his committee or *curator bonis* and any person may act by his agent duly authorized in that behalf.

Representation of corporation, firm, or lunatic.
E.B.A., s. 149.
Vic., ss. 39, 40.
Q., s. 177 (7).
W.A., s. 132.
Tas., s. 74 (7).

43. 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.

Service of notices.
E.B.A., s. 146.
N.S.W., s. 151.
Vic., s. 7.
W.A., s. 126.

Division 3.—Evidence.

44.—(1.) A copy of the *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.
E.B.A., s. 137.
N.S.W., s. 146.
Vic., s. 42.
Q., ss. 70, 186.
S.A., s. 305.
W.A., s. 118.

(2.) The production of a copy of the *Gazette*, containing the notice of a sequestration order, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

Evidence of proceedings at meetings of creditors.

E.B.A., s. 138.
N.S.W., s. 147.
Vic., s. 132.
W.A., s. 119.
Tas., s. 99.

45.—(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 receivable in evidence without further proof.

(2.) Until the contrary is proved, every meeting of creditors in respect of which a minute of proceedings 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.

Evidence of bankruptcy documents.

E.B.A., s. 139.
S.A., s. 302.
W.A., s. 120.
Tas., s. 100.

46. Any—

- (a) petition in bankruptcy; or
- (b) order or certificate made by any Court having any jurisdiction under this Act; or
- (c) instrument, affidavit, document, deed, or extract from any deed or register, made or used in the course of any proceedings under this Act; or
- (d) copy of any of the above-mentioned documents;

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, be receivable in evidence in all legal proceedings whatsoever.

Swearing of affidavits.

E.B.A., s. 140.
Vic., s. 8.
(Cf. s. 12, No. 4, 1905.)

S.A., s. 308.
W.A., s. 121.

47. Subject to rules, any affidavit to be used in any proceeding under this Act may—

- (a) in the case of a person within the Commonwealth—be sworn before any person authorized to administer oaths in the High Court or Supreme Court, or before a Registrar, or official receiver, or before any Judge of the Court, or justice of the peace, or commissioner for affidavits, or commissioner for declarations; or
- (b) in the case of a person out of the Commonwealth—be sworn before—
 - (i) a person authorized under the law of the Commonwealth to take affidavits, or a commissioner of the Supreme Court of a State for taking affidavits empowered and authorized to act in that place;
 - (ii) a High Commissioner of the Commonwealth, a British ambassador, envoy, Minister, *charge d'affaires*, secretary of embassy of legation, consul-general, consul, vice-consul, acting consul, pro-consul, consular agent, or notary public exercising his function in that place; or
 - (iii) any person qualified to administer an oath in that place, he being certified by any of the persons mentioned in the last two preceding sub-paragraphs, or by a notary public of the country or by the superior court of the place to be so qualified.

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

Death of witness.
E.B.A., s. 141.
Q., s. 184.
S.A., s. 307.
W.A., s. 122.
Tas., s. 101.

49. Every Court having jurisdiction under this Act shall have a seal, describing the Court in the prescribed name and in all legal proceedings judicial notice shall be taken of the seal and of the signature of the Judge or Registrar of the Court.

Seal of Court in bankruptcy.
E.B.A., s. 142.
Vic., s. 43.
Q., s. 185.
S.A., s. 15.
W.A., s. 123.
Tas., s. 102.

50. A certificate under this Act that a person has been appointed a trustee under this Act shall be conclusive evidence of his appointment.

Certificate of appointment of trustee.

51.—(1.) Where any examination of a bankrupt or witnesses or of any other person is had before any Court, the Court may, on the application of the trustee or any creditor (but at the expense in the first instance of the party making the application) direct the evidence of the bankrupt or witnesses or of any other person, or any of them to be taken down by a shorthand writer appointed by the Court.

E.B.A., s. 143.
S.A., s. 301.
W.A., s. 124.
Tas., s. 17.
Shorthand notes of evidence.
Q., s. 183.

(2.) The shorthand writer shall be sworn faithfully to report the evidence and a transcript of the shorthand writer's notes certified by him to be correct shall be admitted to prove the oral evidence of the witnesses in the same manner as depositions signed by them may be admitted.

PART IV.—PROCEEDINGS IN CONNECTION WITH SEQUESTRATION.

Division 1.—Acts of Bankruptcy.

52. A debtor commits an act of bankruptcy in each of the following cases :—

Acts of bankruptcy.
E.B.A., s. 1.
N.S.W., s. 4.
Vic., s. 49.
S.A., ss. 57–68.
W.A., s. 4.
Q., s. 44.
Tas., s. 5.

- (a) If in Australia or elsewhere he makes a conveyance or assignment of his property to trustees for the benefit of his creditors generally ;
- (b) If in Australia or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof ;
- (c) If in 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 preference or a fraudulent preference if he became bankrupt ;
- (d) If with intent to defeat or delay his creditors he departs or remains out of Australia, or out of a State, or departs from his dwelling-house or usual place of business, 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 any Court, and the goods have been

either sold or held by the sheriff for seven days or if any such execution has been issued against him and has been returned unsatisfied:

Provided that, where an interpleader summons has been taken out in regard to the goods, the time elapsing between the date on which the summons is taken out and the date on which the proceedings on such summons are finally disposed of, settled or abandoned, shall not be taken into account in calculating the period of seven days;

- (f) If he has been adjudged or declared bankrupt or insolvent by any Court in the King's Dominions out of the Commonwealth having jurisdiction in bankruptcy or insolvency, in which case it shall not be necessary to produce any other evidence of the act of bankruptcy than a duly certified copy, under the seal of the Court, of the order of adjudication by which the debtor was declared or adjudged bankrupt or insolvent;
- (g) If, at any meeting of creditors, he consents to present a petition under this Part of this Act for the sequestration of his estate, and he does not, within forty-eight hours from the date of his consent, present the petition;
- (h) If, at any meeting of creditors, he admits that he is in insolvent circumstances and is requested by a resolution of a majority of the creditors present at the meeting to surrender his estate for administration in accordance with this Act, and he refuses so to surrender his estate;
- (i) If he files in the Court a declaration of his inability to pay his debts, or presents a bankruptcy petition against himself;
- (j) If a creditor has obtained a final judgment or final order against him for any amount, and execution thereon not having been stayed, has served on him in Australia or, by leave of the Court, elsewhere, a bankruptcy notice under this Act, and the debtor does not, within seven days or such time as is prescribed after service of the notice in Australia, or within the time limited in that behalf by the order giving leave to effect the service elsewhere, 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 or proceeding in which the judgment or order was obtained:

Any person who is for the time being entitled to enforce a final judgment or final order for the payment of money shall be deemed a creditor who has obtained a final judgment within the meaning of this paragraph; and a final judgment or order against a married woman shall be deemed to be a final judgment or order within the meaning of this paragraph, notwithstanding the fact that no execution can issue at law on the judgment or order;

- (k) If he gives notice to any of his creditors that he has suspended, or that he is about to suspend payment of his debts;
- (l) If, at a meeting of creditors under Part XI. of this Act 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, or a resolution by a majority in value of the creditors present personally, by attorney, or by proxy that the meeting shall not be deemed an act of bankruptcy, be not duly passed, or if the debtor does not execute a deed of assignment pursuant to a resolution therefor within seven days after the passing of the resolution, or if a resolution accepting a proposal for a composition or scheme be not duly confirmed in accordance with section one hundred and sixty-one of this Act, or if the composition or scheme be rejected or annulled in pursuance of that section, or if a deed of assignment is declared void in pursuance of section one hundred and seventy-six of this Act.

An act of bankruptcy mentioned in this paragraph shall be deemed to have been committed by the debtor on the day of the first meeting of creditors, and also, where the composition or scheme has been rejected or annulled or the deed has been declared void, on the date of the making of the order of rejection or annulment, or the declaration, as the case may be, provided—

- (i) that, except where the composition or scheme has been rejected or annulled or the deed has been declared void, a petition for sequestration is presented against the debtor within two months after the date of the first meeting of creditors; and
- (ii) that, where the composition or scheme has been rejected or annulled, a sequestration order is made against the debtor within seven days after the date of the order of rejection or annulment; and
- (iii) that, where the deed has been declared void, a sequestration order is made against the debtor within fourteen days after the date of the declaration.

53. A bankruptcy notice under this Act shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the court, and shall state the consequences of non-compliance therewith, and shall be served in the prescribed manner:

Bankruptcy
notice.
Cf. Vic., s. 50.
Q., ss. 48, 49.
Tas., s. 6.

Provided that a bankruptcy notice—

E.B.A., s. 2 (3).

- (i) may specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to, or done to the satisfaction of, the creditor ;
- (ii) shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such misstatement ; but if the debtor does not give such notice, he shall be deemed to have complied with the bankruptcy notice if within the time allowed he takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein.

53A added by
1927 No. 3. >

Division 2.—Petition and Sequestration Order.

Jurisdiction to make sequestration order.

E.B.A., s. 3.
N.S.W., s. 5.
Vic., s. 52.
S.A., Part IV.
W.A., s. 5.
Q., ss. 43, 44.
Tas. s. 7.

54.—(1.) Subject to the provisions 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 sequestration order.

(2.) When a sequestration order has been made, the debtor thereby becomes a bankrupt, and continues a bankrupt until an order of discharge has been issued to him or the sequestration order has been annulled.

Conditions on which creditor may petition.

E.B.A., s. 4.
N.S.W., s. 6.
Vic., s. 49.
S.A., ss. 68, 71.
W.A., s. 6.
Q., ss. 45-47.
Tas., s. 5.

55.—(1.) A creditor shall not be entitled to present a petition against a debtor unless—

- (a) the debt owing by the debtor to him, or, if two or more creditors join in the petition, the aggregate of the debts owing to the several petitioning creditors amounts to Fifty pounds ; and
- (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 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 Australia, or has carried on business in Australia, personally or by means of an agent or manager, or is or within the said period has been a member of a firm or partnership which has carried on business in Australia by means of a partner or partners, or an agent or manager,

E.B.A., s. 4.
Cf. s. 187.

and, where a deed of arrangement or a deed of assignment has been executed, a creditor shall not be entitled to present a bankruptcy petition founded on the execution of the deed, or on any other act

committed by the debtor in the course or for the purpose of the proceedings preliminary to the execution of the deed, in cases where he is prohibited from so doing by the provisions of Part XI. or Part XII. of this Act.

(2.) If the petitioning creditor is a secured creditor, he must, in his petition, N.S.W. s. 7.

(a) state that he is willing to give up his security for the benefit of the creditors in the event of a sequestration order being made against the debtor ; or

(b) give an estimate of the value of his security, in which 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.

(3.) If the petitioning creditor is a secured creditor he shall, upon application being made by the trustee or official receiver within the prescribed time after the making of a sequestration order, and upon payment of the estimated value stated in his petition, give up his security to the trustee or official receiver for the benefit of the creditors.

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

(2.) At the hearing, the Court—

(a) 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 them ; and

(b) if satisfied with the proof, may make a sequestration order in pursuance of the petition.

(3.) If the Court—

(a) is not satisfied with the proof of the petitioning creditor's debt, or of the service of the petition, or of the act of bankruptcy ; or

(b) 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,

it 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, or the sum ordered to be paid, the Court may, if it thinks fit, stay or dismiss the petition, on the ground that an appeal from the judgment or order or a motion for a new trial is pending.

(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 requires for payment to the petitioner of any debt which may be established against the debtor in due course of law, and

Proceedings
and order on
creditor's
petition.

E.B.A., s. 5.
N.S.W., s. 8.
Vic. ss. 52, 57-
64, 67, 69.
S.A., ss. 70-78.
Q., ss. 52-65.
W.A., s. 7.
Tas., ss. 7, 74
(1).

of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as is required for trial of the question relating to the debt.

(6.) Where proceedings are stayed, the Court may, by reason of the delay caused by the stay of the proceedings or for any other cause it thinks just, make a sequestration 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 so stayed.

Debtor's
petition and
order thereon.

E.B.A., s. 6.
N.S.W., s. 9.
Vic., s. 45.
S.A., s. 86.
W.A., s. 8.
Q., ss. 40-43.

57. A debtor's petition shall allege that he is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing of any declaration of inability to pay his debts, and the Court shall thereupon make a sequestration order:

Provided, however, that the Court may, if it thinks fit, refuse to make a sequestration order if the unsecured liabilities of the petitioning debtor are under Fifty pounds.

Costs of
sequestration.

Vic., s. 56.
Q., s. 67.
S.A., s. 110.

58.—(1.) The creditor on whose petition any sequestration order is made shall at his own cost prosecute all proceedings in the sequestration until after the close of the first meeting of creditors.

(2.) The trustee shall reimburse the creditor, out of the estate of the bankrupt, the taxed costs incurred by the creditor in any such proceedings.

Withdrawal of
petitions.

E.B.A., ss. 5, 6.
W.A., s. 7.

59. A petition, whether presented by a creditor or by a debtor, shall not, after presentation, be withdrawn without the leave of the Court.

Effect of
sequestration
order.

N.S.W., s. 10.
Vic., s. 166.
Q., ss. 75, 86.
S.A., s. 126.
Cf. E.B.A., ss. 7,
18.
W.A., s. 9.
Tas., s. 11.

60.—(1.) Upon sequestration the property of the bankrupt shall vest in the official receiver named in the order, and shall be divisible among the creditors of the bankrupt in accordance with the provisions of this Act.

(2.) After sequestration, except as directed by this Act, no creditor to whom the bankrupt is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the bankrupt in respect of the debt, or shall commence or take any fresh step in any action or other legal proceeding, unless with the leave of the Court and on such terms as the Court imposes.

(3.) This section shall not affect the power of any secured creditor to realize or otherwise deal with his security.

Second
bankruptcy.

E.B.A., s. 39.
N.S.W., s. 10.

61.—(1.) In the event of a second or subsequent sequestration order being made against an undischarged bankrupt, any property acquired by him since the making of the former sequestration order which at the date when the subsequent petition was presented had not been distributed amongst the creditors in the last preceding bankruptcy, shall (subject to any disposition thereof made by the official receiver or trustee in that bankruptcy without knowledge of the presentation of the subsequent petition, and subject to any order made under paragraph (c) of sub-section (11.) of section sixty-nine of

this Act, and subject to the provisions of section ninety-eight of this Act) vest in the trustee in the subsequent bankruptcy, but any unsatisfied balance of the debts provable under the last preceding bankruptcy may be proved in the subsequent bankruptcy by the trustee in the last preceding bankruptcy.

(2.) Where the trustee in any bankruptcy receives notice of a subsequent petition in bankruptcy against the bankrupt, he shall hold any property then in his possession which has been acquired by the bankrupt since the making of the sequestration order until the subsequent petition has been disposed of, and, if on the subsequent petition a sequestration order is made, he shall transfer all such property or the proceeds thereof (after deducting his costs and expenses) to the trustee in the subsequent bankruptcy.

62. If it is shown to be necessary for the protection of the estate, the Court may, at any time after the presentation of a petition, and before sequestration—

- (a) appoint an official receiver to be interim receiver of the property of the debtor, or of any part thereof; and
- (b) direct the official receiver to take immediate possession thereof and to perform such duties in relation thereto as it thinks expedient or as are prescribed.

63.—(1.) The Court may at any time after the presentation of a petition, upon such conditions as it thinks fit, discharge any order made against the property or person of the debtor under any Act or State Act dealing with the imprisonment of fraudulent debtors and stay any action, suit, execution, or other legal process against the property or person of the debtor, and discharge him out of custody, and any Court in which civil proceedings are pending against a debtor may, on proof that a petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it thinks just.

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

(3.) Every action or proceeding at law or in equity commenced by any person, against whom a sequestration order is afterwards made, shall, upon the sequestration order being made, be stayed until the official receiver or trustee makes election to prosecute or discontinue it, and the official receiver or trustee shall be bound to make such election within four weeks after notice to that effect is served upon him by any defendant or party in the action or proceeding, or otherwise shall be deemed to have abandoned it:

Provided that any bankrupt may continue, in his own name and for his own benefit, any action or proceedings commenced by him previous to his bankruptcy for any personal injury or wrong done to himself or to any member of his family.

Power to
appoint interim
receiver.

E.B.A., s. 8.
W.A., 1892, s. 10.
Tas., 1870, s. 12.

Stay of
legal
proceedings
against or by
debtor.

Cf. E.B.A., s. 9.
N.S.W., s. 10
(5)-(7).
Q., ss. 77, 88.
S.A., s. 221.
W.A., 1892,
ss. 10, 11.
Tas., s. 12.

Power to
appoint special
manager.

E.B.A., s. 10.
N.S.W., 1898, s.
13.
W.A., 1892, s.
12.

64 —(1.) At any time after sequestration, the official receiver of a bankrupt's estate may, on the application of any creditor, and if satisfied that the nature of the bankrupt's estate or business or the interests of the creditors generally require it, appoint a special manager of the estate to act until a trustee is appointed, or so long as the creditors by resolution require or as is prescribed, and with such powers as are intrusted to him by the official receiver or as are prescribed.

(2.) The special manager shall give the prescribed security and shall account in the prescribed manner.

(3.) The special manager shall receive such remuneration as the creditors by resolution determine, or in default of any such resolution, as is prescribed. *the official receiver fixes from time to time subject to the approval of the Court or the Registrar*

65. Notice of every sequestration order, stating the name, address, and description of the debtor, the date of the order, the Court by which the order is made and the date of the petition, shall be published in the *Gazette* and in such other manner as is prescribed and shall be lodged in the office of the Registrar of Titles, or Registrar-General or other proper officer of each State and in such other places as are prescribed.

Division 3.—Proceedings Consequent on Sequestration Order.

66.—(1.) Where a sequestration order is made against a debtor, he shall make out and file with the Registrar, and furnish to the official receiver a copy of a statement of his affairs in the prescribed form, verified by affidavit, and showing—

- (a) the particulars of his assets, debts, and liabilities, and losses, (if any);
- (b) the causes of his bankruptcy;
- (c) the names, residences, and occupations of his creditors and debtors;
- (d) the securities held by his creditors respectively, with the dates when they were given; and
- (e) such other information as is prescribed or as the official receiver requires.

(2.) The statement shall be filed within the following times namely:—

- (a) If the order is made on the petition of the debtor, within three days from the date of the order;
- (b) If the order is made on the petition of a creditor, within seven days from the date of the order:

Provided that the Registrar may, in either case, for special reasons, extend the time.

(3.) Any person stating in writing that he is a creditor of the bankrupt may, without fee, and any other person may, on payment of the prescribed fee, personally or by his agent, inspect the statement at all reasonable times, and make a copy thereof or extract therefrom.

*Amended by
1927 No. 3.*

Publication
of sequestration
order.

E.B.A., s. 11.
Vic., s. 38.
Q., s. 70.
W.A., s. 13.
Tas., s. 9.

Debtor's
statement of
affairs.

E.B.A., s. 14.
N.S.W., s. 14.
Vic., ss. 109,
215.
Q., ss. 69–122.
S.A., ss. 100,
102.
W.A., s. 15.
Tas., s. 18.

(4.) Any person who untruthfully states that he is a creditor or the agent of a creditor of the bankrupt and is allowed, by virtue of that statement, to inspect the statement filed pursuant to this section without payment of the prescribed fee, shall be guilty of an offence.

Penalty : Five pounds.

67.—(1.) Within fourteen days after sequestration unless the Court or the Registrar for any special reason thinks fit to fix a later date, a general meeting of the bankrupt's creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose, amongst other things, of considering generally as to the mode of dealing with his property.

First and other meetings of creditors.

E.B.A., s. 13.
N.S.W., ss. 15, 16.
Vic., ss. 72, 131.
S.A., ss. 101, 120.
W.A., s. 14.
Q., ss. 92, 93.
Tas., ss. 13-15.

First Schedule.

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

Division 4.—Public Examination of Bankrupt.

68.—(1.) Where the Court makes a sequestration order, it may, within such time thereafter as it directs, hold a sitting, on a day to be appointed by the Court, for the examination of the bankrupt, and the bankrupt shall attend thereat, and shall be examined as to his conduct, trade dealings, property and affairs.

Public examination of bankrupt after sequestration order.

E.B.A., s. 15.
N.S.W., s. 18.
Vic., ss. 221, 222.
S.A., s. 88.
W.A., s. 14.

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

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

(4.) Any creditor whose proof has been admitted, or his representative authorized in writing, may question the bankrupt.

(5.) The official receiver may take part in the examination of the bankrupt, and for that purpose, if specially authorized by the Registrar, may employ a barrister solicitor or attorney.

