New South Wales.

ANNO SEXAGESIMO SECUNDO

VICTORIÆ REGINÆ.

Act No. 25, 1898.

An Act to consolidate the Law relating to Bankruptcy.
[Assented to, 27th July, 1898.]

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

1. This Act may be cited as the "Bankruptcy Act, 1898," and is divided into parts and divisions as follows:— Short title of Act. 51 Vic. No. 19, s. 1.

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

DIVISION 1.—*Section* 4—*Acts of bankruptcy.*

DIVISION 2.—*Sections* 5–12—*Sequestration order.*

DIVISION 3.—*Sections* 13–18—*Proceedings consequent on order.*

DIVISION 4.—*Sections* 19–20—*Composition or scheme of arrangement.*

DIVISION 5.—*Sections* 21–26—*Creditors' trustees and committee of inspection.*

DIVISION 6.—*Sections* 27–33—*Control over person and property of bankrupt.*

DIVISION 7.—*Sections* 34–38—*Release of estate, and annulment of sequestration order.*

DIVISION 8.—*Sections* 39–44—*Bankrupt's certificate.*

PART II.—ADMINISTRATION OF PROPERTY.

DIVISION 1.—*Sections* 45–47—*Proof of debts.*

DIVISION 2.—*Sections* 48–50—*Preferential debts.*

DIVISION 3.—*Sections* 51–52—*Property available for payment of debts.*

DIVISION 4.—*Sections* 53–58—*Effect of bankruptcy on antecedent transactions.*

DIVISION 5.—*Sections* 59–68—*Realisation of property.*

DIVISION 6.—*Sections* 69–81—*Distribution of estate.*

PART III.—CREDITORS' TRUSTEES AND OFFICIAL ASSIGNEES.

DIVISION 1.—*Sections* 82–86—*Remuneration of trustees or assignees.*

DIVISION 2.—*Section* 87—*Official name.*

DIVISION 3.—*Sections* 88–94—*Appointment and removal.*

DIVISION 4.—*Sections* 95–106—*Control over assignees and trustees.*

PART IV.—PROCEDURE.

Sections 107–113.

PART V.—APPLICATION OF ACT.

Sections 114–125.

PART VI.—INDICTABLE OFFENCES.

Sections 126–132.

PART VII.—JURISDICTION.

DIVISION 1.—*Sections* 133–138—*Bankruptcy Division of Supreme Court.*

DIVISION 2.—*Sections* 139–145—*Officers of the Court.*

PART VIII.—MISCELLANEOUS PROVISIONS.

Sections 146–156.

2. (1) The several enactments mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed. Repeal. First Schedule.

(2) All persons appointed by virtue of any Act hereby repealed and holding office at the passing of this Act, shall be deemed to have been appointed hereunder.

(3) All rules of Court made under the authority of any Act hereby repealed and being in force at the passing of this Act, shall be deemed to have been made under the authority of this Act.

3. (1) In this Act, unless the context otherwise requires :— Interpretation of terms. 51 Vic. No. 19, s. 3.

"The Judge" means the Judge having jurisdiction in bankruptcy under this Act or any Judge acting as such :

"Available Act of bankruptcy" means any Act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the sequestration order is made :

"Debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy :

"Goods" include all chattels personal :

"The Court" means the Supreme Court in its bankruptcy jurisdiction :

"Local Bank" means any bank in or in the neighbourhood of the district in which the proceedings are taken :

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

"Property" includes money, goods, things in action, land, and every description of property, whether real or personal, and whether situate in New South Wales 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 :

"Secured creditor" means a person holding a mortgage, charge, or lien on the property of the debtor, or any part thereof :

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

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

The term "trustee" shall in all cases where not inconsistent with the context include the official assignee when he fills the office of trustee.

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

PART

PART I.

PROCEEDINGS FROM ACT OF BANKRUPTCY TO BANKRUPT'S EXAMINATION.

DIVISION 1.—*Acts of Bankruptcy.*

Acts of bankruptcy.
51 Vic. No. 19, s. 4.