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

(7.) The Court may put or allow such questions to be put to the bankrupt as it thinks fit.

(8.) The bankrupt shall be examined upon oath, and he shall answer all such questions as the Court puts or allows to be put to him.

(9.) Such notes of the examination as the Court thinks proper shall be taken down in writing, and, after being read over either to or by the bankrupt and signed by him, may be used in evidence against him, and shall be open, at all reasonable times, to the inspection of the official receiver, the trustee, the bankrupt or any creditor of the bankrupt, or the agent of any such person, without fee, and to the inspection of any other person, on payment of the prescribed fee.

(10.) Any person who untruthfully states that he is the official receiver, the trustee, the bankrupt or a creditor of the bankrupt or the agent of any such person and is allowed, by virtue of that

statement, to inspect the notes of the examination without payment of the prescribed fee, shall be guilty of an offence.

Penalty: Five pounds.

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

Further public
examination of
bankrupt.
S.A., ss. 171,
172, 174.

69.—(1.) If, within the prescribed time after sequestration, the bankrupt has not obtained a discharge, the Court may, on the application of the official receiver or trustee, hold a public sitting on a day to be appointed by the Court for the examination (if the debtor has not previously been examined) or (if he has previously been examined) the further examination of the bankrupt as to his conduct, trade dealings, property and affairs.

(2.) Notice of the day appointed for the examination shall be given by the official receiver to the creditors.

(3.) The Court shall make an order directing the bankrupt to attend the Court at the appointed time, and, if the bankrupt, after being served with the order, fails without reasonable excuse to attend, he shall be guilty of contempt of Court.

(4.) The official receiver or trustee may take part in the examination, and the official receiver, for that purpose, if specially authorized by the Registrar, may employ a barrister, solicitor, or attorney.

(5.) The trustee shall report in writing to the Court on the realization and position of the bankrupt's affairs.

(6.) The reports shall be read in the Court, and any creditor of the bankrupt may question him concerning his affairs and the realization of his estate.

(7.) The Court may put or allow such questions to be put to the bankrupt as it thinks fit.

(8.) The bankrupt shall be examined upon oath, and shall answer all such questions as the Court puts or allows to be put to him.

(9.) Such notes of the examination as the Court thinks proper shall be taken down in writing, and, after being read over either to or by the bankrupt and signed by him, may be used in evidence against him, and shall be open, at all reasonable times, to the inspection of the official receiver, the trustee, the bankrupt, or any creditor of the bankrupt, or the agent of any such person, without fee, and to the inspection of any other person on payment of the prescribed fee.

(10.) Any person who untruthfully states that he is the official receiver, the trustee, the bankrupt, or a creditor of the bankrupt, or the agent of any such person, and is allowed, by virtue of that statement, to inspect the notes of the examination without payment of the prescribed fee, shall be guilty of an offence.

Penalty: Five pounds.

(11.) When the Court is of opinion that the affairs of the bankrupt have been sufficiently investigated, it may—

- (a) order the bankrupt to apply forthwith or within a time to be stated for an order of discharge ; or
- (b) determine when and subject to what conditions the discharge shall be granted, and, for this purpose, exercise the same powers and jurisdiction as in the case of an application therefor by the bankrupt ; or
- (c) make an order fixing a date after which the trustee's right to any property acquired by the bankrupt in the course of trade or as earnings shall cease.

70. Unless the Court otherwise directs, a bankrupt shall not be excused from answering any question put to him on any examination by reason only that the answer thereto may expose him to punishment.

Bankrupt to answer questions.
Cf. Vic., s. 226.
S.A., s. 310.

Division 5.—Composition or Scheme of Arrangement.

71.—(1.) Where a bankrupt intends to make a proposal—

- (a) for a composition in satisfaction of his debts, or
- (b) for a scheme of arrangement of his affairs,

he shall lodge with the trustee a proposal in writing, signed by him, embodying the terms of the proposed composition or scheme, and setting out particulars of any sureties or securities proposed.

Composition or scheme of arrangement.
E.B.A., ss. 16, 21.
N.S.W., s. 19.
Vic., ss. 248, 249 and 1897, s. 73.
Q., s. 134.
S.A., ss. 234–241.
W.A., ss. 17, 21.

(2.) The trustee shall hold a meeting of creditors, and shall send to each creditor, before the meeting, a copy of the bankrupt's proposal with a report thereon ; and if a special resolution is passed thereat accepting the proposal, it shall be deemed to be duly accepted by the creditors.

(3.) The bankrupt may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the majority of the creditors, likely to benefit the creditors generally.

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

(5.) The bankrupt or the trustee 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.) If, in the opinion of the Court it is desirable that the bankrupt should be publicly examined in accordance with this Act, the Court shall adjourn the hearing of the application until after the bankrupt has been publicly examined, and any creditor who has proved may, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal, be heard by the Court in opposition to the application.

(7.) The Court shall, before approving the proposal, hear a report of the trustee as to its terms, and as to the conduct of the bankrupt and any objections made by or on behalf of any creditor.

(8.) If the Court is of opinion that the terms of the proposal are unreasonable, or unlikely to benefit the creditors generally, it shall refuse to approve the proposal, and if it is of opinion that an offence against this Act has been committed by the bankrupt, it may 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 bankrupt's discharge, the Court shall refuse to approve the proposal, unless it provides reasonable security for payment of not less than Five shillings 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 bankrupt 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 extent and under such conditions as the Court expressly orders.

(13.) A certificate of the Registrar 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 contempt of Court.

(15.) If—

(a) default is made in payment of any instalment due in pursuance of the composition or scheme, or

(b) 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 to the bankrupt, or that the approval of the Court was obtained by fraud,

the Court may, if it thinks fit, on application by the trustee, or by any creditor, annul the composition or scheme, but without prejudice to the validity of any sale, disposition, or payment duly made, or thing duly done, under or in pursuance of the composition or scheme.

(16.) The Court shall not approve any composition or scheme which does not provide for the payment, in priority to other debts, of all debts required by this Act to be so paid in the distribution of the property of a bankrupt.

(17.) 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.

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

72. Parts V., VI., and VIII. of this Act shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto.

Incorporation.
E.B.A., s. 16
(18).
N.S.W., s. 19
(12).

73. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor who has not assented to it so far as regards a debt or liability from which, under the provisions of this Act, the bankrupt would not be released by an order of discharge.

Effect of
composition or
scheme.
E.B.A., s. 17.
N.S.W., s. 20.
W.A., s. 18.

Division 6.—Committee of Inspection.

74.—(1.) The creditors qualified to vote may at their first or any subsequent meeting by resolution appoint from among the creditors, or the holders of general proxies or general powers of attorney from the creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property.

Committee of
inspection.
E.B.A., s. 20.
N.S.W., s. 26.
Vic., ss. 72,
90 (1), (3)—(10).
Q., ss. 92, 101.
Tas., ss. 13, 77.

(2.) No creditor or person appointed a member of the committee of inspection shall be qualified to act until he has proved his debt or the debt of his principal (as the case may be) and the proof has been admitted.

(3.) The committee of inspection shall consist of not less than three nor more than five persons.

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

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

(6.) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the trustee.

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

(8.) Any member of the committee may be removed by resolution at any meeting of creditors specially called for that purpose, and of which seven days' notice has been given.

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

(10.) The continuing members of the committee, if there are not less than three, may act, notwithstanding any vacancy in their body; and whenever the number of members of the committee is less than five, the creditors may increase that number to five.

Cf. E.B. (r) 337.

(11.) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorized or required to be done or given by the committee may, on the application of the trustee, be done or given by the Court.

Committee of inspection not to derive profit out of estate.
Vic., ss. 90 (2), 210, 211.

75.—(1.) No member of a committee of inspection shall, while he is a member of the committee, except with the express sanction of the Court, directly or indirectly by himself or his wife, child or parent or any employer partner clerk agent or servant, be entitled to derive any profit or advantage from any transaction arising out of the bankruptcy.

(2.) If any profit or payment has been made contrary to the provisions of this section, the Court shall disallow it or direct the person contravening the provisions of this section to pay it into Court.

PART V.—CONTROL OVER PERSON AND PROPERTY OF DEBTOR.

Duties of bankrupt as to discovery and realization of property.
E.B.A., s. 22.
N.S.W., s. 27.
Vic., s. 215.
Q., s. 122.
S.A., s. 102.
W.A., s. 22.
Tas., s. 18.

76.—(1.) Every bankrupt shall, unless prevented by sickness or other sufficient cause—

- (a) attend the first meeting of his creditors, and submit to such examination and give such information as the meeting requires;
- (b) forthwith deliver to the official receiver or trustee all the books, papers, and writings in his possession relating to his estate;
- (c) 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 examinations 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 is reasonably required by the official receiver, special manager, or trustee, or as is prescribed, or directed by the Court by any order made in reference to any particular case, or made on any application by the official

receiver, special manager, trustee, or any creditor or person interested;

- (d) aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds amongst his creditors.

(2.) If a bankrupt 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 duly authorized to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of contempt of Court.

77.—(1.) The Court may, by warrant addressed to any constable or prescribed officer, cause a debtor to be arrested, and any books, papers, documents, 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 orders, under any of the following circumstances:—

Arrest of debtor.
E.B.A., s. 23.
N.S.W., s. 23.
Vic., s. 216.
Q., s. 72.
S.A., s. 79.
W.A., s. 23.
Tas., s. 80.

- (a) If, after a bankruptcy notice has been issued under this Act, or after presentation of a petition by or against him, it appears to the Court that there is reason for believing that he has absconded or is about to abscond with a view to avoiding payment of the debt or service of or appearance to a bankruptcy petition, or examination in respect of his affairs, or otherwise with a view to avoiding, delaying, or embarrassing proceedings in bankruptcy against him:
- (b) If, after presentation of a petition by or against him, it appears to the Court that there is reason for believing that he is about to remove any of his goods with a view to preventing or delaying possession being taken of them by the official receiver or trustee, or that there is reason for believing that he has concealed or destroyed, or is about to conceal or destroy, any of his goods, or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy:
- (c) If, after service of a petition on him, or after sequestration 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 is served with the 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 preferences or fraudulent preferences.

Re-direction of
bankrupt's
letters.

E.B.A., s. 24.
N.S.W., s. 29.
Q., s. 121.
S.A., s. 118.
W.A., s. 24.
Tas., s. 79.

78. The Court, on the application of the official receiver or trustee, may from time to time order that postal articles and telegrams addressed to a bankrupt at any place or places mentioned in the order shall for such time, not exceeding six months, as the Court thinks fit, be re-directed, sent or delivered by the Postmaster-General to the official receiver, or the trustee, or otherwise as the Court directs.

Penalty for
omitting to
notify change
of address.

79. Every bankrupt shall during the continuance of his bankruptcy notify the official receiver or trustee forthwith by registered letter of any change in his address, and shall inform the official receiver or trustee, as often as is required by him or as is prescribed, of the nature of the employment, occupation, business, or profession in which he is engaged.

Penalty: Fifty pounds, or six months' imprisonment.

Discovery of
bankrupt's
property.

E.B.A., s. 25.
N.S.W., ss. 30,
31.
Vic., s. 222.
Q., ss. 114-117.
S.A., ss. 113-117.
W.A., s. 25.
Tas., ss. 89-91.

80.—(1.) The Court may, on the application of the trustee, or of any creditor who has proved (on such terms as to costs as the Court thinks fit to impose) at any time order—

- (a) the bankrupt or his wife, or, where the bankrupt is a married woman, her husband; or
- (b) any person known or suspected to have in his possession any of the estate or effects belonging to the bankrupt, or supposed to be indebted to the bankrupt, or to be able to give information respecting the bankrupt, his dealings or property,

to attend before the Court, or before any other Court having jurisdiction in bankruptcy, or before any stipendiary or police magistrate, and to give evidence and produce any documents in his custody or power relating to the bankrupt, his trade dealings, property, or affairs.

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

(3.) The Court, magistrate, or official receiver, or trustee, or any creditor who has proved, may examine on oath, either *visâ voce* or by written interrogatories, or as prescribed, any person so ordered to attend, concerning the bankrupt, his trade dealings, property, or affairs.

(4.) Any person so ordered to attend shall, on his examination, be entitled to be represented by counsel who shall be entitled to re-examine that person after his examination in pursuance of the last preceding sub-section.

(5.) If any person on examination before the Court or magistrate admits that he is indebted to the bankrupt, the Court or magistrate may, on the application of the trustee, or any creditor who has proved, order him to pay to the trustee, at such time and in such manner as the Court or magistrate thinks fit, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court or magistrate thinks fit.

(6.) If the bankrupt or any other person on examination before the Court or magistrate admits that he has in his possession any property of the bankrupt, the Court or magistrate may, on the application of the trustee, or any creditor who has proved, order him to deliver to the trustee the property, or any part thereof, at such time and in such manner, and on such terms as the Court or magistrate thinks just.

(7.) Such notes of the examination as the Court or magistrate thinks proper shall be taken down in writing, and may, after being read over either to or by the person examined and signed by him, be used in evidence against him in any proceeding under this Act, and shall be open, at all reasonable times, to the inspection of the official receiver, the trustee, the bankrupt, or any creditor of the bankrupt, or the agent of any such person, without fee, and to the inspection of any other person, on payment of the prescribed fee.

(8.) Any person who untruthfully states that he is the official receiver, the trustee, the bankrupt, or a creditor of the bankrupt, or the agent of any such person, and is allowed, by virtue of that statement, to inspect the notes of the examination without payment of the prescribed fee, shall be guilty of an offence.

Penalty: Five pounds.

(9.) If any person at any examination, being thereto required and not having any lawful excuse, refuses to surrender any book, document, or writing relating to the estate, or refuses to be sworn, or to answer any lawful question touching any of the matters aforesaid, or to sign the notes of his examination, the Court or magistrate may commit him to prison, there to remain, until he has done the thing so required of him, or is discharged by the Court or magistrate.

Committal for refusing to obey or for perjury.
N.S.W., s. 31.

(10.) If any person while under examination is guilty of prevarication or evasion, the Court or magistrate may commit him to prison for any term not exceeding fourteen days.

PART VI.—ADMINISTRATION OF PROPERTY.

Division 1.—Proof of Debts.

81.—(1.) All debts and liabilities, present or future, certain or contingent, to which the bankrupt is subject at the date of the sequestration order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the sequestration order, shall be deemed to be debts provable in bankruptcy:

Provided however that 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.

Description of debts provable in bankruptcy.
E.B.A., s. 30.
N.S.W., s. 45.
Vic., s. 187.
Q., ss. 140-1.
S.A., ss. 195-198, 211-213.
W.A., s. 35.
Tas., s. 30.

(2.) The trustee shall make an estimate of the value of any debt or liability so provable, which by reason of its being subject to any contingency, or for any other reason, does not bear a certain value.

(3.) Any person aggrieved by any estimate so made by the trustee may appeal to the Court.

(4.) If the Court finds that the value of the debt or liability cannot be fairly estimated, the debt or liability shall be deemed not to be a debt provable in bankruptcy.

(5.) If the Court finds that the value of the debt or liability can be fairly estimated, the Court may direct the value to be assessed, before the Court itself without a jury, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

(6.) "Liability" for the purposes of this section includes—

- (a) any compensation for work or labour done;
- (b) 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 or not the breach occurs, or is likely to occur or is capable of occurring, before the discharge of the bankrupt; and
- (c) generally 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—
 - (i) as respects amount—fixed or unliquidated;
 - (ii) as respects time—present or future, certain or dependent on any contingency; or
 - (iii) as to mode of valuation—capable of being ascertained by fixed rules, or as matter of opinion.

Mutual credit
and set-off.

E.B.A., s. 31.
N.S.W., s. 46.
Vic., s. 193.
S.A., s. 204.
W.A., s. 36.
Q., s. 150.
Tas., s. 38.

82. Where there have been mutual credits, mutual debts, or other mutual dealings between a bankrupt and any person proving or claiming to prove a debt in the bankruptcy, 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:

Provided that no person shall 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 or at the time of receiving credit from the debtor, notice of an available act of bankruptcy.

Rules as to
proof of debts.
Second Schedule.
E.B.A., s. 32.
N.S.W., s. 47.
W.A., s. 37.

83. 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 to be observed shall, subject to the regulations, be the rules set out in the Second Schedule to this Act.

*Sub-section 1
Amended by
1927 No. 3.*

Division 2.—Priority of Debts.

84.—(1.) Subject to the next succeeding sub-section, sections ninety-three, one hundred and twelve and one hundred and twenty-two of this Act the trustee shall apply the estate of the bankrupt in the following order of priority—

- (a) Firstly, where a deed of assignment under Part XI. of this Act or where a deed of arrangement entered into under Part XII. of this Act is avoided by reason of the bankruptcy, in payment of the expenses properly incurred by the trustee under the deed in the performance of any of the duties imposed on him by this Act; 4 and 5 Geo. V.,
c. 47, s. 21.
- (b) Secondly, in payment of the remuneration of the trustee;
- (c) Thirdly, in payment of the taxed costs of the petitioning creditor incurred in proceedings in the sequestration of the estate;
- (d) Fourthly, in the case of the estate of a deceased debtor, in payment of the proper funeral and testamentary expenses incurred by the legal personal representative of the deceased debtor; E.B.A., s. 130
(6).
Vic., s. 55 (3).
W.A., s. 114 (6).
- (e) Fifthly, in payment of all wages or salary of any clerk, servant, labourer or workman (not being the wife, husband, child, parent, brother or sister of the bankrupt), not exceeding Fifty pounds, whether payable per time or piece work, in respect of services rendered to the bankrupt within four months before the date of the sequestration order; E.B.A., s. 33.
N.S.W., s. 48.
Vic., s. 188.
Q., s. 143.
S.A., ss. 201-2.
W.A., s. 38.
Tas., s. 31.
- (f) Sixthly, in payment of all amounts, not exceeding in any individual case Two hundred pounds, due in respect of compensation under any Act or State Act or law of a Territory relating to the payment of compensation where in any employment personal injury by accident arising out of, and in the course of, the employment, is caused to any workman, the liability wherefor accrued before the date of the order of sequestration:

Provided that where the employer has entered into a contract with insurers in respect of any liability under any such Act or State Act or law of a Territory to any workman this paragraph shall not apply.

- (g) Seventhly, in payment, to an apprentice or artied clerk to the bankrupt, of such sum as is payable under section eighty-seven of this Act;
- (h) Eighthly, in payment of all municipal or other local rates due from the bankrupt at the date of the order of sequestration and having become due and payable within twelve months next preceding that date; and all assessed land tax and income tax, assessed under any Act or State Act prior to the date of the order of sequestration and not exceeding in the whole one year's assessment; and in repayment of any advance made to the bankrupt, or in payment of any amount owing by the bankrupt for goods

supplied to him, under any Act or State Act or law of a Territory relating to or providing for the improvement, development or settlement of land, or the aid, development or encouragement of mining :

Provided that, if the bankrupt has given security for the payment or repayment of the amount due, this paragraph shall only apply to the balance due after deducting the net amount realized from the security ; and

- (i) Ninthly, in payment to the landlord of the bankrupt of so much rent, for a period not exceeding three months, as was due and payable at the date of the sequestration order, and in respect of which there were, at the date of the sequestration order, goods on the premises, in respect of which rent was payable, liable, but for sequestration, to distress for rent :

Provided that no payment shall be made under this paragraph in excess of the value of the goods so distrainable, such value to be fixed by the Court in a summary manner in the event of the trustee and landlord not agreeing as to the amount.

(2.) Where assets in any estate have been recovered by means of an indemnity for costs of litigation given by certain creditors, the Court may make such order as it deems just with respect to the distribution of those assets with a view to giving the indemnifying creditors an advantage over others in consideration of the risk run by them in giving the indemnity.

(3.) The debts in each of the classes specified in sub-section (1.) of this section 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.

(4.) Subject to sub-section (1.) of this section 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.

(5.) Where a debt has been proved which includes interest, or any pecuniary consideration in lieu of interest, or any claim founded on a claim for interest, the interest consideration or claim shall, for the purposes of dividend, be calculated at a rate not exceeding eight pounds 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.

E.B.A., s. 35.
Vic., s. 178.
Q., s. 145.
Cl. Tas., s. 33.

Partnership
debts.

E.B.A., s. 33 (6).
W.A., s. 38 (3).

Interest on
debts.

E.B.A., s. 66 (1).
Vic., s. 191.
S.A., s. 233.
W.A., s. 68 (4).