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

(*a*) If in New South Wales or elsewhere he makes a conveyance or assignment of his property to a trustee for the benefit of his creditors generally :

(*b*) If in New South Wales or elsewhere he makes a conveyance, gift, delivery, assignment, or transfer of his property, or of any part thereof, with intent to defeat or delay his creditors, or any of them :

(*c*) If in New South Wales or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon which would under this or any other Act be void as a fraudulent preference if a sequestration order were made against him:

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

52 Vic. No. 11, s. 2.

(*e*) If execution issued against him has been levied by seizure and sale of his goods under process in an action in any Court, or in any civil proceeding in the Supreme Court, and if he has not within five days of such sale, satisfied the debt by payment :

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

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

(*h*)

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

(*i*) If he has been adjudged bankrupt or insolvent by a British Court of competent jurisdiction in or out of New South Wales, and has not received a certificate of discharge or other corresponding release—of any of which facts a copy of the order or orders or certificate or release made or given by such Court certified under its seal shall be sufficient evidence:

(*j*) If he has not presented a bankruptcy petition against himself or filed in the Court a declaration of his inability to pay his debt within forty-eight hours after having at a convened meeting of his creditors admitted that he is unable to pay his debts, and been thereupon required by a majority in number of his creditors present to present such petition or file such declaration.

(2) A bankruptcy notice under this Act shall be in the form prescribed in the Fifth Schedule hereto, and shall state the consequences of non-compliance therewith, and shall be served in the manner prescribed by the rules of Court; it shall be under the hand of the Registrar, and may be granted upon the application of the creditor claiming to be entitled thereto.

(3) Upon the debtor satisfying the Court that such notice ought not to have issued, the Court may order the payment to him by the creditor applying for such notice of all the costs occasioned by the issue thereof, and if satisfied that the notice was issued maliciously and without reasonable and probable cause may at the request of the debtor assess the damages occasioned thereby.

(4) Upon security being given by the debtor for payment of the debt and the cost of establishing it, the Court may stay all proceedings on the notice, and may stay execution on the judgment in respect of which such notice was issued, for such a time, in either case, as it thinks fit.

(5) Upon the affidavit of any creditor who would be entitled to present a bankruptcy petition that a debtor, being a trader, has committed an act of bankruptcy and is diminishing his assets to the prejudice of his creditors, whether voluntarily or for consideration, by conveyance, gift, delivery, assignment, pledge, mortgage, transfer, or execution upon a collusive judgment, the Court may grant an injunction restraining such debtor and all other persons from disposing of or dealing with such assets or any part thereof until the hearing of the bankruptcy petition against such debtor:

Provided that before such injunction be granted the creditor applying shall give security to the satisfaction of the Registrar to present a bankruptcy petition forthwith, and to be responsible for all damages which may be occasioned by issuing such injunction.

60 Vic. No. 29, s. 6 (1).

(6) Any person who is for the time being entitled to enforce a final judgment shall be deemed a creditor who has obtained a final judgment within the meaning of this section.

Married women.
Ibid. s. 6 (2).

(7) Any final judgment obtained against a married woman shall be deemed to be a final judgment within the meaning of subsection (1) (*g*) of this section, and a bankruptcy notice in the form prescribed by the Fifth Schedule hereto may issue and be served upon her in respect thereof as if judgment had been obtained against her as a feme sole, and the fact that no execution can issue at law on such judgment shall not prevent the non-compliance with such notice being deemed an act of bankruptcy under the said subsection.

Ibid. s. 6 (2).

(8) Nothing herein contained shall be construed to render a married woman liable to be made bankrupt except in respect of her separate estate and upon evidence that she is possessed of separate estate, or to alter or repeal anything contained in the Married Woman's Property Act, 1893, or any Act consolidating or amending the same.

Ibid. s. 6 (3).

(9) Any decree or order which is in its terms or effect final shall be deemed to be a final judgment within the meaning of this section.

Unregistered deeds of assignment.
Ibid. s. 23.

(10) Every deed of conveyance or assignment for the benefit of creditors may be registered by filing in the office of the Registrar-General an examined copy signed by one or more of the parties to the original deed of assignment and certified by the oath of some credible person taken before a Judge or before the Registrar-General or his deputy, or before any commissioner for affidavits; and if so registered within one month from the execution of the same by the assignor shall be within the protection of this Act.