85.—(1.) Any money or other estate of the wife of a bankrupt lent or intrusted by her to him shall be treated as assets of his estate, and the wife shall not be entitled to claim any dividend as a creditor in respect of any such money or other estate until all claims of his other creditors for valuable consideration in money or money's worth have been satisfied.

Postponement
of husband's
and wife's
claims.

E.B.A., s. 36.

(2.) Where the bankrupt is a married woman her husband shall not be entitled to claim any dividend as a creditor in respect of any money or other estate lent or intrusted by him to her until all claims of her other creditors or valuable consideration in money or money's worth have been satisfied.

86. Where money has been advanced, by way of loan, to a bankrupt, who was engaged or about to engage in any business, on a contract with the bankrupt that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, or, where the bankrupt is the buyer of a goodwill in consideration of a share of the profits of the business, the lender of the loan shall not be entitled to claim any dividend as a creditor in respect of his loan, and the seller of the goodwill shall not be entitled to claim any dividend in respect of the share of the profits contracted for, until the claims of the other creditors of the bankrupt (other than the wife or husband of the bankrupt) for valuable consideration in money or money's worth have been satisfied.

Postponement
of claims of
lender of money
at rate of
interest varying
with profits of
business.

87.—(1.) Where at the time of the presentation of the petition any person is apprenticed or is an articled clerk to the bankrupt, the sequestration order shall, if the apprentice or clerk or any person acting on his behalf 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 application by or on behalf of the apprentice or clerk, pay out of the bankrupt's property, to or for the use of the apprentice or clerk, such sum as the trustee, subject to an appeal to the Court, thinks reasonable, regard being had to the amount paid by or on behalf of the apprentice or clerk and to the time during which he has served with the bankrupt under the indenture or articles and to the other circumstances of the case.

Apprenticeship
claims.

E.B.A., s. 34.

N.S.W., s. 49.

Vic., s. 189.

S.A., s. 203.

W.A., s. 39.

Q., s. 144.

Tas., s. 32.

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

88.—(1.) After sequestration no distress for rent shall be levied or proceeded with as against the estate of the bankrupt.

Rent.

E.B.A., s. 35.

Vic., s. 178.

S.A., s. 200.

W.A., s. 40.

(2.) In this section "sequestration" shall be deemed to include an order under this Act for the administration of the estate of a deceased person and a deed of assignment under Part XI. and a deed of arrangement under Part XII. respectively of this Act.

< 88A added by
1927 No 31

Order of
payment.

E.B.A., s. 33 (7).
Vic., s. 138.
W.A., s. 38 (5).
Tas., s. 31.

Relation back
of trustee's
title.

E.B.A., s. 37.
N.S.W., s. 51.
Q., s. 74.
S.A., s. 127.
Tas., s. 10.
W.A., s. 41.

Description of
bankrupt's
property
divisible
amongst
creditors.

E.B.A., ss. 38,
43.
N.S.W., s. 52.
Vic., s. 141.
S.A., ss.
156-170.
W.A., s. 42.
Q., s. 87.
Tas., s. 14.
N.S.W., 1902,
No. 49, ss. 4-6.
Vic., No. 2631,
s. 476.
S.A., No. 417,
1887, ss. 3, 4.
W.A., 1905,
No. 12, s. 2.

89. Subject to the provisions of this Act, all debts proved in the bankruptcy shall be paid *pari passu*.

Division 3.—Property available for Payment of Debts.

90. The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a sequestration order is made against him, or, if the bankrupt is proved to have committed more than one act of bankruptcy, 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 six months next preceding the date of the presentation of the bankruptcy petition :

Provided that no bankruptcy petition or sequestration order shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

91. The property of the bankrupt divisible amongst his creditors, and in this Act referred to as "the property of the bankrupt", shall not include—

- (a) property held by the bankrupt on trust for any other person ;
- (b) policies of life assurance or endowment, except to the extent of a charge on the policies in respect of the amount of the premiums paid on the policies during the two years next preceding the date of the order of sequestration ;
- (c) policies for annuities, the payments made on behalf of which have extended for six years, or which were purchased at least six years prior to the commencement of the annuity, to the extent to which they do not provide for payment of an annuity of more than Two hundred and eight pounds in the aggregate ;
- (d) the tools implements and instruments of trade of the bankrupt not exceeding in the whole Fifty pounds in value, and the necessary wearing apparel, beds, bedsteads, and bedding of himself, his wife, and children, and any sewing machine used for domestic purposes by the bankrupt or his wife or children, and such other household property as the creditors by resolution determine ;
- (e) goods hired under a valid contract for letting and hiring, chattels in respect of which a bill of sale has been filed or registered under any Act or State Act or law of a Territory, stock, crops, and wool in respect of which mortgages or liens have been registered under any Act or State Act or law of a Territory and book debts in respect of which an assignment has been registered under any Act or State Act or law of a Territory ; and
- (f) subject to section one hundred and two of this Act, the separate property of a married woman the income of which is subject to a restraint on anticipation ;

But, subject to this Act, it shall include—

- (i) all property which belongs to or is vested in the bankrupt at the commencement of bankruptcy, or is acquired by or devolves on him before his discharge;
- (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 the 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, with 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 paragraph.

< 91A added by
1927 No. 3

Division 4.—Effect of Bankruptcy on Antecedent Transactions.

92.—(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 unless he has completed the execution or attachment before sequestration and before notice of the presentation of any petition by or against the debtor or before notice of the commission of any available act of bankruptcy by the debtor.

Restriction of rights of creditor under execution or attachment.

E.B.A., s. 40.
N.S.W., s. 53.
W.A., ss. 43, 44.

(2.) For the purposes of this Act—

- (a) an execution against goods is completed by seizure and sale;
- (b) an execution against land is completed by ~~seizure and~~ sale; or, in the case of an equitable interest, by the appointment of a receiver; and
- (c) an attachment of a debt is completed by receipt of the debt.

Amended by
1927 No. 3

(Cf. Vic., s. 174.)

(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 property in good faith under a sale by the sheriff shall in all cases acquire a good title to it against the trustee in bankruptcy.

E.B.A., s. 40 (3).

93.—(1.) Where any goods of a debtor are taken in execution, and before their sale, 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 sequestration order has been made against the debtor, the sheriff shall, on request in writing, deliver the goods and any money seized or received in part satisfaction of the execution to the trustee, but the costs of the execution up to the date of the service

Duties of sheriff as to goods taken in execution.

E.B.A., s. 41.
N.S.W., s. 54.
Q., s. 102.
S.A., s. 164.
W.A., s. 44.
Tas., s. 81.

(Cf. Vic. s. 173.)

of the notice, and the taxed costs incurred by any creditor in the action or proceeding under which the execution issued or such costs as are fixed or allowed by the Court before which the action or proceeding was tried or heard (not exceeding Fifty pounds), shall be a first charge on the goods or money so delivered, and the trustee may sell the goods or an adequate part thereof, for the purpose of satisfying the charge.

Duties of
sheriff as to
proceeds of sale.

(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—

(a) notice is served on him of a petition having been presented by or against the debtor, and

(b) a sequestration 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 trustee, who shall be entitled to retain it as against the execution creditor:

Provided that the costs of the execution up to the date of the service of the notice, and the taxed costs incurred by any creditor in the action or proceeding under which the execution issued or such costs as are fixed or allowed by the Court before which the action or proceeding was tried or heard (not exceeding Fifty pounds) shall be a first charge on the balance paid to the trustee.

Avoidance of
voluntary
and marriage
settlements.
E.B.A., s. 42.
N.S.W., s. 55.
Vic., s. 143.
S.A., ss. 158-160.
W.A., s. 45.
Q., s. 106.
Tas., s. 84.
(Cf. Bd. T. R.,
par. 198.)

94.—(1.) Any settlement of property not being—

(a) a settlement made before and in consideration of marriage, or made in favour of a purchaser or encumbrancer in good faith and for valuable consideration, or

(b) 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,

(i) if the settlor becomes bankrupt within two years after the date of the settlement—be void against the trustee in the bankruptcy; and

(ii) if the settlor becomes bankrupt at any subsequent time within five 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 settlor's interest in the property passed to the trustee of the settlement or to the donee thereunder on its execution.

(2.) Any covenant or contract made in consideration of marriage either— Contracts for future settlements.

- (a) for the future payment to the settlor's wife or husband or children, of any money, or
- (b) for the future settlement on or for the settlor's wife or husband or children of any property,

wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of the settlor's wife or husband, shall, on the settlor becoming bankrupt before the covenant or contract has been executed, be void as against the trustee in the bankruptcy, except so far as it enables the persons entitled under the covenant or contract to claim for dividend in the settlor's bankruptcy under the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth have been satisfied.

(3.) Any payment of money (not being a payment of premiums on a policy of life assurance or endowment or for an annuity) or transfer of property made by the settlor in pursuance of any such covenant or contract as is mentioned in the last preceding sub-section, shall be void as against the trustee in the settlor's bankruptcy, unless the persons to whom the payment or transfer was made can prove, either—

- (a) that the payment or transfer was made more than two years before the date of the commencement of the bankruptcy, or
- (b) that at the date of the payment or transfer the settlor was able to pay all his debts without the aid of the money so paid or the property so transferred, or
- (c) that the payment or transfer was made in pursuance of a covenant or contract to pay or transfer money or property expected to come to the settlor from or on the death of a particular person named in the covenant or contract, and was made within three months after the money or property came into the possession or under the control of the settlor ;

but, if the payment or transfer is so declared void, the persons to whom it was made shall be entitled to claim for dividend under the covenant or contract as if it had not been executed at the commencement of the bankruptcy.

(4.) Nothing in this section shall affect or prejudice the title or interest of any person who has *bonâ fide* and for value purchased or acquired, from the persons entitled to the benefit of the settlement, covenant or contract, or from the trustee of the settlement the money or property the subject thereof, or any interest in such money or property.

(5.) "Settlement" for the purposes of this section includes any conveyance or transfer of property.

Avoidance of preferences.

E.B.A., s. 44.
N.S.W., s. 56.
Vic., s. 151.
S.A., s. 161.
W.A., s. 46.
Q., ss. 107-9.
Tas., s. 85.

95.—(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 favour of any creditor or of any person in trust for any creditor, having the effect of giving that creditor, or any surety or guarantor for the debt due to that creditor, a preference over the other creditors, shall, if the debtor becomes bankrupt on a bankruptcy petition presented within six months thereafter be void as against the trustee in bankruptcy.

Q. 1874, s. 9.

(2.) Nothing in this section shall affect—

- (a) the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt ; or
- (b) the rights of a purchaser, payee or encumbrancer in good faith and for valuable consideration and in the ordinary course of business.

(3.) The burden of proving that the provisions of the last preceding sub-section have been complied with shall lie upon the person who relies upon their having been complied with.

(4.) For the purposes of this section a creditor shall not be deemed to be a purchaser, payee or encumbrancer in good faith if the conveyance, transfer, charge, payment or obligation were made or incurred under such circumstances as to lead to the inference that the creditor knew or had reason to suspect that the debtor was unable to pay his debts as they became due, and that the effect of the conveyance, transfer, charge, payment or obligation would be to give him a preference over the other creditors.

Protection of *bona fide* transactions without notice.

E.B.A., s. 45.
N.S.W., s. 57.
S.A., s. 168.
W.A., s. 47.
Q., ss. 112, 113.
Tas., ss. 87, 88.

96.—(1.) 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 ; or
- (e) any transaction to the extent of any present advance *bonâ fide* made by any existing creditor,

provided that the transaction took place before the date of sequestration, and that the person (other than the debtor) with whom it took place, had not, at the time of the transaction, notice of any available act of bankruptcy committed by the debtor or the presentation of a petition, and that the transaction was in good faith and in the ordinary course of business.

(2.) The burden of proving that the provisos stated in the last preceding sub-section have been complied with shall lie upon the person who relies upon their having been complied with.

(3.) In this section—

“transaction” includes payment, delivery, conveyance, transfer, assignment, contract or dealing;

“payment” includes the drawing, making, or indorsing of a bill of exchange, cheque, or promissory note.

97. Any payment of money or delivery of any security or negotiable instrument made to or by the order or direction of a debtor by his banker in good faith before the making, or without negligence on the part of the banker after the making, of the order of sequestration made against the debtor shall be valid as against the trustee.

Protection to bankers.

98.—(1.) All transactions by a bankrupt with any person dealing with him *bonâ fide* and for value, in respect of property, whether real or personal, acquired by the bankrupt after the sequestration, shall, if completed before any intervention by the trustee, be valid against the trustee, and any estate or interest in such property which by virtue of this Act is vested in the trustee shall determine and pass in such manner and to such extent as is required for giving effect to any such transaction.

Dealings with undischarged bankrupt.
E.B.A., 1914, s. 47.

For the purposes of this sub-section, the receipt of any money, security, or negotiable instrument from, or by the order or direction of, a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to, or by the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with such banker dealing with him for value.

Bankers' protection.

(2.) The lodging by the trustee of a caveat against the title of the bankrupt to deal with any estate or interest in land shall be deemed to be a sufficient intervention within the meaning of the last preceding sub-section.

(3.) After the expiration of twenty years after the date of the sequestration of the estate of a bankrupt, no claim shall be made by the trustee of the estate, to any estate or interest in any land which is part of the property of the bankrupt, and that estate or interest shall, subject to the rights (if any) of any person in possession of the land, be deemed to be vested in the bankrupt or any person claiming through or under him, as the case may be.

Limitation of claim by trustee in bankrupt estate.
Vic., s. 164.

(4.) Where a doubt arises as to the identity of any person appearing in the title to any property with any bankrupt, any intending or actual vendor, mortgagor or lessor of the property or applicant to bring land under the provisions of any Act or State Act relating to title to land, or any resuming or constructing authority under any Act or State Act may give, to the official receiver or trustee of the estate of the bankrupt as to whose identity the doubt arises, a notice, accompanied by the prescribed fee, containing particulars of the property in question and of the person whose

N.S.W., 1919, No. 6, s. 62.

96A added by 1927 No. 3.

identity is in doubt, and a statement of his intention to sell, mortgage or lease, or complete the sale, mortgage or lease, of the property or to bring the property under the provisions of any Act or State Act relating to title to land, or to pay compensation in respect of the resumption of the property.

(5.) The official receiver or trustee may, within such time after the date of the notice as is prescribed, file with the Registrar of Titles or Registrar-General or other proper officer of the Commonwealth or the State in which the property is situated, a memorandum in the prescribed form claiming the property in respect of which the notice was given.

(6.) If the official receiver or trustee does not within the prescribed time file, in accordance with the last preceding sub-section, a memorandum claiming the property in respect of which the notice was given, he shall not be entitled at any future time to assert his title thereto or make any claim in respect thereof as against the vendor, mortgagor, lessor, applicant or the resuming or constructing authority, or as against any person claiming under or through the vendor, mortgagor, lessor or applicant.

(7.) The official receiver or trustee may file with the Registrar of Titles or Registrar-General or other proper officer of the Commonwealth or the State in which the property is situated, a notice, in the prescribed form, of withdrawal of any such memorandum.

(8.) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, it shall be his duty forthwith to inform the trustee in the bankruptcy or the Attorney-General of the existence of the account, and thereafter he shall not make any payments out of the account, except under an order of the court or in accordance with instructions from the trustee, unless by the expiration of one month from the date of giving the information no order has been made by the Court and no instructions have been received from the trustee.

Division 5.—Realization of Property.

99.—(1.) The trustee shall forthwith take possession of the deeds, books and documents of the bankrupt and all other parts of his property capable of manual delivery.

(2.) The Court may, on the application of the trustee, enforce possession accordingly.

(3.) No person shall be entitled as against the trustee to withhold possession of the books of account or any papers or documents relating to the accounts or to any trade dealings of the bankrupt or to claim any lien thereon.

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

Duties of
bankers.

Possession of
property by
trustee.
E.B.A., s. 48.
N.S.W., s. 59.
Vic., ss. 154, 160.
S.A., s. 126.
W.A., s. 48.
Q., ss. 111, 129.
Tas., s. 21.

(5.) If any person has in his possession or power any moneys or securities which he is not by law entitled to retain as against the bankrupt or trustee he shall pay and deliver them to the trustee. Tas., s. 86.

(6.) If any person does not comply with the provisions of the last preceding sub-section he shall be guilty of a contempt of Court, and may, on the application of the trustee, be punished accordingly.

(7.) Where a corporation fails to comply with the requirements of sub-section (5.) of this section, such officer of the corporation as, in the opinion of the Court, is responsible for such failure shall be deemed to be guilty of contempt of court.

100.—(1.) 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, room, or receptacle of the bankrupt where he or any of his property is supposed to be. Seizure of property of bankrupt.
E.B.A., s. 49.
N.S.W., s. 60.
Vic., ss. 170-172.
S.A., s. 108.
W.A., s. 49.
Q., ss. 118, 119.
Tas., s. 92.

(2.) 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.

(3.) Any person who—

(a) knowing that property is liable to seizure as aforesaid does any act to hinder or prevent the seizure of that property; or

(b) knowing that property has been so seized, disposes of, removes, retains, conceals or receives it with intent to defeat the seizure,

shall be guilty of an indictable offence.

Penalty : Imprisonment for one year.

101. Subject to this Act, where a bankrupt is in receipt of pay, pension, salary, emoluments, profits, wages, earnings, or income, the trustee shall receive for distribution amongst the creditors so much thereof as the Court, on the application of the trustee, directs: Appropriation of portion of pay or salary to creditors.
E.B.A., s. 51.
N.S.W., s. 61.
Vic., s. 161.
Q., ss. 103, 104.
W.A., s. 50.
Tas., ss. 82, 83.

Provided that this section shall not apply to any pay, pension, salary, or wages which by any Act or State Act is made exempt from attachment or incapable of being assigned or charged.

102. Where a married woman who has become bankrupt has separate property the income of which is subject to a restraint on anticipation, the Court shall have power, on the application of the trustee, to order that, during such time as the Court orders, the whole or some part of that income shall be paid to the trustee for distribution amongst the creditors, and in the exercise of that power the Court shall have regard to the means of subsistence available for the woman and her children. Appropriation of income of property restrained from anticipation
E.B.A., s. 52.

Vesting and transfer of property.

E.B.A., s. 53.
N.S.W., ss. 24, 93.
Vic., s. 168.
S.A., ss. 126-128.
W.A., s. 51.
Q., ss. 96, 97.
Tas., ss. 16, 77
(8), (8).

103.—(1.) On the appointment of a trustee by the creditors, the property of the bankrupt shall forthwith pass to and vest in the trustee appointed by them.

(2.) The property of the bankrupt shall pass from trustee to trustee (including under that term the official receiver whenever 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.

(3.) The certificate of appointment of a trustee may be deemed to be a transfer, conveyance, or assignment of property, and may be registered, enrolled, recorded, and acted upon accordingly or as is prescribed.

(4.) Notwithstanding anything contained in this Act, where any Act or State Act requires the transmission of property to be registered, and makes provision for the registration of the official receiver or trustee as the owner of property vested in him under this Act, the vesting of the property of the bankrupt in the official receiver or trustee upon sequestration shall be subject to compliance with the requirements of the Act or State Act.

Disclaimer of onerous property.

E.B.A., s. 54.
N.S.W., s. 62.
Vic., s. 155.
S.A., ss. 130-134.
W.A., s. 52.
Q., s. 130.
Tas., ss. 22, 23.

104.—(1.) Where any part of the property of the bankrupt consists of—

- (a) land of any tenure burdened with onerous covenants; or
- (b) shares or stock in companies; or
- (c) unprofitable contracts; or
- (d) any other property that is unsaleable, or not readily saleable, by reason of its binding the owner thereof to the performance of any onerous act, or to the payment of any sum of money,

the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, may, subject to the provisions of this section, by writing signed by him, at any time within twelve months after the first appointment of a trustee, or within such further time as the Court allows disclaim the property :

Provided that where any such property has not come to the knowledge of the trustee within one month after such appointment, he may disclaim the 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.) Except as prescribed, a trustee shall not be entitled to disclaim a lease without the leave of the Court, 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—

- (a) 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
- (b) he has, for a period of twenty-eight days after the receipt of the application, or such extended period as is allowed by the Court, declined or neglected to give notice whether he disclaims the property or not.

In the case of a contract, if the trustee, after the application, does not, within that period or extended period, disclaim it, 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 the Court thinks just, and any damages payable under the order to any such person may be proved by him as a debt in the bankruptcy.

(6.) The Court may, on application by any person either claiming any interest in, or being 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 seems just that it should be delivered by way of compensation for that liability, or a trustee for him, and on such terms as the Court thinks just.

(7.) On any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without (unless otherwise prescribed) any conveyance, transfer, or assignment for the purpose.

(8.) Where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise, except upon the terms of making that person—

- (a) 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 petition was filed, or
- (b) subject to the same liabilities and obligations as if the lease had been assigned to him at the date when the petition was filed;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order.

(9.) 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 is 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 the lease, freed and discharged from all estates, encumbrances, and interests created therein by the bankrupt.

Disclaimer by
official receiver
as interim
trustee.
E.B.A., s. 54 (7).

(10.) Where, on the release removal resignation or death of a trustee, an official receiver is acting as trustee, he may disclaim any property which might be disclaimed by a trustee under the foregoing provisions of this section, notwithstanding that the time prescribed by this section for the disclaimer has expired, but the power of disclaimer shall be exercisable only within twelve months after the official receiver has so become trustee, or has become aware of the existence of the property, whichever period last expires.

(11.) 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 it as a debt in the bankruptcy.

Powers of
trustee to deal
with property.
E.B.A., s. 55.
N.S.W., s. 63.
Vic., ss. 100,
104.
S.A., s. 137.
W.A., s. 53.
Q., s. 132.
Tas., s. 24.

105. Subject to this Act, the trustee may do all or any of the following things :—

- (a) 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 public tender, with power to transfer the whole thereof to any person or company, or to sell the same in parcels ;
- (b) Transfer any stock, shares in ships, shares or any other property transferable in the books of any company, office or person, in the same manner as the bankrupt could, before the bankruptcy, transfer the stock, shares or other property ;
- (c) 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 ;
- (d) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt ;
- (e) Compromise any debt not exceeding One hundred pounds due to the bankrupt ;
- (f) 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 ;
- (g) Summon general meetings of the creditors for the purpose of ascertaining their wishes ;
- (h) Use his own discretion in the management of the estate and its distribution among the creditors ;

Q., s. 124.

- (i) Apply to the Court in the prescribed manner for directions in any particular matter arising under the bankruptcy ; Q., s. 127.
- (j) Employ a barrister, solicitor, attorney or other agent to take any proceedings or to take part in any examinations or to do any business or in respect of conveyancing matters ; Q., s. 135.
- (k) Take advice on any legal question affecting the bankrupt estate or the administration thereof, and employ a barrister, solicitor or attorney to commence, conduct or defend actions and suits or any other proceedings for or against the bankrupt estate, and charge against the estate all fees allowed upon taxation by the proper officer ; and Vic., s. 102.
- (l) 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.

106.—(1.) If a bankrupt has conveyed, transferred or assigned any property or deposited any deeds, the conveyance, transfer, assignment, assurance or deposit being upon condition or power of redemption at a future day by payment of money or otherwise, the trustee may, before the time of the performance of the condition, make tender or payment of money or other performance according to the condition, and, after the tender, payment or performance, the property may be sold and disposed of for the benefit of the creditors.

Mortgage may be redeemed by trustee.
Vic., s. 157.
Q., ss. 137-139.
S.A., s. 140.

(2.) Any mortgagee, with the leave of the Court, may bid at any such sale of the mortgaged property.

107. The trustee may, by permission of the creditors by resolution passed at any general meeting or of the Committee of Inspection, or by leave of the Court, do all or any of the following things :—

Powers exercisable by trustee by permission.
E.B.A., ss. 56, 58.
N.S.W., ss. 64-66.
Vic., ss. 105 (2), 106.
Q., ss. 132 (2), (3), 133, 149.
W.A., s. 54.
S.A., ss. 147-149, 231.
Tas., ss. 26, 27, 37.

- (a) Carry on the business of the bankrupt, so far as may be necessary for its beneficial winding-up, or sell, by private contract, 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) with power to transfer the whole thereof to any person or company or to sell the same in parcels ;
- (b) Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt ;
- (c) 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 he thinks fit ;
- (d) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts ;

- (e) Refer any dispute to arbitration, compromise any 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 are agreed on ;
- (f) Make such compromise or other arrangement as is thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable in the bankruptcy ;
- (g) Make such compromise or other arrangement as is thought expedient in respect of 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 ;
- (h) 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 ; and
- (i) Make such allowance out of the estate as he thinks just to the bankrupt for the support of 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.

Allowance to bankrupt for maintenance or services.

E.B.A., s. 58.
Vic., s. 105 (2).

N.S.W., s. 65.

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 be a permission to do only the particular thing for which permission is sought in a specified case.

Power to allow bankrupt to manage property.

E.B.A., s. 57.
Vic., s. 105 (1).
Q., s. 133 (2).
S.A., s. 141.
W.A., s. 61.
Tas., s. 25.

108. The trustee, with the sanction of the creditors by resolution at any general meeting, may appoint the bankrupt himself to superintend the management of his property or of any part thereof, or to carry on his trade (if any) 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 directs.

Right of trustee to inspect goods pawned, &c.

E.B.A., s. 59.

109. Where any goods of a bankrupt are held by any person by way of pledge, pawn, or other security, it shall be lawful for the official receiver or trustee, after giving notice in writing of his intention to do so, to inspect the goods, and, where such notice has been given, the person holding the goods shall not be entitled to realize his security until he has given the trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so.

Limitation of trustee's powers in regard to copyright.

E.B.A., s. 60.

110. Where the property of a bankrupt comprises the copyright in any work or any interest in the copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the trustee shall not be entitled to sell, or authorize the sale of,

any copies of the work, or to perform or authorize the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he, without the consent of the author or of the Court, be entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of the profits at a rate not less than that which the bankrupt was liable to pay.

111. Where the official receiver or trustee has seized or disposed of any goods, chattels, property, or other effects in the possession or on the premises of a bankrupt without notice of any claim by any person in respect of the goods, chattels, property or other effects, and it is thereafter made to appear that the goods, chattels, property, or other effects were not, at the date of the sequestration order, the property of the bankrupt, the official receiver or trustee shall not be personally liable for any loss or damage arising from the seizure or disposal sustained by any person claiming the property, nor for the costs of any proceedings taken to establish a claim thereto, unless the Court is of opinion that the official receiver or trustee has been guilty of negligence in respect of the seizure or disposal.

Protection of
official
receivers
and trustees
from personal
liability in
certain cases.
E.B.A., s. 61.
Vic., s. 17.

Division 6.—Distribution of Property.

112.—(1.) Subject to the retention of such sums as are 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.

Declaration and
distribution of
dividends.
E.B.A., s. 62.
N.S.W., ss. 69-72.
Vic., s. 197.
S.A., ss. 225, 226.
W.A., s. 55.
Q., ss. 152, 156.
Tas., s. 40.

(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 Registrar that there is sufficient reason for postponing the declaration to a later date.

(3.) Unless the Registrar otherwise directs, 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 so to do to be published in the *Gazette* and in such other manner as is prescribed, and shall also send reasonable notice thereof to each creditor known to him or mentioned in the bankrupt's statement who has not proved his debt:

Provided that a dividend under a prescribed amount need not be advertised.

(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 where it is payable, and in the case of the first and the final dividend, a statement in the prescribed form as to the realization of the estate.

Joint and
separate
dividends.

E.B.A., s. 63.
N.S.W., s. 73.
Vic., s. 200.
W.A., s. 56.
Q., ss. 160, 161.
Tas., ss. 96, 97.

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

(2.) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary made by the Court on the application of any person interested, be declared together; and the expenses of and incidental to the 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.

Provision for
creditors
residing at
a distance, &c.

E.B.A., s. 64.
Vic., s. 201.
W.A., s. 57.
Q., s. 153.
Tas., s. 41.

114.—(1.) In the calculation and distribution of a dividend, the trustee shall make provision for—

- (a) 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;
- (b) debts provable in bankruptcy, the subject of claims not yet determined; and
- (c) disputed proofs or claims, and the expenses necessary for the administration of the estate or otherwise.

(2.) Subject to the foregoing provisions of this Division, he shall distribute as dividend all money in hand.

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

E.B.A., s. 65.
N.S.W., s. 74.
Vic., s. 202.
W.A., s. 58.
Q., s. 154.
Tas., s. 42.

115. Any creditor who has not proved his debt before the declaration of any dividend shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividends he has failed to receive, before that money is applied to the payment of any future dividend, 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.

Final dividend.

E.B.A., s. 67.
N.S.W., s. 80.
Vic., s. 203.
W.A., s. 59.
Q., s. 155.
Tas., s. 43.

116.—(1.) When the trustee has realized all the property of the bankrupt, or so much thereof as can, in the joint opinion of the trustee and of the Committee of Inspection, be realized 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 within a time limited by the notice, he shall proceed to make a final dividend, without regard to their claims.

(2.) After the expiration of the time so limited, or, if the Court on application by any such claimant grants him further time for establishing his claim, then on the expiration of that 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.

117. No action for a dividend shall lie against the trustee, but if the trustee neglects or 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.

No action for dividend.
E.B.A., s. 68.
N.S.W., s. 75.
Vic., s. 204.
S.A., s. 227.
W.A., s. 60.
Q., s. 158.
Tas., s. 45.

118. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, and of the costs, charges, and expenses of the bankruptcy.

Right of bankrupt to surplus.
E.B.A., s. 69.
N.S.W., s. 81.
Vic., s. 205.
S.A., s. 233.
W.A., s. 62.
Q., s. 157.
Tas., s. 44.

PART VII.—DISCHARGE OF BANKRUPT.

119.—(1.) A bankrupt may, at any time after he has been publicly examined, or at such time as is prescribed, and shall, whenever ordered so to do by the Court on the application of the official receiver or the trustee or a creditor who has proved his debt or in pursuance of this Act, apply to the Court for an order of discharge releasing him from his debts.

Discharge of bankrupt.
E.B.A., s. 26.
N.S.W., ss. 39-44.
Vic., ss. 228-246.
S.A., ss. 171-174, 177-181, 186-189, 194.
W.A., ss. 26-29.
Q., ss. 167-170.
Tas., s. 47.

(2.) The Registrar shall—

(a) appoint a day for hearing the application which shall be published in the *Gazette* and in such other manner as is prescribed; and

(b) send, at least fourteen days before the day so appointed, to every creditor who has proved his debt, a notice of the day of hearing.

(3.) If the bankrupt does not apply for an order of discharge whenever ordered so to do, or does not attend the hearing of the application, he shall, unless the Court otherwise directs, in addition to any other penalty to which he is subject, be deemed to be guilty of a contempt of Court.

(4.) Upon any such application, the Court may hear the official receiver, the trustee, any creditor who has proved his debt, and the bankrupt, and may put such questions and receive such evidence as it thinks fit.

(5.) On the hearing of the application the Court—

(a) shall take into consideration any depositions of the bankrupt and any other evidence produced or received, and a report in writing of the ~~trustee~~ as to the bankrupt's conduct, trade dealings, property, and affairs, and as to his conduct during the proceedings under the bankruptcy;

official receiver
Amended by
1927 No. 3

- (b) may either grant or refuse an absolute order of discharge, or may suspend the operation of the order for a specified time, or may grant an order of discharge subject to any conditions with respect to any pay, pension, salary, emoluments, profits, wages, 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 offence under this Act, or any other offence connected with his bankruptcy, unless the Court, in its discretion, otherwise determines ;

- (c) may adjourn the hearing of the application from time to time ; and
(d) may make such order as it thinks fit as to costs, charges, and expenses of the application.

(6.) The Court shall, on proof of any of the facts mentioned in the next succeeding sub-section, either—

- (a) refuse the discharge ; or *specific period ; or*
(b) suspend the discharge for a ~~period of not less than two years~~ ;

*Amended by
1927 No 3.*

Provided that, where the only such fact proved is that the bankrupt's assets are not of the value of Ten shillings in the pound on the amount of his unsecured liabilities, ~~the Court may suspend the discharge for a period of less than two years ; or~~

- (c) suspend the discharge until a dividend of not less than Ten shillings in the pound has been paid to the creditors ; or
(d) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the trustee for any balance, or part of any balance, of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, the balance or part 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 directs ; 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 the bankrupt satisfies the Court that there is no reasonable probability of his being in a position to comply with the terms of any order made under this, or the last preceding sub-section, the Court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it thinks fit.

(7.) The facts referred to in the last preceding sub-section 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 that fact 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 five years immediately preceding his bankruptcy ;
- (c) That the bankrupt has, after knowing himself to be insolvent, continued to trade, or obtained credit to the amount of Fifty pounds or upwards ;
- (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 after taking into consideration his other liabilities at the time ;
- (e) That the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets ;
- (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 before sequestration, incurred unjustifiable expense by bringing a frivolous or vexatious action ;
- (i) That the bankrupt has, within six months before sequestration, when unable to pay his debts as they became due, given an undue preference to any of his creditors ;
- (j) That the bankrupt has, within six months before sequestration, incurred liabilities with a view of making his assets equal to Ten shillings in the pound on the amount of his unsecured liabilities ; and
- (k) That the bankrupt has been guilty of any fraud or fraudulent breach of trust.

(8.) 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 realized, or is likely to realize, or with due care in realization might have realized an amount equal to Ten shillings in the pound on the amount of his unsecured liabilities, and

E.B.A., s. 26(5).

Amended by 1927 No. 3
 a report by *the official receiver or* the trustee shall be *prima facie* evidence of the amount of those liabilities.

E.B.A., s. 26 (8).

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

E.B.A., s. 26 (8).

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

E.B.A., s. 26 (9).

(11.) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realization 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, 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.

Effect of fraudulent settlements on discharge.

E.B.A., s. 27.
 N.S.W., s. 41.
 Vic., s. 148.

120. In either of the following cases, that is to say:—

- (a) 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
- (b) In the case of any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife husband or children of any money or property wherein the settlor had not at the date of the marriage any estate or interest (not being money or property of or in right of the wife or husband),

if the settlor becomes bankrupt or compounds or arranges with his creditors, and it appears to the Court that the 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 bankrupt has been guilty of fraud.

Effect of order of discharge.

E.B.A., s. 28.
 N.S.W., s. 44.
 Vic., s. 241.
 Q., ss. 173-175.
 S.A., ss. 182, 184, 185.
 W.A., s. 28.
 Tas., ss. 48, 49.

121.—(1.) An order of discharge shall not—

- (a) unless the Treasurer (in the case of a debt to the Commonwealth) or the Treasurer of a State (in the case of a debt to a State) certify in writing his consent to the bankrupt being released therefrom—release the bankrupt from any debt on a recognizance, or from any debt with which the bankrupt is chargeable, at the suit of the Crown or of any person, for any offence against any Act or State Act 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;

(b) 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; or

(c) release the bankrupt from any liability under a judgment against him in an action for seduction, or under an affiliation or maintenance 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 that liability; or

(d) release any person who at the date of the sequestration order was a partner or a co-trustee with the bankrupt or was jointly bound or had made any joint contract with him, or with any person who was surety or in the nature of a surety for him.

(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.

122. Notwithstanding anything contained in this Act, where the liabilities of the bankrupt do not exceed Three hundred pounds, in granting an order of discharge subject to the payment of a dividend the Court may if it thinks just order that any creditor or class of creditors be paid a greater or less rate of dividend in the pound than any other creditor or class of creditors, or that any creditor or class of creditors be excluded from the receipt of dividends.

Discrimination
between
creditors.

123. (1.) If the bankrupt or any person on his behalf pays in full all the creditors, or obtains a legal acquittance of the debts due to them, the bankrupt may apply for an order of discharge for the release of his estate.

Discharge on
payment of
acquittance.
N.S.W., s. 35.
Q., s. 163.

(2.) If the Court is satisfied that the creditors have been so paid or have released their debts, it may make an order upon such terms as it thinks just.

Repealed
and Section 123
of 1927 No. 3.
Substituted.

(3.) Notice of all orders of discharge granted under this section or section one hundred and twenty-one of this Act shall be published in the *Gazette*, and in such other manner as is prescribed, and shall be lodged in the office of the Registrar of Titles or Registrar-General or other proper officer of each State and in such other places as are prescribed.

124.—(1.) Where—

(a) in the opinion of the Court a sequestration order ought not to have been made, or

(b) it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, or that he has obtained a legal

the Court may, on the application of any person interested, annul the sequestration order.

Power to annul
sequestration
order.
F.B.A., s. 29.
N.S.W., s. 37.

(Amended by 1927 No. 3.)

Q., s. 178.
Tas., s. 75.

(2.) Where a sequestration order 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 shall vest in such person as the Court appoints, or in default of appointment shall revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the Court orders.

(3.) Notice of the order annulling a sequestration order shall be forthwith published in the *Gazette*, and in such other manner as is prescribed, and shall be lodged in the office of the Registrar of Titles or Registrar-General or other proper officer of each State and in such other places as are prescribed.

Meaning of pay-
ment in full.
E.B.A., s. 29 (4).
N.S.W., s. 38.

125. For the purposes of this Part—

- (a) 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
- (b) 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 VIII.—TRUSTEES.

Division 1.—Appointment and Official Name.

Registration of
persons qualified
to act as
trustees.
Cf. Vic., s. 74.

126.—(1.) Any person may apply to the Court in the prescribed manner to be registered as qualified to act as a trustee.

(2.) The Court may, if it thinks fit, on the applicant entering into a bond in the prescribed amount and manner, by order direct that he be registered as so qualified.

(3.) On such order being made, the Registrar shall keep a record of the registration, and shall issue to the applicant a certificate of registration in the prescribed form.

(4.) The Court may, at any time, cancel any such registration.

(5.) No person (except an official receiver) who is not registered, shall be capable of acting as a trustee.

Gazetted of
registration.

127. When any person is registered as qualified to act as a trustee, the Registrar shall cause notice of the fact to be forthwith advertised in the *Gazette*.

Appointment of
qualified persons
as trustees.
E.B.A., s. 19.
Cf. Vic. ss. 72,
74.
N.S.W., s. 21.
Q., s. 92.
S.A., ss. 122,
123.
W.A., s. 20.
Tas., s. 13.

128.—(1.) Where a sequestration order is made against a debtor, the creditors may, by resolution, at the first or any subsequent meeting of creditors, appoint the official receiver or some person registered as qualified to act as trustee, to fill the office of trustee of the property of the bankrupt, and the Registrar shall issue to any trustee so appointed a certificate of appointment in the prescribed form.

(2.) On the application of any creditor any trustee so appointed (other than an official receiver), may, in relation to that particular property, be required by the Court to give security to its satisfaction in the prescribed manner. N.S.W., s. 22.

(3.) If one-sixth in value of the creditors notify to the Court that they object to any appointment made under this section, on the ground— Cf. W.A., s. 83.

- (a) that it has not been made in good faith by a majority in value of the creditors voting, or
- (b) that the person appointed is not fit to act as trustee, or
- (c) that his connexion with or relation to the bankrupt or his estate or any particular creditor is likely to make it difficult for him to act with impartiality in the interests of the creditors generally,

the Court may cancel the appointment and order that some other person registered as qualified to act as a trustee be appointed by the creditors.

(4.) The appointment of a trustee in regard to the estate of the bankrupt shall take effect as from the date of the certificate of appointment issued by the Registrar.

129.—(1.) The creditors may, if they think fit, appoint more persons than one to the office of trustee, and in that case shall declare whether any act required or authorized to be done by the trustee is to be done by all or any one or more of those persons; and all those persons are in this Act included under the term “trustee”, and shall be joint tenants of the property of the bankrupt. Power to
appoint suc-
cessive trustees.
E.B.A., s. 77 (2).
N.S.W., s. 91.
Vic., ss. 72, 73.
S.A., s. 125.
W.A., s. 81.

(2.) 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 act, or failing to give the required security, or vacating or resigning the office of trustee.

130.—(1.) If a vacancy occurs in the office of a trustee, the creditors in general meeting may 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.
E.B.A., s. 78.
N.S.W., s. 91.
Vic., s. 88.
S.A., s. 125.
W.A., s. 84.
Tas., s. 77 (2).

(2.) The official receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy. Official receiver
when deemed
trustee.
E.B.A., ss. 74 (1),
78 (4).
Vic., s. 89.
Q., s. 84.
Tas., s. 78.
Trustee may
sue and be
sued.
E.B.A., s. 76.
N.S.W., s. 87.
W.A., s. 80.
Vic., s. 107.

131. Until a trustee is appointed, or if no trustee is appointed, or during any vacancy in the office of trustee, the official receiver shall be the trustee for the purposes of this Act.

132. The trustee may sue and be sued by the official name as is prescribed, and by that name may hold property of every description, make contracts, 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.