Ibid. s. 23.

(11) The Registrar-General shall upon the said copy being so filed as aforesaid register the same accordingly.

Division 2.—*Sequestration order.*

Jurisdiction to make sequestration order.
51 Vic. No. 19, s. 5.

5. (1) Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a sequestration order.

(2) When a sequestration order has been made, the debtor thereby becomes a bankrupt, and continues a bankrupt until a certificate of discharge has been issued to him, or the order for sequestration be discharged or annulled in manner hereinafter provided.

Conditions on which creditor may or may not petition.
Ibid. s. 6.
60 Vic. No. 29, s. 23.

6. A creditor shall not be entitled to present a bankruptcy petition against a debtor unless—

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

(*b*)

(*b*) The debt is a liquidated sum, payable either immediately or at some certain future time, whether due at law or in equity; and

(*c*) The act of bankruptcy on which the petition is grounded has occurred within six months before the presentation of the petition:

Provided that, if the alleged act of bankruptcy is one of those mentioned in subsection (*i*) of section four, the petition may be presented within three months after the alleged act came to the knowledge of the petitioning creditor; and unless

(*d*) The debtor is domiciled in New South Wales, 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 New South Wales:

Provided that when the alleged act of bankruptcy is that set forth in subsection (*a*) of section four, and the deed of conveyance or assignment has been registered within one month from the execution thereof by the assignor in accordance with the provisions of subsection ten of the said fourth section, no sequestration order shall be made upon the petition of a creditor or creditors, if such creditor or creditors do not represent at least one-fifth in value of all the creditors.

Secured creditor.
51 Vic. No. 19, s. 7.

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

Proceedings and order on creditor's petition.
Ibid. s. 8.

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

60 Vic. No. 29, s. 2 (1); s. 23.

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

Trustees shall receive notice of hearing.

(3) If the debtor has made a conveyance or assignment of his property to a trustee for the benefit of his creditors generally, and the same has been registered within one month from the execution thereof by the assignor in accordance with the provisions of subsection ten of section four of this Act, the trustee under such assignment shall also receive the prescribed notice of the hearing, and may appear and show cause for the dismissal of the petition, and if it appears to the Court

Court that it will be for the advantage of the creditors that the estate should be administered under the said deed such petition may be dismissed.

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

(5) If it appears to the Court upon the hearing of the petition that the petition was unfounded and vexatious or malicious, he may allow the respondent then, or at some other fixed time, to prove any damage sustained thereby, and may award such sum in respect thereof not exceeding two hundred pounds as the Court deems fit:

Provided that nothing herein shall affect the right of the respondent to sue the petitioner for damages beyond the amount awarded by the Court.

Staying proceedings on petition upon security being given.

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

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

(8) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a 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 stayed as aforesaid.

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

Proviso for revival on proceeding being stayed.

(10) Where a petition is withdrawn or discharged, or where proceedings upon a petition are stayed in consequence of the petitioning creditor's default, or his collusion with the debtor, the Court, within six months after such withdrawal or discharge or stay of proceedings, may, on the petition of any other creditor or creditors, whose debt or debts existed at the date of the service of the said petition, direct that a sequestration order shall be made. (11)

(11) If any person against whom a sequestration order has been made pays any money to any petitioning creditor or to any one on his behalf, or gives to such creditor any security for his debt or part thereof, such payment, gift, or security shall be a new act of bankruptcy, and the person receiving such money, gift, or security shall deliver up such security and repay or deliver the money or gift or its full value to the assignee for the benefit of the creditors, and shall pay all the costs incurred by any other creditor in obtaining a sequestration order upon such act of bankruptcy. Preference to petitioning creditor to be a new act of bankruptcy.

9. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and upon the presentation thereof the Court shall make a sequestration order. Debtor's petition and order thereon. 51 Vic. No. 19, s. 9.