Division 2.—Remuneration and Costs.

Remuneration
of trustee.

E.B.A., s. 82.
N.S.W., ss. 82-5.
Vic., ss. 77-82.
Q., s. 92.
S.A., s. 143.
W.A., s. 69.
E.B.A., 1890,
s. 15 (1).

133.—(1.) Where the creditors appoint any person other than the official receiver to be trustee of a bankrupt's estate, his remuneration (if any) shall from time to time be fixed by a resolution of the creditors, or if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission not exceeding Five pounds per centum on the amount realized by the trustee after the deduction of the expenses of realization, but the creditors may, by resolution, fix a higher commission on the collection of book debts:

Provided, however, that in the case of two or more trustees acting in succession the commission shall be apportioned in such manner as the Registrar determines.

(2.) Notwithstanding anything contained in the last preceding sub-section the remuneration of the trustee shall, if the creditors so resolve, be a sum of money fixed in accordance with the prescribed scale.

(3.) If the creditors fail, within seven days of the appointment of a trustee under this section, to fix the remuneration of the trustee, the Court may fix the remuneration.

(4.) 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.

(5.) Notwithstanding anything contained in this section, the Court may order that the remuneration of a trustee be increased, and may take into account in allowing the increase—

- (a) any special services rendered by the trustee; and
- (b) any special circumstances which in the opinion of the Court increased the difficulty of realizing the estate.

(6.) The resolution shall express what expenses (if any) 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.

(7.) 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, with the sanction of the Registrar, approve.

(8.) 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 this Act or by the rules to be performed by himself.

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

E.B.A., s. 83 (1).
N.S.W., s. 85
(4)-(7).
Vic., s. 84.
S.A., s. 153.
W.A., s. 70.

E.B.A., s. 83 (2).
Q., s. 135.
Tas., s. 28.

134.—(1.) A trustee shall not, under any circumstances whatever—

- (a) make any arrangement for or accept from the bankrupt, or any solicitor or auctioneer, or any other person 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; or
- (b) 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 employed about the bankruptcy or to any creditor; or
- (c) directly or indirectly by himself or his wife, child, or parent or any partner, clerk, agent or servant, be entitled to derive, except as provided by section one hundred and thirty-three of this Act, any profit or advantage from any transaction, sale, or purchase for or on account of the estate or any gift, profit or advantage from any creditor.

Trustee not to accept extra benefit.

E.B.A., s. 82 (5).
Cf. Vic., s. 82.
S.A., s. 152.
W.A., s. 69 (5).

Cf. Vic., s. 211.

(2.) If a trustee contravenes any of the provisions of the last preceding sub-section, he shall be guilty of a contempt of Court, and the Court may, on the application of any person, make against the trustee any order it thinks just.

135. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf or with the consent of a trustee in obtaining proxies or in procuring the trusteeship, the Court may, if it think fit, order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation has been exercised notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

Solicitation by trustee prohibited.

Cf. Vic., s. 76.

136.—(1.) All bills and charges of solicitors, accountants, auctioneers, and brokers, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts, without proof of the taxation having been made:

Taxation of costs.

E.B.A., s. 83 (3).

Provided that it shall not be necessary to tax bills and charges amounting to less than Ten pounds.

Vic., s. 84.

(2.) The prescribed officer shall satisfy himself before passing the bills and charges, that the employment of those persons, in respect of the particular matters out of which the charges arise, was duly sanctioned by the official receiver or trustee. The sanction must be obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

W.A., s. 70 (3).

(3.) 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 prescribed 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

E.B.A., s. 83 (4).
W.A., s. 70 (4).

allows, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited against the trustee personally as well as against the estate.

(4.) An appeal shall, on the motion of the official receiver or trustee, or any person interested, lie to the Court from a decision of the officer in allowing or disallowing any bill or charges or any item.

Division 3.—Trustees' Accounts and Audits.

Trustee not to pay into private account.

E.B.A., s. 88.
N.S.W., s. 103.
Vic., s. 116.
W.A., s. 72.

Trustee to pay moneys into bank.

E.B.A., s. 89 (2).
N.S.W., s. 102.
Vic., s. 114.
Q., s. 136.
S.A., s. 144 (1).
W.A., s. 71.
Tas., s. 29.

137. A trustee shall not pay into a private banking account any moneys received by him as trustee.

Penalty: Fifty pounds.

138.—(1.) The trustee shall pay any moneys received by him into such bank as the creditors by resolution at any general meeting appoint, and failing such appointment, into such bank as the official receiver approves, to the credit of an account to be opened and kept by the trustee in the name of the bankrupt's estate.

(2.) If the trustee at any time keeps in his hands any money exceeding Twenty-five pounds for more than ten days, he shall unless he can prove to the satisfaction of the Court that his reason for retaining the money was sufficient—

E.B.A., s. 89 (5).

(a) pay interest at the rate of Twenty pounds per centum per annum on the excess; and

(b) be, on the application of any creditor or the official receiver, dismissed by the Court from his office of trustee, and have no claim for remuneration, and be liable to any expenses to which the creditors are put in consequence of his dismissal.

Trustee to give official receiver information.

139.—(1.) The trustee shall give the official receiver such information access to and facilities for inspecting the bankrupt's books and documents and generally such aid, as is requisite for enabling the official receiver to perform his duties.

(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 is kept, a copy of the account; and, if any manager neglects to furnish the copy within seven days, or such further time as the Court allows after demand, he shall be guilty of a contempt of Court, and shall on the application of the official receiver be punishable accordingly.

Trustee's payments out of bank.
Cf. Vic., s. 115.

140.—(1.) All payments by the trustee out of any banking account shall be made by cheque payable to order, with the name of the estate printed or written on the face thereof.

(2.) If the creditors by resolution so direct, the cheque in addition to being signed by the trustee shall, if there is a committee of inspection, be countersigned by at least one member thereof.

141. Whenever the cash balance standing to the credit of the bankrupt'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 excess or any part thereof on fixed deposit in such bank and for such term as is approved by the Registrar, and any interest received in respect of the deposit shall be part of the assets of the estate.

Investment of surplus lands.
Cf. E.B.A., s. 90.
W.A., s. 37.
Vic., s. 117.
S.A., s. 228.

142. The trustee shall, whenever required by any creditor so to do, and on payment by the creditor of the prescribed fee, furnish and transmit to the creditor by post a list of the creditors, showing the amount of the debt of each and distinguishing the debts proved, not proved, and rejected.

List of creditors to be furnished by trustee.
E.B.A., s. 84;
1890, s. 16.
N.S.W., s. 99.
Vic., s. 98.
W.A., s. 75.

143.—(1.) Any creditor, with the concurrence of one-sixth in value of the creditors including himself, may at any time require the trustee to furnish and transmit to the creditors a statement of the accounts up to the date of the requirement, and the trustee shall, upon receipt of the requirement, furnish and transmit the statement.

Statement of accounts.
E.B.A., s. 85.
Vic., s. 98.
W.A., s. 76.

(2.) The creditor making the requirement shall deposit with the trustee a sum sufficient to pay the costs of furnishing and transmitting the statement, which sum shall be repaid to him out of the estate if the creditors by resolution so approve or the Court so directs.

144. The trustee shall keep, in manner prescribed, books of account and other 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 are prescribed, and any creditor of the bankrupt may, subject to rules, personally or by his agent inspect any such books.

Books to be kept by trustee.
E.B.A., s. 86.
N.S.W., s. 100.
Vic., s. 113.
Q., s. 129.
W.A., s. 77.

145.—(1.) Where the trustee carries on the bankrupt's business, he shall keep a separate business account, and shall incorporate in the prescribed books kept by him and so as to be readily ascertainable the total weekly amounts of the receipts and payments.

Trustee's accounts when trading.
Cf. Vic., s. 122.

(2.) The business account shall from time to time as is prescribed be verified by affidavit, and the trustee shall thereupon submit the account to the Registrar or to the committee of inspection (if any) or such member thereof as is appointed by the committee for the purpose.

146.—(1.) The trustee shall, at the prescribed times, transmit to the Registrar—

Audit of trustee's accounts.

(a) an account in the prescribed form and verified by affidavit of his receipts and payments as trustee; and

E.B.A., ss. 87, 92.
N.S.W., ss. 78, 98, 101.
Vic., ss. 110, 128.
Q., ss. 133, 194.
W.A., ss. 74, 78.
Tas., ss. 54-57.

(b) a report as to the bankrupt's conduct and affairs and such other matters in relation to the bankrupt or his estate as is prescribed.

(2.) The Registrar may cause the account to be audited by the prescribed officer, and for the purposes of the audit the trustee

shall furnish and produce such vouchers, information, books and accounts as the Registrar requires or as is prescribed.

(3.) If a creditor with the concurrence of one-sixth in value of the creditors including himself requires the Registrar at any time to have the accounts of the trustee audited the Registrar shall have the audit made accordingly.

(4.) When the account has been audited, it shall be filed with the Court, and shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

(5.) The Registrar may at any time order the trustee to submit to him an account, verified by affidavit, of the sums received and paid by him, and may direct an audit thereof.

(6.) The Registrar shall report to the Court any misfeasance, neglect, or omission on the part of the trustee, and the Court may order the trustee to make good any loss which the bankrupt's estate has sustained thereby, or make such other order in the premises as it thinks fit.

Division 4.—Control over Trustees.

147.—(1.) Subject to 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 given by resolution of the creditors at any general meeting.

(2.) The trustee shall summon general meetings of the creditors at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise, direct, or whenever requested in writing so to do by one-fourth in value of the creditors.

(3.) Any creditor, with the concurrence of one-sixth in value of the creditors including himself, may at any time require the trustee to call a meeting of the creditors, and the trustee shall within fourteen days of such requirement call the meeting accordingly.

(4.) The creditor making the requirement shall deposit with the trustee a sum sufficient to pay the costs of summoning the meeting, which sum shall be repaid to him out of the estate if the creditors by resolution so approve or the Court so directs.

148. 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 matter as it thinks just.

149.—(1.) The Court shall take cognisance of the conduct of trustees, and in the event—

(a) of any trustee not faithfully performing his duties and not duly observing all the requirements imposed on him by statute, rules, regulations, or otherwise, with respect to the performance of his duties; or

(b) of any complaint being made to the Court by any creditor or by the bankrupt in regard thereto,

Control of
creditors over
trustee.

E.B.A., s. 79.
N.S.W., s. 95.
Vic., s. 94.
Q., s. 123.
S.A., ss. 142,
145.
W.A., s. 86.
Tas., s. 19.

Appeal to Court
against trustee.

E.B.A., s. 80.
N.S.W., s. 96.
Vic., s. 98.
Q., s. 125.
W.A., s. 87.
Tas., s. 19.

Control of Court
over trustees.

E.B.A., s. 81.
N.S.W., s. 97.
Vic., s. 92.
W.A., s. 88.

the Court shall inquire into the matter, and may take such action and make such order as is deemed expedient.

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

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

Division 5.—Vacation of Office of Trustee.

150. Subject to such terms and conditions as it thinks just the Court may accept the resignation of any trustee.

Resignation of trustee.
Vic., s. 87.
S.A., s. 124.

151.—(1.) When the trustee—

(a) has realized all the property of the bankrupt, or so much thereof as can, in his opinion, be realized without needlessly protracting the trusteeship, and has distributed a final dividend, if any; or

(b) has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office,

Release of trustee.
E.B.A., s. 93.
N.S.W., s. 92.
W.A., s. 79.
Q., s. 197.
Tas., s. 50.

he may apply to the Court for an order of release.

(2.) The Court shall, on his application, cause a report on his accounts to be prepared by the Registrar, and on his complying with all the requirements of the Registrar, and after taking into consideration the report, and any objection which may be urged by the Registrar, or by any creditor or person interested, against the release of the trustee, shall either grant or withhold the release accordingly.

(3.) 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 done or default made by him contrary to his duty.

(4.) 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.

Tas., s. 52.

(5.) Where the trustee has not previously resigned or been removed, his release shall operate as his removal from his office.

(6.) The foregoing provisions of this section shall apply to an official receiver when he is, or is acting as, trustee, and when an official receiver has been released under this section he shall continue to act as trustee for any subsequent purposes of the administration of the debtor's estate, but no liability shall attach to him personally by reason of his so continuing in respect of any act done, default made, or liability incurred before his release.

Application to official receiver as trustee.

(7.) Where, on the release of a trustee, an official receiver is, or is acting as, trustee, no liability shall attach to him personally in respect of any act done or default made, or liability incurred, by any prior trustee.

Office of trustee vacated by bankruptcy.

E.B.A., s. 94.
N.S.W., s. 89.
Vic., s. 85.
W.A., s. 82.
Tas., s. 77 (5).

Removal of trustee.

E.B.A., s. 95.
N.S.W., s. 90.
Vic., ss. 86, 97.
S.A., s. 124.
W.A., s. 83.
Tas., s. 77 (4).

152. If a sequestration order is made against a trustee, or if he assigns his estate for the benefit of his creditors generally, he shall thereby vacate his office of trustee.

153.—(1.) The creditors may, by resolution, at a meeting specially called for that purpose, of which seven days' notice has been given in the prescribed manner, 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 provided in section one hundred and thirty of this Act in case of a vacancy in the office of trustee.

(2.) If the Court is of opinion—

- (a) that the trustee appointed by the creditors is guilty of misconduct, or fails to perform his duties or is, by reason of lunacy, or continued sickness, or absence, incapable of performing his duties, or
- (b) that his trusteeship is being needlessly protracted without any probable advantage to the creditors, or
- (c) that his connexion 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 if in any other matter he has been removed from office on the ground of misconduct, the Court may remove him from his office of trustee.

PART IX.—SMALL BANKRUPTCIES.

Summary administration.
E.B.A., s. 129.
N.S.W., s. 17.
W.A., s. 110.

154.—(1.) Where a sequestration order is made against a debtor, if the Court is satisfied by affidavit or otherwise, or if the official receiver reports to the Court that neither the assets nor the liabilities of the debtor are likely to exceed in value Three 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, in relation to the bankruptcy, be subject to such modifications as are prescribed for such cases with the view of simplifying procedure and saving expense.

(2.) The official receiver alone shall be the trustee in the bankruptcy.

(3.) Nothing in this section shall permit the modification of the provisions relating to the examination or discharge of the bankrupt.

PART X.—ESTATES OF PERSONS DYING INSOLVENT.

155.—(1.) Any creditor or creditors of a deceased debtor whose debt or debts owing to him or them would have been sufficient to support a bankruptcy petition against him, had he been alive, may present to the Court a petition in the prescribed form praying for an order for the administration in bankruptcy of the deceased debtor's estate.

Administration
in bankruptcy
of estate of
persons dying
insolvent.
E.B.A., s. 130.
N.S.W., s. 121.
Vic., ss. 47, 55.
W.A., s. 114.

(2.) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, or, if there is no legal personal representative, to such person as the Court directs, the Court may—

- (a) in the prescribed manner, upon proof of the petitioner's debt, make an order for the administration in bankruptcy of the deceased debtor's estate, 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 ; and
- (b) make an order for the examination of the personal representative of the deceased debtor and of such other persons as it thinks fit ; or
- (c) upon cause shown dismiss the 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 any Court for the administration of the deceased debtor's estate, but the latter Court may, on proof that there is no reasonable probability that the estate will be sufficient to pay its debts, transfer the proceedings to the Court exercising bankruptcy jurisdiction, and thereupon the Court may, in the prescribed manner, make an order for the administration of the deceased debtor's estate, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(4.) With the modifications mentioned in this section, all the provisions of this Act relating to the administration of the property of a bankrupt and to trustees shall, so far as they are applicable, apply to the case of an order for administration under this section in like manner as to a sequestration order.

(5.) 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 as trustee thereof, and he shall proceed forthwith to realize and distribute the same in accordance with the provisions of this Act.

(6.) The creditors shall have the same powers as to appointment of trustees and committees of inspection as they have in other cases where the estate of a debtor is being administered or dealt with in bankruptcy, and the provisions of this Act relating to trustees and committees of inspection shall apply to trustees and committees of inspection appointed under the power so conferred.

(7.) If no committee of inspection is appointed, any act or thing or any direction or permission which might have been done or given by a committee of inspection may be done or given by the Court.

(8.) In the administration of the property of a deceased debtor under an order of administration, the official receiver or trustee 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.

(9.) If, in the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver or trustee after payment in full of all the debts due from the debtor together with the costs of the administration, the surplus shall be paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such other manner as is prescribed, and the Court shall make an order releasing the estate from administration in bankruptcy.

(10.) When an order for administration of a deceased debtor's estate has been made under this section on the petition of a creditor, no payment or transfer of property made by the legal personal representative of the deceased debtor, after the receipt by him of the prescribed notice of the presentation of the petition, shall operate as a discharge to him as between himself and the official receiver.

(11.) Except as provided in the last preceding sub-section, 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.

Voluntary
sequestration of
deceased
person's estate.
E.B.A.,
s. 130 (9).
Cf. N.S.W.,
s. 122.

156. Any person in whom the administration of the estate of a deceased person is vested, may present a bankruptcy petition, and the same proceedings may be taken in relation to the estate as in the case of a petition by a creditor.

PART XI.—COMPOSITIONS AND ASSIGNMENTS WITHOUT SEQUESTRATION.

Meeting of
creditors.
Cf. S.A.,
s. 262.
W.A., 1898,
s. 4.

157.—(1.) A meeting of creditors under this Part 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 three nor more than twenty-one days before the day of meeting or by advertisement as is prescribed.

(2.) The meeting shall be held at a time and place convenient to the majority in value of the creditors.

Bar to
proceedings
under Part XII.

158. If a meeting of creditors is held under this Part in relation to the affairs of a debtor no proceedings in relation to his affairs shall be taken under Part XII. of this Act.

Stay of
proceedings.
S.A., s. 263.
W.A., 1898,
s. 5.

159.—(1.) The Court may, after the delivery or posting of the circulars or any of them, and either before or after the meeting, on the application of the debtor or any creditor, subject to such conditions (if any) as the Court thinks fit to impose, order a stay

of proceedings in any action, execution, writ of *fieri facias* affecting land, distress for rent, or other legal process in respect of any debt or liability which would be provable in the bankruptcy if a sequestration order were made against the debtor, and may, at any time in its discretion, set aside the order.

(2.) The order, while in force, shall have the effect—

- (a) of staying the proceedings until after the meeting, and any adjournment thereof;
- (b) in the event of a resolution for a composition or scheme of arrangement being duly passed at the meeting or adjournment, in pursuance of the provisions of this Part—of further staying the proceedings until the composition or scheme becomes binding on the creditors, or fails to be confirmed, or is rejected by the Court;
- (c) in the event of a resolution for a deed of assignment being duly passed at the meeting or adjournment—of further staying the proceedings until the expiration of fourteen days after the passing of the resolution.

(3.) Any meeting may be adjourned from time to time by resolution for any period not exceeding three months.

160. The following provisions shall be observed at all meetings of creditors held under this Part :—

- (a) The majority in number of the creditors present at the meeting, in person, by proxy, or by attorney, shall elect a chairman ;
- (b) The debtor shall, unless prevented by sickness or other sufficient cause, attend the meeting, and shall submit a statement in writing signed by him of his assets and liabilities ;
- (c) Every creditor may vote at the 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 ;
- (d) 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 estimates it, and shall be entitled to vote only in respect of the balance (if any) due to him after deducting the estimated 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 ;

Provisions
as to meeting.
S.A., s. 264.
W.A., 1898, s. 6.
Election of
Chairman.

Statement of
assets and
liabilities.

Persons entitled
to vote.

Secured
creditor.

Right of
creditor on
current bill to
vote.

(e) 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—

(i) to treat the liability to him thereon of every person, not being a bankrupt, who is liable thereon antecedently to the debtor, as security in his hands, and

(ii) for the purposes of voting, but not for the purposes of dividend, to deduct its estimated value from his proof,

in which case he shall, on application by any person interested, give up that security for the benefit of the creditors upon payment of its estimated value ;

Chairman may
admit or reject
claim to vote.

(f) The chairman of the meeting shall have the power to admit or reject a claim to vote ; and may, for the purpose of the 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 to vote, determine the amount ;

Attorney or
proxy may
vote.

(g) A creditor may vote either in person, or by attorney appointed by deed, or by proxy appointed by instrument in writing signed by the creditor and attested or authorized by telegram as is prescribed ;

Chairman's
decision as to
place and time
of meeting to be
final.

(h) The chairman shall at the meeting determine whether the meeting has been held at a time and place convenient to the majority in value of the creditors, and his decision shall be final, unless shown to be not *bonâ fide* ; and

Lapse of
meeting.

(i) If the chairman decides that the meeting has not been held at a time and place convenient to such majority, the meeting shall lapse :

Provided that the creditors may pass a resolution that the meeting shall not be deemed an act of bankruptcy.

Meeting may
resolve to
accept com-
position or
scheme.
S.A., s. 265.
W.A., 1898, s. 7.

161. The creditors may, at the 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, and thereupon the following provisions shall have effect :—

Composition or
scheme not
binding unless
confirmed.

(a) The composition or scheme shall not be binding on the creditors unless the resolution is confirmed by an extraordinary resolution passed at a subsequent meeting of creditors or some adjournment thereof, or in such other manner as is prescribed, nor until after the lapse of seventeen days from the confirmation, and in the event of the Court appointing a day to consider the composition or scheme, it shall not be binding on the creditors until the Court has approved it ;

- (b) The subsequent meeting shall be held not less than seven nor more than fourteen days after the passing of the 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 from the passing of the resolution ; Subsequent meeting to be held.
- (c) The chairman of each meeting shall sign a certificate in the prescribed form of the resolution passed thereat, and the certificates shall, within three days of the date of the last resolution, be filed in the Court nearest to the place where the subsequent meeting was held, or in such other Court as is prescribed 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 to be filed in Court.
- (d) Any creditor may, within fourteen days after the filing of the certificates, apply to the Court to appoint a day to consider the composition or scheme, which day shall not be earlier than twenty-one days after the filing, and notice of the appointment shall be given by advertisement in the *Gazette* and in such other manner, if any, as the Court directs ; Appointment of day for consideration of composition or scheme by Court.
- (e) 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, be heard against it ; but the debtor and any creditor may, without notice, be heard in favour of it ; Right of creditor to oppose.
- (f) If the Court thinks 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 a discharge, the Court may, in its discretion, reject the composition or scheme ; Power of Court to reject composition or scheme.
- (g) The Court may approve the composition or scheme, and in that event, or if no creditor within the time limited applies to the Court to appoint a day to consider it, the composition or scheme shall be binding on all creditors so far as relates to any provable debts ; Power of Court to approve composition or scheme.
- (h) 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, 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 any creditor or of the debtor, annul the composition or scheme, but without prejudice to the validity of any sale, Power of Court to annul composition or scheme.

disposition, or payment duly made or thing duly done under or in pursuance of it, and may, if it thinks fit, forthwith make a sequestration order in regard to the estate of the debtor, and proceedings may be had accordingly;

When order of rejection or annulment to take effect.

(i) If the composition or scheme is rejected or annulled, the order of rejection or annulment shall not take effect unless a sequestration order is made in pursuance of the last preceding paragraph, or is obtained by or against the debtor within seven days from the date of the order or within such further time as the Court allows; and

Persons deemed creditors.

(j) Every person who would be entitled to prove in bankruptcy shall be deemed a creditor within the meaning of this section; and in case of 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 the dispute.

Right of creditors to require debtor to execute a deed.

S.A., s. 266.
W.A., 1898, s. 8.

Certificate of resolution to be filed.

S.A., s. 267.
W.A., 1898, s. 9.

Warrant to seize debtor's personal estate.

S.A., s. 268.
W.A., 1898, s. 10.

Conveyance by debtor to trustees.

S.A., s. 269.
W.A., 1898, s. 11.

162.—(1.) The creditors may, by special resolution at any meeting under this Part, or any adjournment thereof, resolve that the debtor execute a deed of assignment under this Part to a trustee to be named in the resolution, who shall be a person registered under Part VIII. of this Act as qualified to act as a trustee.

(2.) A certificate of the resolution, in the prescribed form, signed by the chairman, shall be filed in the Court nearest to the place where the meeting is held, or in such other Court as is prescribed, and shall, in the absence of fraud, be conclusive evidence that the meeting was duly convened and held, and the resolution duly passed.

(3.) Notice of the fact that a certificate has been filed under this section shall be given by advertisement in the *Gazette*.

(4.) The chairman signing the certificate may, from time to time, grant a warrant under his hand in the prescribed form authorizing the person therein named and his assistants to seize all the personal estate of the debtor; and the 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 bankrupt, and shall continue in force until superseded by a fresh warrant, or by the order of the trustee under the deed, or, in the event of the debtor's estate being sequestrated, by the warrant of the Court to seize the estate.

(5.) The debtor shall, within seven days after the passing of the resolution, convey and assign his real and personal estate by deed, for the benefit of his creditors, to the trustee named in the resolution.

(6.) If the trustee under the deed serves, in the prescribed manner, on any creditor, notice in writing of the execution of the deed and that the assents required for the validity of the deed have been obtained with an intimation that the creditor will not after the expiration of one month from the service of the notice be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed or on any other act committed by the debtor in the course

or for the purpose of the proceedings preliminary to the execution of the deed as an act of bankruptcy, that creditor shall not, after the expiration of that period, unless the deed becomes void, be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed or any act so committed by the debtor as an act of bankruptcy.

(7.) The provisions so far as applicable of Division 6 of Part IV. of this Act shall apply to every deed of assignment as fully and effectually as if a sequestration order had been made against the debtor.

(8.) The provisions so far as applicable of Part VIII. of this Act shall apply in relation to every trustee of a deed of assignment as if an order of sequestration had been made against the debtor and the trustee had been appointed trustee in the bankruptcy.

163.—(1.) Every such deed shall comply with the following provisions :—

(a) It shall purport to be made in pursuance of this Part of this Act and shall provide for the payment in priority to all other debts of the debts specified in section eighty-four of this Act ;

(b) 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 it forth, except such articles of household furniture, wearing apparel of the debtor and his family, tools or implements of his trade, and other like necessities, not exceeding in the whole the value of Fifty pounds, as the debtor selects, and such other household property as a majority of the creditors may by resolution determine ;

(c) It shall contain in a second schedule, annexed, 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 is then unknown to the debtor, it shall be sufficient if that fact is stated in the schedule with the amount of the bill or note, and the date when it will fall due, and if the name of the last known holder thereof is given, and the names of the parties thereto, so far as known to the debtor ;

(d) A declaration by the debtor, in the prescribed form, verifying the contents of the schedules, shall be attached to the deed ;

(e) The deed shall be executed by the trustee within seven days after the debtor's execution thereof, or within such further time as is prescribed, and the execution by the debtor and

Provisions
relating to deed
S.A., s. 270.
W.A., 1898, s. 12.

To purport to
be made in
pursuance of
this Part.

Schedule of
property.

Schedule of
creditors.

Debtor's
verification.

Execution by
trustee.

trustee shall be respectively attested by an official receiver, Registrar, barrister, solicitor, or Justice of the Peace; and each witness shall specify the date on which the execution so attested was made;

Notice of deed
to be given to
the Registrar
of the Court.

- (f) 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 wherein the certificate of the resolution mentioned in the last preceding section was filed, and the cost of advertising the notice in the *Gazette* shall at the same time be paid, and a copy of the notice shall be lodged in the office of the Registrar of Titles, or Registrar-General or other proper officer of each State and in such other places as are prescribed;

Requisite
majority for
consent.

- (g) 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;

Secured
creditors.

- (h) 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 him, and the amount of any debt or set-off owing by him to the debtor, appears to be the balance due to him;

Time within
which assents
are to be
obtained.

- (i) The assents shall be given, as regards creditors resident in Australia or having therein a known duly authorized agent, within thirty days from the execution of the deed by the debtor, and as regards other creditors within six months from the execution;

Mode of giving
assent.

- (j) 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, and prepared by and at the cost of the creditor making it, which shall be deemed equivalent to a proof of debt in bankruptcy;

Assent of
partner or
agent.

- (k) 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 authorized may sign or assent to the deed and supply the statement on behalf of a creditor; and the partner or agent shall aver in the statement that he is the partner or agent, as the case may be.

Form of deed.
S.A., s. 271.

(2.) The form in the first part of the Third Schedule hereto may be used for any deed under this Part of this Act, and when so used shall be of the same effect as if it were in the form of the deed in the second part of that Schedule.

164. If the deed has not been assented to by the required number of creditors within the time specified in the last preceding section, the trustee shall give notice of the fact to those creditors who have signed the deed.

Notice to creditors if assents not obtained.

165. Every such deed, until set aside, as in this Part provided, shall release the debtor from all provable debts, and shall vest in the trustee all the property of the debtor (except such necessities as are mentioned in paragraph (b) of section one hundred and sixty-three of this Act), upon the trusts and for the purposes of the deed ; and the trustee may recover the property including things in action in his own name, as trustee for the estate of the debtor, in like manner as a trustee in bankruptcy.

Deed to be a release of all provable debts.
S.A., s. 272.
W.A. 1898, s. 14.

166. From and after the execution of any such deed by the debtor and the trustee thereof, all parties to the deed, and all persons bound thereby, shall, in all matters relating to the property, conveyed and assigned by the deed, or belonging to or vested in the debtor prior to the execution of the deed, be subject to the jurisdiction of the Court, and shall, except as otherwise declared or provided by this Act or the deed, have the benefit and be liable to all the provisions of this Act as if a sequestration order had been made against the debtor and the creditors had proved and the trustee had been appointed trustee in the bankruptcy ; and the trustee of the deed, and the creditors thereunder, shall, as between themselves respectively, and as between themselves and the debtor, and against third persons, have the same powers, rights, duties, and remedies, with respect to the debtor and the property, as a trustee in bankruptcy, or creditors of a bankrupt, have with respect to a bankrupt and his property.

Application of Act, as if sequestration order made.
S.A., s. 273.
W.A. 1898, s. 15.

167. Any property which in the event of the debtor's bankruptcy would have been available to the trustee by reason of having been in the possession, order, or disposition of the debtor, and of his having been reputed owner thereof, or for any other reason, shall be deemed to be property conveyed and assigned by the deed.

Property in reputed ownership of debtor.
S.A., s. 276.
W.A. 1898, s. 18.

168. As long as the deed remains in force, its execution by the debtor shall, so far as consistent with the other provisions of this Part, be deemed for all purposes equivalent to—

Effect of execution of deed.
S.A., s. 277.
W.A. 1898, s. 19.

- (a) an act of bankruptcy committed by the debtor on the date of the meeting of creditors at which the deed was resolved upon ;
- (b) the filing of a bankruptcy petition against him ; and
- (c) a sequestration order against him.

169. The creditors shall have the same rights as to set-off, mutual credit, lien, and priority, and joint and separate assets shall be distributed in the same way, 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 the deed, or by its being obligatory upon him ; and every person who would be entitled

Creditors to have same rights as in bankruptcy.
S.A., s. 278.
W.A. 1898, s. 20.

to prove in bankruptcy shall be deemed a creditor within the meaning of this Part, and the trustee of the deed shall have the same powers and duties as a trustee in bankruptcy to estimate the value of a debt which does not bear a certain value; and in case of 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 the dispute.

Creditor not appearing in schedule may obtain benefit of deed.

S.A., s. 279.
W.A., 1898,
s. 21.

170. Any creditor who does not appear as such in the schedule to the deed may obtain the benefit of the 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.

S.A., s. 280.
W.A., 1898,
s. 22.

171. 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, at the place where the deed is lying for inspection and execution, to inspect the 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 are in the custody or under the control of the trustee, and may make copies of or take extracts therefrom.

Trustee or creditor may have debtor examined.

S.A., s. 281.
W.A., 1898,
s. 23.

172. Any creditor or trustee may, upon making affidavit that he suspects that the debtor—

- (a) has not fully disclosed his estate and effects, or
- (b) has, within six calendar months prior to the execution of the deed, made a fraudulent preference to any creditor, or
- (c) has concealed, or is making away with, or improperly or fraudulently dealing with his property, or any part thereof, cause the debtor to appear and be examined in the Court.

Debtor or creditor may have trustee examined.

S.A., s. 282.
W.A., 1898, s. 24.

173. The debtor or any creditor may, upon making affidavit that the trustee has concealed, or is making away with, or improperly or fraudulently dealing with the property of the debtor, cause the trustee to appear and be examined in the Court.

Preservation of other powers to Court.

S.A., s. 283.
W.A., 1898, s. 25.

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

Duties of trustee:

S.A., s. 284.
W.A., 1898, s. 26.

To notify creditors:

To file copy of deed:

175.—(1.) The trustee of every deed shall—

- (a) with all convenient speed after he has executed the deed, cause notice of the deed, and of the place where it is lying for inspection and execution, to be given to the several creditors whose names appear in the second schedule to the deed;
- (b) within fourteen days from the execution of the deed by the debtor, file in the Court a true copy of the deed with the schedules and debtor's declaration, and all assents and statements relating thereto, which shall be open to public inspection;

(c) once in every six months or at the prescribed times, until the estate is finally wound up, file in the Court a statement— To file statement :

- (i) of the whole estate of the debtor as then ascertained, the property recovered, and the property outstanding, specifying the cause of its being so outstanding;
- (ii) of all receipts, and all payments made or to be made; and
- (iii) 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 forthwith cause notice of the filing of the statement, and of the amount in the pound (if any) proposed to be paid, to be given by advertisement in the *Gazette* :

(d) open a banking account in the name of the trust estate with some incorporated bank, and pay into that account all moneys received by him on account of the estate, and pay all moneys payable by him on account of the estate by cheques drawn on that account ; and shall not at any time keep in his hands any sum exceeding Twenty pounds for more than ten days ; To open a banking account :

(e) at the expiration of twelve months from the date of the deed, on the application of the Registrar, at the request of any creditor, forthwith pay into Court all moneys in his hands or to his credit belonging to the assigned estate ; and if he keep any such moneys in his hands or under his control in contravention of this paragraph for a period of one month after such application, or keep money in his hands in contravention of the last preceding paragraph, shall be subject to the like liabilities and penalties as if he had been a trustee in bankruptcy and wrongfully kept moneys in his hands contrary to the provisions of this Act ; To pay moneys into Court :

(f) before declaring a dividend out of the money paid into Court, file in Court a dividend-sheet, showing the amount of the dividends due to the several creditors : To file dividend-sheet :

(g) not less than one month before the final winding up of the estate cause notice to be given by post to each person claiming or appearing to be a creditor who has not proved his debt and assented to the deed, stating that unless he proves his debt and assents to the deed within one month from the posting of the notice, he will be excluded from all benefits under the deed, and in the event of such creditor failing to comply with the terms of such notice, the trustee may exclude him from all benefits under the deed : Before final winding up to notify creditors who have not assented to deed :

Provided that if there is any creditor residing outside of Australia, the notice shall be given to that creditor six months before the final winding up of the estate ;

To make a final
account :

(h) when the estate is finally wound up, make out a full and true account, verified by affidavit of the gross amount of all moneys which have come to his hands, showing how they have been disposed of, and the amount in the pound paid to the creditors, and forthwith file the same, with the verifying affidavit, in Court ;

To account to
Registrar.

(i) within one month after demand, furnish to the Registrar an account of the estate in the prescribed form.

(2.) Out of the moneys paid into Court under paragraph (e) of the last preceding sub-section the Registrar shall—

(a) make any payments that the trustee directs on account of the estate ; and

(b) pay the dividend declared by the trustee.

(3.) The provisions contained in Part XIII. of this Act shall apply to money paid into Court under paragraph (e) of sub-section (1.) of this section.

Court may
declare deed
void.

S.A., s. 285.
W.A., 1898, s. 27.

176.—(1.) The Court may—

(a) at any time before the final winding up of the estate declare the deed to be void on the ground that it does not comply with the provisions of this Part, 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

(b) at any time before the final winding up of the estate and before the granting of a certificate of the validity of the deed, on the petition of more than one-fourth in value or one-half in number of the creditors, declare the deed to be void, and may, if it thinks fit, forthwith make a sequestration order in regard to the estate of the debtor, and proceedings may be had accordingly.

S.A., s. 286.

(2.) Any order of the Court under this section declaring a deed void shall take effect only if a sequestration order is made in pursuance of the last preceding sub-section or is obtained against the debtor within fourteen days after the date of the order ; but after the order of the Court is made the deed shall be deemed an act of bankruptcy for the purpose of obtaining a sequestration order.

Trustee not to
realize within
ten days of
debtor's
execution of the
deed.

S.A., s. 287.

177. The trustee shall not, without the consent of the majority of the creditors in value, within ten days after the debtor's execution of the deed, unless the assents required for the validity of the deed have been sooner obtained, realize, sell, or otherwise dispose of, except in the ordinary course of business, any portion of the debtor's property, except property of a perishable nature, passing under the deed.

178. In considering any application for an order declaring the deed void, or for a certificate of validity of the deed under this Part, the Court shall not make any such order or abstain from granting any such certificate—

Technical objections.

- (a) merely because the declaration required to be made by the debtor, or any schedule to the deed, or any 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 thinks that the irregularity was not wilful and material; or

S.A., s. 288.
W.A., 1898, s. 28.

- (b) if the Court thinks that the grounds of objection to the deed are not substantial.

179. When any deed is 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 of the order may be effected either personally or by leaving it 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.

Indemnity to trustee under deed declared void.

S.A., s. 289.
W.A., 1898, s. 29.

180. The Court shall make all just allowances to the trustee, and further, may order that he shall be indemnified, in such manner as the Court provides, against all proceedings to be brought against him for or arising out of any act or omission in relation to his trusteeship.

Allowances to trustee.

S.A., s. 290.
W.A., 1898, s. 30.

181. The Court may, on the application of a creditor or debtor or trustee, remove any trustee of a deed made under this Part, 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 duties and be subject to the same liabilities as if he or they had been the trustee or trustees to whom the original assignment was made.

Power of appointment and removal of trustee.

S.A., s. 291.
W.A., 1898, s. 31.

182. Every deed purporting to be executed by the debtor and trustee, and to be attested as provided in this Part, shall be *primâ facie* evidence of the execution and attestation respectively; and every debtor's declaration attached to the deed in pursuance of this Part, and every statement accompanying a creditor's assent to the deed, shall be *primâ 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 special resolution as provided in this Part shall be liable to be impeached or disturbed except as provided in this Part.

Deed *primâ facie* evidence of execution and attestation.

S.A., s. 292.
W.A., 1898, s. 32.

Court may
grant certificate
of validity of
deed.

S.A., s. 293.

W.A., 1898, s. 33.

183.—(1.) The trustee of a deed or the debtor may at any time apply to the Court to appoint a sitting to inquire into the validity of the deed, of which sitting the trustee or the debtor shall give at least nine days' notice to the creditors whose names appear in the schedule to the deed.

(2.) At the sitting the Court shall inquire whether the deed complies with the provisions of this Part, and if the Court finds that it does so comply, the Court shall thereupon grant a certificate of validity in the prescribed form, and that certificate shall, in all Courts, be conclusive evidence of the due execution and validity of the deed.

Remuneration
of trustee.

S.A., s. 294.

W.A., 1898, s. 34.

184. The trustee of a 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 such commission as is fixed by the creditors, the commission not to exceed—

- (a) Five pounds per centum on the amount realized by the trustee after the deduction of the expenses of realization, subject to the creditors, by resolution, fixing a higher commission on the collection of book debts; or
- (b) where the trustee carries on the business of the debtor, one pound per centum on the turnover of the capital of the business.

*Repealed by
1927 No. 3
And new section
substituted*

Persons to
whom dividend
to be paid.

S.A., s. 295.

W.A., 1898, s. 35.

185. When the trustee declares any dividend, the sum proposed to be divided shall, except in the case of a final dividend, be apportioned rateably 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 thereafter assent thereto in writing, and no dividend shall be declared until fourteen days after the publication of the last advertisement of the dividend required by this Part.

Enforcing
payment of
dividend.

S.A., s. 296.

W.A., 1898, s. 36.

186. No action for any dividend shall be brought against any trustee by any creditor; but if the trustee refuses to pay the dividend, the Court may order payment thereof with interest for the time that it has been withheld, and may also order the trustee to pay the costs of the application.

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

S.A., s. 297.

W.A., 1898, s. 37.

187.—(1.) If, during the period of ten days after the debtor's execution of the deed, and before the deed has been assented to by the requisite majority of creditors, the goods and chattels of the debtor are 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 the process shall, after notice of the deed, pay the proceeds of the sale into the Court out of which the process issued.

(2.) The creditor at whose suit the process issued shall not be entitled to any of the proceeds thereof, until the expiration of that period of ten days, when, if the deed has then been assented to by the requisite majority of creditors, the proceeds shall be paid to the trustee of the deed as part of the general estate of the debtor, or

may be recovered by the trustee on summary application to the Court into which the same has been paid, and on proof of the requisites in that behalf.