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

10. (1) Upon the making of a sequestration order the property of the bankrupt shall vest in one of the official assignees to be named in such order, and be divisible among the creditors of the bankrupt in accordance with the provisions of this Act. Effect of sequestration order. *Ibid.* s. 10. 60 Vic. No. 29, ss. 2 (2); 7.

(2) Upon the making of an order for the sequestration of the estate of an undischarged bankrupt or insolvent, the property of such bankrupt or insolvent possessed by him at the date of the second order of sequestration shall, if the official assignee or trustee appointed under the prior order has not intervened, vest in the official assignee named in the subsequent order, and be divisible in the first instance among the creditors of the bankrupt in the subsequent bankruptcy. Sequestration of estate of undischarged bankrupt.

(3) After a sequestration order has been made, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence or take any fresh step in any action or other legal proceedings unless with the leave of the Court and on such terms as the Court may impose.

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

(5) The Court may at any time after the presentation of a bankruptcy petition, upon such conditions as it thinks fit, stay any action, execution, or other legal process against the property or person of the debtor, and may discharge him out of custody, and any Court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think fit. Power to stay legal proceedings.

(6) 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 such proceeding.

(7) All actions or proceedings at law or in equity commenced by any person, against whom a sequestration order is afterwards made, shall, upon such order being made, be stayed until the official assignee or trustee make election to prosecute or discontinue the same, and such official assignee 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 such action or proceedings, or otherwise shall be deemed to have abandoned the same:

Provided that any bankrupt shall be permitted to 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 of his family.

Registration of sequestration order and bankruptcy notice.
51 Vic. No. 19, s. 11.
52 Vic. No. 11, s. 2.

11. The Registrar shall forthwith publish in the Gazette a notice of every sequestration order, and also send a like notice to the Registrar-General, who shall make a note of the same in every index and registered instrument kept in his office for public inspection. The Registrar shall also send notice of every such order and notice of the issue of any bankruptcy notice to the sheriff, who shall forthwith register the same respectively in his office.

Agent of creditor may act for him.
51 Vic. No. 19, s. 12.

12. Where a creditor entitled to present a bankruptcy petition is absent from New South Wales, his agent, if authorised to recover his debts or effects, may present the petition and make the proof required in lieu of such creditor:

Provided that the person whom it is sought to make bankrupt shall have, in addition, the same rights and remedies in every such case against such agent as he has against the person in whose name such proceeding is taken, and all notices, summonses, orders, and documents may be served upon such agent, and shall have the same effect as if served upon the creditor.

Division 3.—*Proceedings consequent on order.*

Power to appoint special manager.
Ibid. s. 13.

13. (1) At any time after the making of a sequestration order, the official assignee 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 the appointment of a special manager or receiver of the estate or business, or any part thereof, other than the official assignee, appoint a manager or receiver thereof accordingly to act until a trustee is appointed, or so long as the creditors may by resolution require.

(2)

(2) Every such special manager or receiver shall, for all the purposes of obtaining and retaining possession of the property or business of the bankrupt, be in the same position in all respects as a receiver and manager appointed by the Supreme Court in its equitable jurisdiction, and the Court may enforce such acquisition or retention accordingly.

(3) Every person aggrieved by any act of a receiver or manager may apply to the Court, who may confirm or disallow the act complained of, and make such order in the premises as is just.

(4) Such special manager or receiver shall receive such remuneration as the creditors may by resolution determine, or in default of any such resolution as may be prescribed.

Bankrupt's statement of affairs. 51 Vic. No. 19, s. 14.

14. (1) Where a sequestration order is made the bankrupt shall make out and lodge in the office of the Registrar and furnish to the official assignee a copy of a statement of and in relation to his affairs in the form prescribed by rules of Court verified by affidavit, and showing:—

(*a*) the particulars of the bankrupt's assets, debts, and liabilities;

(*b*) the names, residences, and occupations of the debtors to his estate and of his creditors;

(*c*) the amounts due by and to each, and the securities given or held by them respectively;

(*d*) the dates when such debts and securities arose and were granted; and

(*e*) such further or other information as may be prescribed or as the official assignee may require.

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

(*a*) If the order is made on the petition of the debtor, upon the making of the sequestration order.