188. Subject to the power of transfer contained in Division I of Part III. of this Act, all jurisdiction and proceedings under this Act concerning any composition or scheme of arrangement or concerning any deed made under this Part, or concerning any debtor or his creditors in relation to any such deed, or concerning the trustee of any such deed or the property thereby conveyed or assigned, shall be had, exercised, and taken by and in the Court in which the chairman's certificate of the resolution accepting the proposal for the composition or scheme of arrangement, or requiring the debtor to execute the deed, as the case may be, is filed, and that certificate shall be deemed a proceeding in the Court in which it is filed.

Jurisdiction of Court.
S.A., s. 298.

PART XII.—DEEDS OF ARRANGEMENT.

189. In this Part, unless the contrary intention appears—

“Creditors generally” includes all creditors who assent to or take the benefit of a deed of arrangement and whether or not the deed provides that any of those creditors shall have any preference or priority as regards any other creditors, and whether or not the trustee (if any) of the deed or any other person has any discretion as to giving any creditor a preference or priority or any advantage as regards any other creditor.

Interpretation.
4 & 5 Geo. V.,
c. 47, s. 30.
Vic., s. 250.

“Registrar” (except as is otherwise prescribed) means the Registrar in the District in which the trustee of the deed of arrangement resides, or, where there is no trustee, means the Registrar in the District in which the deed of arrangement is entered into, or in which the bulk of the property or business of the debtor is situate or carried on, or as is prescribed.

190.—(1.) This Part shall apply to every deed of arrangement as defined in this section, except that it shall not apply to a composition or scheme of arrangement under Division 5 of Part IV. of this Act or to a composition or scheme of arrangement or to a deed of assignment under Part XI. of this Act.

Application of Part.
4 & 5 Geo. V.,
c. 47, s. 1.
Vic., s. 25.

(2.) A deed of arrangement to which this Part applies shall include any instrument of the classes mentioned in the next succeeding subsection whether under seal or not—

- (a) made by, for or in respect of the affairs of a debtor for the benefit of his creditors generally;
- (b) made by, for or in respect of the affairs of a debtor who was insolvent at the time of the execution of the instrument for the benefit of any three or more of his creditors.

(3.) The classes of instrument referred to in the last preceding sub-section are—

- (a) an assignment of property ;
- (b) a deed of or agreement for a composition ;

and, in cases where creditors of a debtor obtain any control over his property or business—

- c) a deed of inspectorship entered into for the purpose of carrying on or winding up a business ;
- (d) a letter of licence authorizing the debtor or any other person to manage, carry on, realize, or dispose of a business, with a view to the payment of debts ; and
- (e) any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorizing the debtor or any other person to manage, carry on, realize, or dispose of the debtor's business, with a view to the payment of his debts.

(4.) For the purpose of determining the number of creditors for whose benefit a deed is made, any two or more joint creditors shall be treated as a single creditor.

Bar to
proceedings
under Part XI.

191. If a deed of arrangement is made under this Part in respect of the affairs of a debtor no proceedings in relation to his affairs shall be taken under Part XI. of this Act.

Form and
conditions of
deed of
arrangement.

192.—(1.) A deed of arrangement to which this Part applies shall comply with the following conditions :—

- (a) 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 it forth, except such articles of household furniture, wearing apparel of the debtor and his family, tools or implements of his trade and other like necessities (not exceeding in the whole the value of Fifty pounds) as the debtor selects, and such other household furniture as a majority of the creditors may by resolution determine ;
- (b) It shall contain in a second schedule annexed the names of the several creditors of the debtor and the several amounts due or supposed to be due to them respectively ; and
- (c) A declaration by the debtor in the prescribed form verifying the contents of the schedules shall be attached to the deed.

(2.) The trustee (if any) of such a deed shall be a person registered under Part VIII. of this Act as qualified to act as a trustee.

(3.) Notwithstanding anything contained in the next succeeding section, the Court may, after the execution of such a deed, on the application of the trustee (if any) or of any creditor who has assented to the deed, subject to such conditions (if any) as the Court thinks fit

to impose, order a stay of proceedings in any action, execution, distress for rent or other legal process, in respect of any debt or liability which would be provable in the bankruptcy if a sequestration order were made against the debtor, and may at any time in its discretion set aside the order.

(4.) The order while in force shall have the effect of staying the proceedings pending the registration of the deed and its receiving the assent of the requisite majority in number and value of the creditors within the prescribed time.

(5.) The form in the first part of the Third Schedule to this Act may be used for any deed to which this Part applies, and when so used shall be of the same effect as if it were in the form of a deed in the second part of that Schedule.

193.—(1.) A deed of arrangement to which this Part applies shall be void unless—

Unregistered
deeds void.
4 & 5 Geo. V.,
c. 47, ss. 2, 3.
Vic., s. 253.

- (a) it is registered under this Act within twenty-eight clear days after its first execution by the debtor or any creditor, or, if it is executed beyond Australia, then within fourteen clear days after the time at which it would in the ordinary course of post arrive in Australia if posted within one week after its execution; and
- (b) before or within twenty-eight days after the date of registration, or within such extended time as the Court allows it receives the assent of a majority in number and value of the creditors of the debtor.

(2.) In calculating a majority of creditors for the purposes of this section, a creditor holding security upon the property of the debtor shall be reckoned as a creditor only in respect of the balance (if any) due to him after deducting the value of the security, and creditors whose debts amount to sums not exceeding Ten pounds shall be reckoned in the majority in value but not in the majority in number.

194. The registration of a deed of arrangement shall be effected in the following manner:—

Mode of
registration.
4 & 5 Geo. V.,
c. 47, s. 5.
Vic. s. 254.

The deed and every schedule or inventory thereto annexed or therein referred to, or a true copy thereof respectively and of every attestation of the execution thereof, shall be filed in the office of the Registrar by the debtor or a creditor or trustee or barrister solicitor or attorney acting for the creditors within the time aforesaid, together with—

- (a) an affidavit verifying the time of execution by the debtor and containing a description of his residence and occupation and of the place or places where his business is carried on and the title of the firm or firms under which he carries on business; and

- (b) an affidavit by the debtor stating the total estimated amount of property and liabilities included in the deed, the total amount of the composition (if any) payable thereunder, the name occupation and address of the trustee (if any), and the names and addresses of all his creditors and the amounts of their claims, and the names of the creditors who on or before the date of filing have assented thereto.

Evidence of
creditors' names
and claims.

4 & 5 Geo. V.,
c. 47, s. 3
(3)-(4).

Evidence of
assent.

Affidavit as to
requisite
majority.

195.—(1.) The list of creditors and the statement of amounts of their claims, annexed to or contained in the affidavit of the debtor filed on the registration of the deed, shall be *prima facie* evidence of the names of the creditors and the amounts of their claims.

(2.) The assent of a creditor shall be established by his executing the deed, or sending to the trustee his assent in writing attested by a witness, but not otherwise.

(3.) The trustee of the deed shall at the time of its registration, or within twenty-eight days after the date of its execution by the debtor or such extended time as the Court allows, file with the Registrar an affidavit stating whether the requisite majority in number and value of the creditors have assented thereto.

(4.) The affidavit shall, in favour of a *bona fide* purchaser for value, be conclusive, and, in other cases, be *prima facie* evidence of the facts stated therein.

Immaterial
error not to
invalidate
deed.

4 & 5 Geo. V.,
c. 46, s. 7.
Vic., s. 256.

196. A deed of arrangement shall not be deemed insufficient or invalid by reason only that in the deed, or in any schedule or inventory or copy thereof, or in any affidavit connected therewith, there is an error or omission in respect of any of the particulars required by law to be contained therein, if the Court before which the validity of the deed comes into question is satisfied that the error or omission was accidental or due to inadvertence or to some cause beyond the control of the debtor and not imputable to any negligence on his part.

Contents of
register.

4 & 5 Geo. V.,
c. 47, s. 6.
Vic., s. 255.

197.—(1.) The Registrar shall keep a register wherein shall be entered, as soon as conveniently may be after the registration of a deed, an abstract of its contents containing the following and any other prescribed particulars :—

- (a) The date of the deed;
- (b) The name address and description of the debtor, and the place or places where his business is carried on, and the title of the firm or firms under which the debtor carries on business, and the name and address of the trustee (if any) under the deed;
- (c) A short statement of the nature and effect of the deed and of the composition in the pound payable thereunder;
- (d) The date of registration; and
- (e) The amount of property and liabilities included under the deed as estimated by the debtor.

(2.) Notice of the registration of every deed stating the particulars mentioned in the last preceding sub-section shall be lodged in the office of the Registrar of Titles, or Registrar-General or other proper officer of each State and in such other places as are prescribed.

198.—(1.) If the trustee under a deed of arrangement, which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, serves in the prescribed manner on any creditor of the debtor notice in writing of the execution of the deed and of the filing of the affidavit certifying the creditors' assents with an intimation that the creditor will not after the expiration of one month from the service of the notice be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed or on any other act committed by the debtor in the course or for the purpose of the proceedings preliminary to the execution of the deed as an act of bankruptcy, that creditor shall not, after the expiration of that period, unless the deed becomes void, be entitled to present a bankruptcy petition against the debtor founded on the execution of the deed or any act so committed by the debtor as an act of bankruptcy.

Saving as to
"acts of bank-
ruptcy".
4 & 5 Geo. V.,
c. 47, s. 24.
Vic., s. 24.

(2.) Where such a deed of arrangement has become void by virtue of this Part, the fact that a creditor has assented to the deed shall not disentitle him to present a bankruptcy petition founded on the execution of the deed of arrangement as an act of bankruptcy.

(3.) Save as otherwise expressly provided in this Act, nothing in this Act shall give validity to any deed or instrument which by law is an act of bankruptcy or void or voidable.

199.—(1.) The provisions of this Act as to—

- (a) the payment in priority of certain debts,
- (b) the proof of debts,
- (c) the respective rights of secured and unsecured creditors, and
- (d) the examination of a bankrupt or any other person,

Incorporation.
Vic., s. 257.

shall apply to every deed of arrangement registered under this Part, as fully and effectually as if a sequestration order had been made against the debtor.

(2.) The provisions, so far as applicable, of Part V. of this Act shall apply, as if a sequestration order had been made against the debtor, to every deed of arrangement registered under this Part, in respect to the control over the person and property of the debtor and to the wife, or, where the debtor is a married woman, the husband, of the debtor and to any person supposed to be indebted to the debtor or to have in his possession any of his estate or effects or to be able to give information respecting his dealings or property.

(3.) The provisions, so far as applicable, of Part VIII. of this Act shall apply in relation to every trustee of a deed of arrangement as if an order of sequestration had been made against the debtor and the trustee had been appointed trustee in the bankruptcy.

Provisions
for protection
of trustees
under void
deeds.

4 & 5 Geo. V.,
c. 47, s. 19.

200.—(1.) Where a deed of arrangement is void by reason that the requisite majority of creditors have not assented thereto, or, in the case of a deed for the benefit of three or more creditors, by reason that the debtor was insolvent at the time of the execution of the deed and that the deed was not registered as required by this Part, but is not void for any other reason, and a sequestration order is made against the debtor upon a petition presented after the lapse of six months from the execution of the deed, the trustee under the deed shall not be liable to account to the trustee in the bankruptcy for any dealings with or payments made out of the debtor's property which would have been proper if the deed had been valid, if he proves that at the time of such dealings or payments he did not know, and had no reason to suspect, that the deed was void.

(2.) When a deed of arrangement is void by virtue of this Act for any reason other than that it has not been registered within the time allowed for the purpose by this Part, the trustee shall, as soon as practicable after he has become aware that the deed is void, give notice in writing thereof to each creditor whose name and address he knows and file a copy of the notice with the Registrar, and, if he fails to do so, he shall be liable on summary conviction to a fine not exceeding Twenty pounds.

Failure of
trustee to give
security.

201. If the trustee under a deed of arrangement fails to give security when required so to do in pursuance of this Act, the Court may, on the application of any creditor and after hearing such persons as it thinks fit, declare the deed of arrangement to be void or may cancel the appointment of the trustee and order that some other person registered as qualified to act as a trustee be appointed by the creditors.

Payments to
trustee
protected.

202. Nothing in this Act shall, as against the person paying or delivering, invalidate a payment of a debt or delivery of property made to a trustee of a deed of arrangement, *bonâ fide* in the ordinary course of business without notice of the presentation of a bankruptcy petition, and before the date of the making of a sequestration order against a debtor.

Trustee's
remuneration.

203.—(1.) The remuneration of a trustee of a deed of arrangement shall from time to time be fixed as determined by the creditors, and shall be such a sum of money as is fixed by the creditors or shall be in the nature of a commission, the commission not to exceed—

- (a) Five pounds per centum on the amount realized by the trustee after the deduction of the expenses of realization, subject to the creditors, by resolution, fixing a higher commission on the collection of book debts; or
- (b) where the trustee carries on the business of the debtor, one pound per centum on the turnover of the capital of the business.

(2.) Where two or more trustees act in succession the commission shall be apportioned in such manner as the creditors determine.

Repealed by
1927 No. 31
and new section
substituted

204. At any time within three years after a debtor has made a deed of arrangement, the Court may require the debtor to make a statement verified by affidavit giving particulars of all his assets and liabilities and property whatsoever, and, if without reasonable cause he fails so to do, he shall be guilty of a contempt of Court.

Debtor to furnish statement when required.

Vic., s. 265.

205. Subject to rules, any person shall be entitled on payment of such fee as is prescribed—

(a) to have an office copy of, or extract from, any deed registered under this Part; and

Office copies and inspection of register.

4 & 5 Geo. V., c. 47, ss. 9, 25. Vic., s. 268.

(b) to search the register, and to inspect and examine and make extracts from any registered deed of arrangement:

50-1 Vic., c. 5, s. 12 (1).

Provided that the extracts shall be limited to the dates of execution and of registration, the names, addresses, and descriptions of the debtor, and of the parties to the deed, a short statement of the nature and effect of the deed, and any other prescribed particulars.

206. Any application by the trustee under a deed of arrangement which either is expressed to be or is in fact for the benefit of the debtor's creditors generally, or by the debtor or by any creditor entitled to the benefit of such a deed of arrangement, for the enforcement of the trusts or the determination of questions under it, shall be made to the Court having jurisdiction in bankruptcy in the district in which the deed is registered:

Courts in which applications for enforcement of trusts to be made.

4 & 5 Geo. V., c. 47, s. 23.

Provided that the provisions of sub-section (2.) of section twenty of this Act shall apply to any such application as if it were a proceeding in bankruptcy.

207. The provisions of this Part of this Act, except section two hundred, shall not apply to a deed of arrangement made for the benefit of any three or more of the debtor's creditors unless it is in fact for the benefit of the debtor's creditors generally.

Application of Part XII.

4 & 5 Geo. V., c. 47, s. 22.

PART XIII.—UNCLAIMED FUNDS OR DIVIDENDS.

208.—(1.) Where the trustee, under any bankruptcy, composition, or scheme or deed of arrangement or deed of assignment, has under his control—

Unclaimed and undistributed dividends or moneys.

(a) any unclaimed dividend or moneys which have remained unclaimed for more than six months; or

E.B.A., s. 153.

4 & 5 Geo. V., c. 47, s. 16.

(b) after making a final dividend, any unclaimed or undistributed moneys arising from the property of the debtor,

N.S.W., s. 105.

Vic., ss. 118, 208.

S.A., ss. 229, 230.

he shall forthwith pay those moneys into such account at the Treasury as is prescribed.

W.A., s. 138.

Q., ss. 198, 200.

Tas., ss. 51, 109.

(2.) The Court may at any time on the application of the Registrar or official receiver order any trustee to submit to it an account of any unclaimed or undistributed funds or dividends under his control, verified by affidavit, and may direct and enforce an audit thereof and may direct him to pay them into such account at the Treasury as is prescribed.

(3.) For the purposes of this section the Court may exercise all the powers conferred by this Act with respect to the discovery and realization of the property of a bankrupt, and the provisions of this Act with respect thereto shall, with such modifications as are prescribed, apply to proceedings under this section.

(4.) The provisions of this section shall not, except as expressly declared herein, deprive any person of any other right or remedy to which he is entitled against the trustee or any other person.

(5.) Any person claiming to be entitled to any moneys paid in to the prescribed account pursuant to this section may apply to the Court for payment to him of any sum due to him, and, if satisfied that the person claiming is entitled thereto, the Court shall make an order for the payment accordingly.

(6.) The interest arising from any investment of the moneys paid in to the prescribed account pursuant to this section shall be paid to the credit of a fund to be called the "Bankruptcy Suitors' Fund" which shall be a trust account within the meaning of section sixty-two A of the *Audit Act* 1901-1920.

(7.) If it appears to the Court, upon the application of the official receiver or trustee, that inquiries or proceedings relating to a bankrupt's estate ought to be instituted or carried on, or any prosecution ought to be carried on against any person for any offence against this Act, and that there are no funds in the estate available for the inquiries, proceedings or prosecution, the Court may direct the payment of the costs of any such inquiries, proceedings or prosecution, after taxation thereof out of the "Bankruptcy Suitors' Fund" and payment of the taxed costs shall be made accordingly.

PART XIV.—OFFENCES.

209. Whoever—

- (a) wilfully conceals any property being part of the estate of a bankrupt with intent to defraud the bankrupt's creditors ;
- (b) forges the signature of the Judge, Registrar, or Deputy Registrar to any order, certificate, or process of the Court or Judge, or serves or enforces any such forged order or process knowing it to be forged, or delivers or causes to be delivered to any person any paper or writing falsely purporting to be a summons, order, warrant, or process of the Court or Judge, or to be a copy thereof, knowing the paper or writing to be false, or acts or endeavours to act under colour or pretence of that process ;
- (c) disposes of, receives, removes, retains, conceals, or embezzles any property, money, or security for money which has been attached as part of a bankrupt estate, knowing it to have been so attached ; and with intent to defeat the attachment, obstructs or endeavours to obstruct any sheriff, messenger or other authorized person in the discharge of his duty ;

E.B.A., s. 154.
N.S.W., s. 126.
Vic., s. 271.
S.A., s. 251.

Concealing
property.

Forging
process.

Removing
property under
attachment.

- (d) whether before or after sequestration receives any property from the bankrupt or from any person on his behalf with intent to defraud or to assist the bankrupt in defrauding his creditors ;
- (e) with intent to defraud inserts or causes to be inserted in any newspaper any advertisement purporting to be under this Act without authority or knowing it to be false in any material particular ; or
- (f) in any proceeding in bankruptcy or while an estate is under composition or arrangement with creditors makes any false claim or any proof, declaration or statement of account which is untrue in any material particular with intent to defraud,

Receiving property from bankrupt.

Inserting false advertisements.
S.A., s. 255.

False claim, &c.
E.B.A., s. 160.

shall be guilty of an offence.

Penalty : Three years' imprisonment.

210.—(1.) Any bankrupt who—

- (a) does not, to the best of his knowledge and belief, fully and truly discover to the trustee all his property, real and personal, and when, how, and to whom, and for what consideration, he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family ;
- (b) does not deliver up to the trustee, or as he directs, all parts of his real and personal property which are in his custody or under his control, and which he is required by law to deliver up ;
- (c) does not deliver up to the trustee, or as he directs, all books, documents, papers, and writings in his custody or under his control relating to his property or affairs ;
- (d) makes any material omission in any statement relating to his affairs ;
- (e) knowing or believing that a false debt has been proved by any person under the bankruptcy, fails for the period of one month to inform the trustee ;
- (f) is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his property or affairs ; or
- (g) fails to give to the Court a complete and satisfactory account of loss of any substantial portion of his estate within a period of one year immediately preceding his bankruptcy,

Failure to make full discovery.
Ib. s. 154 (1).
Vic., s. 272.
S.A., s. 242.

Failure to make delivery.
Ib. s. 154 (2).

Failure to give up documents.
Ib. s. 154 (3).

Omission in statement.
Ib. s. 154 (6).

Failure to inform trustee of false debt.
Ib. s. 154 (7).

False representation.
Ib. s. 154 (16).

Failure to account for loss.

shall be guilty of an offence.

Penalty : One year's imprisonment.

(2.) Any person against whom a sequestration order is made, who after or within six months before the presentation of the petition on which the order is made—

Concealment of property.

E.B.A. s. 154(4).

Concealment of debt.

Concealment, mutilation, or falsification of documents.

Ib. s. 154 (9),

(10), (11).

S.A., s. 243.

Accounting by

fictitious losses.

Ib. s. 154 (12).

(a) conceals or removes any part of his property to the value of Ten pounds or upwards;

(b) conceals any debt due to or from him;

(c) conceals, parts with, destroys, mutilates, falsifies, alters, or makes any false entry or any omission in, any book or document affecting or relating to his property or affairs; or

(d) attempts to account for any part of his property by fictitious losses or expenses,

shall be guilty of an offence.

Penalty: One year's imprisonment.

Ib. s. 154 (13),
(14), (15).

(3.) Any person against whom a sequestration order is made, who after or within six months before the presentation of the petition on which the order is made—

(a) has by any false representation or other fraud, obtained any property on credit and has not paid for it;

(b) has obtained, under the false pretence of carrying on business or dealing in the ordinary way of his trade, any property on credit, and has not paid for it;

(c) has pawned, pledged or disposed of, otherwise than in the ordinary way of his trade, any property which he has obtained on credit, and has not paid for; or

(d) has obtained money by fraud,

shall be guilty of an offence.

Penalty: One year's imprisonment.

Obtaining property on credit by fraud.

Trader obtaining property on credit by false pretences.

S.A., s. 244.

Trader disposing of property obtained on credit.

(4.) Any person against whom a sequestration order is made, who after the presentation of the petition on which the order is made, prevents the production of any book, document, paper, or writing affecting or relating to his property or affairs, shall be guilty of an offence.

Penalty: One year's imprisonment.

(5.) Any person who is privy to any act or omission which if done or made by himself would be an offence against this section, shall be deemed to be guilty of the offence.

(6.) It shall be a defence to any charge under this section, other than to a charge under paragraphs (f) and (g) of sub-section (1.), or under sub-section (3.), if the accused proves that the act or omission with which he was charged was done or made without intent to defraud his creditors or dishonestly conceal the state of his affairs or otherwise violate or defeat the law.

*Amended by
1927 No 2.*

Liability of undischarged bankrupt.

Ib. s. 155.

211. Where an undischarged bankrupt—

(a) either alone or jointly with any other person obtains credit to the extent of Twenty pounds or upwards from any person without informing him that he is an undischarged bankrupt; or

- (b) trades under an assumed name, or in the name of any other person, or in the name of a firm, without disclosing his true name and the fact of his bankruptcy to all those with whom he deals,

S.A., s. 175.

he shall be guilty of an offence.

Penalty: One year's imprisonment.

212.—(1.) Any person against whom a sequestration order is made who—

- (a) in incurring any debt or liability, has obtained credit by means of fraud ;
 (b) has, with intent to defraud his creditors, or any of them, made or caused to be made any gift, delivery, or transfer of or any charge on his property ;
 (c) has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him,

Fraudulently obtaining credit.
 Fraudulent gift or transfer.
 Fraudulent avoidance of payment.
 E.B.A., s. 156.
 N.S.W., s. 128.
 Vic., s. 275.

shall be guilty of an offence.

Penalty: One year's imprisonment.

(2.) In any prosecution under this section the burden of proving the absence of fraud shall lie upon the defendant.

Burden of proof.

213.—(1.) If any person who has on any previous occasion been a bankrupt or made a composition or arrangement with his creditors becomes a bankrupt, he shall be guilty of an offence, if, having during the whole or any part of the two years immediately preceding the date of the presentation of the bankruptcy petition been engaged in any trade or business, he has not kept proper books of account throughout those two years or part thereof, as the case may be, and, if so engaged at the date of presentation of the petition, thereafter, whilst so engaged, up to the date of the sequestration order, or has not preserved all books of account so kept :

Bankrupt failing to keep proper accounts.
 E.B.A., s. 158.
 S.A., s. 175
 (vi) (d).

Provided that a person who has not kept or has not preserved those books of account shall not be convicted of an offence under this section if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

(2.) A prosecution shall not be instituted against any person under this section except by order of the Court.

(3.) For the purposes of this section, a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of annual stocktakings.

(4.) Sub-section (2.) of section two hundred and ten of this Act (so far as it relates to the destruction, mutilation, and falsification

and other fraudulent dealing with books and documents), shall, in its application to the books mentioned in this section, have effect as if "two years next before the presentation of the bankruptcy petition" were substituted for the time mentioned in that sub-section as the time prior to the presentation within which the acts or omissions specified in that sub-section constitute an offence.

Gambling or unjustifiable speculations.
E.B.A., s. 157.
Vic., s. 235 (5).
S.A., s. 175 (ix).

214.—(1.) If a bankrupt brings about or contributes to his bankruptcy by gambling or by unjustifiable speculations unconnected with his trade or business, he shall be guilty of an offence.

Penalty : One year's imprisonment.

(2.) No proceedings shall be taken under this section except by order of the Court exercising bankruptcy jurisdiction.

Penalty for absconding with property.
E.B.A., s. 159.
Vic., s. 273.

215. If any person in respect of whose estate a sequestration order has been made, after the presentation of a bankruptcy petition by or against him, or within six months before the presentation, quits Australia and takes with him, or attempts or makes preparation to quit Australia and take with him, any part of his property to the amount of Twenty pounds or upwards which ought by law to be divided amongst his creditors, he shall (unless he proves that he had no intent to defraud) be guilty of an offence.

Penalty : One year's imprisonment.

Order by Court for prosecution on report of trustee.
C E.B.A., s. 61.
Q., s. 217.
W.A., s. 142.

216. Where—

- (a) the official receiver or a trustee reports to the Court that in his opinion a bankrupt has been guilty of any offence against this Act; or
- (b) the Court is satisfied upon the representation of any creditor that there is ground for believing that the bankrupt has been guilty of any offence under this Act,

the Court may, if it appears that there is a reasonable probability that the bankrupt will be convicted, order that the bankrupt be prosecuted for the offence in any Court of competent jurisdiction.

Power of Court to try summarily or commit for trial.
Cf. E.B.A., s. 163.
N.S.W., s. 130.
Vic., ss. 234, 235.

217.—(1.) If the Court, in any application for an order of discharge either voluntary or compulsory, has reason to believe that the bankrupt has been guilty of an offence against this Act punishable by imprisonment, it may—

- (a) charge him with the offence and try him summarily; or
- (b) commit him for trial before any Court of competent jurisdiction.

(2.) Where the Court tries the bankrupt summarily it shall serve him with a copy of the charge and appoint a day for him to answer it. On the day so appointed, the Court shall require the bankrupt to plead to the charge, and if the bankrupt admits the charge, or if after trial the Court finds that the bankrupt is guilty of the offence, the Court may sentence him to imprisonment for any period not exceeding six months.

(3.) At the summary trial, if the offence is not admitted, the Court may cause to be read to the bankrupt the evidence taken before the Court on which the charge is based, and that evidence shall thereupon be evidence in the trial; and the Court may take further evidence in support of the charge, and shall allow evidence and argument to be adduced on behalf of the bankrupt.

(4.) For the purpose of committing the bankrupt for trial, the Court shall have all the necessary powers as to taking depositions, binding over witnesses to appear, admitting the accused to bail, and otherwise.

218. Where a debtor has been guilty of any offence against this Act, 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 for deed of arrangement has been accepted or approved.

Criminal liability after discharge or composition.
E.B.A., s. 162.
N.S.W., s. 131.
W.A., s. 144.

or deed of assignment

Added by 1927 No. 3.

219.—(1.) A person guilty of an offence against this Act in respect of which no special penalty is imposed by this Act shall be liable, on conviction on indictment, to imprisonment with or without hard labour for a term not exceeding two years, or, on summary conviction, to imprisonment with or without hard labour for a term not exceeding six months.

Trial and punishment of offences.
E.B.A., s. 164.

(2.) Summary proceedings in respect of any such offence shall not be instituted after one year from the first discovery thereof either by the official receiver or by the trustee in the bankruptcy, or, in the case of proceedings instituted by a creditor, by the creditor, nor in any case shall they be instituted after three years from the commission of the offence.

(3.) In an indictment for an offence under this Act, it shall be sufficient to set forth the substance of the offence charged in the words of this Act specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant, or document of, any Court acting under this Act or any State Act.

220. If a trustee under a deed of arrangement pays to any creditor out of the debtor's property a sum larger in proportion to the creditor's claim than that paid to other creditors entitled to the benefit of the deed, then, unless the deed authorizes him to do so, or unless such payments are either made to a creditor entitled to enforce his claim by distress or are such as would be lawful in a bankruptcy, he shall be guilty of an offence.

Preferential payment to creditor an offence.
E.B.A., s. 17.

Penalty: Fifty pounds.

221. If a trustee acts under a deed of arrangement—

- (a) after it has to his knowledge become void by reason of non-compliance with any of the requirements of this Act; or
- (b) after he has failed to give security within the time and in the manner provided for by this Act,

Penalty on trustee acting when deed of arrangement void.
Ib. s. 12.

he shall be liable on summary conviction to a fine not exceeding Five pounds for every day between the date on which the deed became void or the expiration of the time within which security should have been given, as the case may be, and the last day on which he is proved to have acted as trustee, unless he satisfies the Court before which he is accused that his contravention of the law was due to inadvertence, or that his action has been confined to taking such steps as were necessary for the protection of the estate.

Attorney-General to act in certain cases.

Ib. s. 185.
W.A., s. 143.

222. Where the Court commits any bankrupt for trial for any offence against this Act, 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.

PART XV.—MISCELLANEOUS.

Power to make rules and regulations.

E.B.A., ss. 132, 133.

N.S.W., s. 124.

Vic., ss. 34, 44, 209.

S.A., ss. 16, 17.

W.A., s. 115.

Q., ss. 27-29.

Tas., ss. 65, 73.

223.—(1.) The Governor-General may make rules or regulations, not inconsistent with this Act, for prescribing all matters forms and things which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the administration thereof, and in particular—

- (a) for regulating the practice and procedure of Courts having jurisdiction in bankruptcy, and all matters relating to the costs of proceedings under this Act and their taxation ;
- (b) for summoning meetings of creditors and regulating the proceedings thereat ;
- (c) for the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs and all matters incidental thereto ;
- (d) for regulating the transmission by telegraph of the proxies of creditors at a distance from the place of the bankruptcy proceedings ;
- (e) for prescribing the fees or percentages to be charged in respect of proceedings under this Act or in relation to any declarations, affidavits, instruments, documents, searches, or extracts ; and
- (f) for repealing, amending or adding to the rules set out in the First and Second Schedules to this Act.

E.B.A., s. 132
(2).

N.S.W., s. 156.

W.A., s. 116.

(2.) All rules made under this section shall be notified in the *Gazette*, shall take effect from the date of notification or from a later date specified in the rules, and shall be laid before both Houses of the Parliament within thirty days after the making thereof, or, if the Parliament is not then sitting, within thirty days after the next meeting of the Parliament.

(3.) If either House of the Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after any such rules have been laid before such House disallowing any rule, that rule shall thereupon cease to have effect.

THE SCHEDULES.

THE FIRST SCHEDULE.

Section 67.

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 sequestration order, unless the Court or the Registrar for any special reason deems it expedient that the meeting be held at a later day. Cf. E.B.A. 1st Schedule.

2. The official receiver shall summon the meeting by giving in the prescribed manner not less than seven days' public notice of the time and place thereof.

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 a summary of the debtor's statement of affairs including the causes of his failure, and any observations thereon which the official receiver thinks 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 in value 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 is 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 those present at 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 with the official receiver at least twenty-four hours before the time appointed for the meeting. Vic., s. 135 (a).

9. The wife or husband of a bankrupt shall not be entitled to vote at a meeting of creditors.

10. 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. Vic., s. 135 (b).

11. 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. Vic., s. 138.

12. 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 (not being a bankrupt) who is liable thereon antecedently to the debtor as a security in his hands, and for the purposes of voting, but not for the purposes of dividend, to deduct its estimated value from his proof. Vic., s. 139.

13. The trustee or the official receiver may, 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, require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated. Vic. s. 140.

14. If a sequestration 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.

15. 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.

Cf. E.B.A.

Ib. s. 22 (2).

Vic., s. 133.

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

17. Every instrument of proxy shall be in the prescribed form.

18. 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.

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

20. 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:—

Ib. s. 22 (3).

(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.

Eng. Sch.
(17).

21. 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.

22. Where it appears to the satisfaction of the Court that any solicitation 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 thinks fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary.

Ib. (19).

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

Cf. ib. (23).

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

Ib. (22).

25. 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 entitled to vote, or all the creditors if their number does not exceed three.

Ib. (23).

26. 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.

Ib. (24).

27. 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.

Ib. (25).

Vic., s. 134.

28. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor:

Ib. (26).

Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use those proxies and vote accordingly.

Ib. (28).

Vic., s. 83.

W.A., s. 85.

29. 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.

THE SECOND SCHEDULE.

Section 83.

PROOF OF DEBTS.

Proof in Ordinary Cases.

1. Every creditor shall prove his debt as soon as may be after the making of a sequestration order. Cf. E.B.A., 2nd Schedule. N.S.W. rules.
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—
 - (a) by the creditor himself, or
 - (b) by some person authorized by or on behalf of the creditor, stating 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 it 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 his own costs 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.
9. Any account settled between the debtor and the creditor within three years preceding the date of the sequestration order may be examined, and, if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalization of interest or ascertainment of loans or otherwise), the account may be re-opened and the whole transaction treated as one. E.B.A., s. 66 (2) (a).
10. Any payments made by the debtor to the creditor before the sequestration order, whether by way of bonus or otherwise, and any sums received by the creditor before the sequestration order from the realization of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated to principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate. Ib. s. 66 (2) (b).
11. Where the debt due is secured and the security is realized after the sequestration order, or the value thereof is assessed in the proof, the amount realized or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate. Ib. s. 66 (2) (c).

Proof by Secured Creditors.

12. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized, provided the creditor satisfies the Court or the trustee that the realization has been effected in a *bona fide* and proper manner. Q., s. 151. S.A., s. 199. Tas., s. 39. S.A., s. 199. Tas., s. 39. S.A., s. 199.
13. 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.
14. If a secured creditor does not either realize 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.
15. (a) Where a security is so valued the trustee may at any time redeem it on payment to the creditor of the assessed value. S.A., s. 199.
- (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 are agreed on between the creditor and the trustee, or as, in default of such agreement, the Court directs. 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 realized, 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.

16. 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 *bonâ fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court orders, unless the trustee allows the amendment without application to the Court.

S.A., s. 199.

17. 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.

S.A., s. 199.

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

S.A., s. 199.

Tas., s. 39.

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

S.A., s. 199.

20. Subject to the provisions of Rule 15, a creditor shall in no case receive more than Twenty shillings in the pound, and interest as provided by this Act.

Proof in respect of distinct Contracts.

Q., s. 146.

Tas., s. 34.

21. If a debtor was at the date of the sequestration 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.

22. When any rent or other payment falls due at stated periods, and the sequestration 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.

23. 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 sequestration 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.

24. A creditor may prove for a debt not payable when the debtor became bankrupt 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 in which it was contracted.

Admission or Rejection of Proofs.

25. 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.

26. 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.

27. 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.

28. 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.

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

30. 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.

THE THIRD SCHEDULE.

FIRST PART.

Sections 163,
192.

This Deed, made the _____ day of _____, 19____, in pursuance of Part XI. (or Part XII. *as the case may be*) of the *Bankruptcy Act* 1924, between _____ of _____, in the State of _____, of the one part, and _____ of _____, in the said State _____, of the other part: Witnesseth that the said _____ doth hereby convey and assign all his real and personal estate except so much thereof as is retained by the debtor in pursuance of Part XI. (or Part XII. *as the case may be*) of the *Bankruptcy Act* 1924 to the said _____, his heirs, executors, administrators, and assigns upon trust for the benefit of the creditors of the said _____, the trustee's remuneration to be (1) £ _____ per centum on the amount realized by the trustee after the deduction of the expenses of realization and (2) £ _____ per centum on the amount collected in respect of book debts.

In witness whereunto the said parties to these presents have hereunto set their hands and seals the day and year first before-written.

Signed, sealed, and delivered by the
said _____ this _____ day of _____ 19____, in the presence of _____

Signed, sealed, and delivered by the
said _____ this _____ day of _____ 19____, in the presence of _____

SECOND PART.

This Deed, made the _____ day of _____, 19____, One thousand nine hundred and _____, in pursuance of Part XI. (or Part XII. *as the case may be*) of the *Bankruptcy Act* 1924, between _____, of _____, in the State of _____, of the one part, and _____, of _____, in the said State of the other part: Witnesseth, that in consideration of the release hereinafter contained, the said (assignor) doth by these presents grant and assign unto the said (trustee) his heirs, executors, administrators, and assigns, who and every other trustee or trustees for the time being

hereof are hereinafter called "the said trustee," all the real and personal property and estate, of which the said (assignor) is possessed, or of which any person or persons in trust for him is or are possessed, or to which he or any such person or persons is or are entitled legally or equitably in possession, reversion, remainder, or expectancy, and which are more particularly described, so far as the said (assignor) is able to set forth the same, in the First Schedule hereto annexed, except such articles of household furniture and wearing apparel of the said (assignor) and his family, and other like necessities, not exceeding in the whole the value of Fifty Pounds, and such other household property as a majority of the creditors may by resolution determine to the intent that the real and personal property and estate hereinbefore granted and assigned shall be held by the said trustee by virtue hereof and subject to the provisions of Part XI. (or Part XII. as the case may be) of the *Bankruptcy Act 1924*: And to the further intent that the said (assignor) shall be and he is hereby released from all debts and liabilities which, under the said Act, would have been provable under his bankruptcy had he been adjudicated bankrupt on the day of the date of these presents: And it is hereby declared and agreed subject to the said Act that in addition to and without any revocation, limitation, or restriction whatsoever of the powers and authorities conferred upon the said trustee by virtue of the said *Bankruptcy Act 1924*, it shall and may be lawful for the said trustee, when and as to him shall seem best, to sell and dispose of the said estate and premises hereby conveyed and assigned, or intended so to be, to any person or persons whatsoever, either by public auction or private contract, or by both such methods, and either together or in lots, as to the said trustee shall seem most advantageous, and subject to any special or other conditions, and in such manner in all respects as the said trustee may think proper, with full power to buy in or to rescind any contract for sale, and to resell without being responsible for any loss occasioned thereby, and to do, make, sign, execute, and deliver any act, thing, deed, or instrument whatsoever that may be necessary for completing any such sale or contract, and for vesting the property sold in the purchaser or purchasers respectively. And it is declared that the receipt or receipts of the said trustee for the property sold, or any part thereof, shall effectually discharge the purchaser or purchasers paying the same therefrom and from being concerned as to the disposition or application thereof in any way whatsoever. And it shall also be lawful for the said trustee, as soon as conveniently may be, to collect, get in, and receive all outstanding debts and sums of money whatsoever, and to make, sign, and give all necessary receipts and discharges for all moneys paid to him by any person or persons whatsoever; and to pay all costs, charges, and expenses of the said (assignor), and of the said trustee of and preparatory and incidental to the making, preparation, and completion of these presents, and all other costs, charges and expenses, touching, relating to, or concerning the execution of the powers contained in these presents or conferred by the said *Bankruptcy Act 1924*, or otherwise: And it shall also be lawful for the said trustee to retain for his own remuneration a commission as fixed by the creditors in accordance with Part XI. (or Part XII. as the case may be) of the *Bankruptcy Act 1924* and after full payment of all such charges, expenses, and commission as aforesaid, the said trustee shall apply and apportion the residue of the moneys arising from the sale, disposition, and getting in of the said premises hereinbefore respectively conveyed and assigned, and other the moneys coming to his hands hereunder in manner directed in the said Part XI. (or Part XII. as the case may be) of the *Bankruptcy Act 1924*: And it is hereby declared that in case the moneys arising from the sale and getting in of the estate hereby conveyed and assigned shall be more than sufficient to satisfy the several debts and liabilities of the said (assignor), together with all costs, charges, expenses, and commission whatsoever of or incidental to the execution of the trusts hereof or payable hereunder, the said trustee shall pay the surplus, if any, unto the said (assignor), his executors, administrators, or assigns.

In witness whereof the said parties to these presents have hereunto set their hands and seals the day and year first before-written.

Signed, sealed, and delivered by the }
said _____ day of _____, 19____,
the _____
in the presence of _____

Signed, sealed, and delivered by the }
said _____ day of _____, 19____ }
the _____ in the presence of _____ }