(*b*) If the order is made on the petition of a creditor, within seven days from the date of the service of the order.

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

(3) The bankrupt shall also deliver to the official assignee all books of account, vouchers, and other documents and writings in the possession or power of such bankrupt relating to his estate and dealings, and shall at all times as far as lies in his power assist the official assignee, trustee, and manager in the collection and realisation of the assets.

(4) If the bankrupt fails without reasonable excuse to comply with the requirements of this section the Court may, on the application of the official assignee or of any creditor, adjudge him guilty of contempt of Court and punish him accordingly.

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

First creditors meeting.
51 Vic. No. 19, s. 15.

15. (1) As soon as may be after the lodgment of the bankrupt's statement of affairs as aforesaid a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held at an advertised time and place.

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

(3) In the interpretation of the said rules the words first meeting shall include single meeting, except that such single meeting shall be presided over by the Judge or Registrar, anything in the said rules to the contrary notwithstanding.

Proceedings at first meeting.
Ibid. s. 16.

16. At such first meeting the following business may be transacted:—

(1) The creditors may consider whether any and what proposal for a composition or scheme of arrangement shall be entertained.

60 Vic. No. 29, s. 9.

(2) The official assignee may, with the consent of the creditors given by resolution at the first or any other meeting of creditors and with the approval of the Court, allow the bankrupt to retain any of his personal property; and such approval shall have the effect of vesting the said property in the bankrupt as from the date of such resolution. Notice of the intention to allow a bankrupt to retain any of his personal property shall be given to all proved creditors seven days at least before a vote is taken on the resolution.

(3) A trustee or committee of inspection may be appointed as hereinafter provided.

(4) Other business may also be transacted at such meeting, and the business specified in this section may be transacted at any other meeting as well as at the first meeting.

Single meetings for small bankruptcies.
51 Vic. No. 19, s. 17.
60 Vic. No. 29, s. 2 (3).

17. (1) If the estate of the bankrupt does not appear to the official assignee to be of the value of two hundred pounds or upwards, there shall ordinarily be only a single meeting of creditors, which shall specially be so termed and be advertised accordingly.

(2) At such single meeting the bankrupt shall attend, and all such matters may be done and directions given as are authorised to be done or given at any meeting of creditors where the value of the estate exceeds two hundred pounds.

(3)

(3) If the assets appear at a single meeting to exceed two hundred pounds other meetings may be summoned, and all proceedings and directions shall be given or taken as provided in the case of a bankruptcy where the estate exceeds two hundred pounds.

Public examination of bankrupt. 51 Vic. No. 19, s. 18. 60 Vic. No. 29, s. 2 (4).

18. (1) Where the Court makes a sequestration order it shall hold a public 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, dealings, and property.

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

(3) The Court may adjourn the examination from time to time, and may direct such further examinations to be had from time to time as it may think fit at a date and place to be appointed by it.

(4) Any creditor who has proved, or his representative authorised in writing, may question the bankrupt concerning his affairs and the causes of his failure; and any creditor who has tendered a proof or his representative authorised in writing, may question the bankrupt upon any matters which may serve to establish his alleged claim to be counted as a creditor.

(5) The official assignee may take part in the examination of the bankrupt.

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

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

(8) The bankrupt shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. The evidence shall be taken down in writing or in shorthand, and when transcribed, shall be read over to and signed by the bankrupt before the Judge or Registrar either at the same or at a future time, and it shall be open to the inspection of any creditor at all reasonable times.

(9) When the Court is of opinion that the affairs of the bankrupt have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors, and the Court may at any time direct a further examination on being satisfied of its propriety.

Division 4.—*Composition or scheme of arrangement.*

Power for creditors to accept and Court to approve composition or arrangement.

19. (1) The creditors may at the first or any other meeting, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the bankrupt, or a proposal for a scheme of arrangement of the bankrupt's affairs. (2)

51 Vic. No. 19, s. 19. 52 Vic. No. 11, s. 2. 60 Vic. No. 29, s. 2 (5).

(2) The composition or scheme shall not be binding on the creditors unless it is confirmed by a resolution passed by a majority in number representing three-fourths in value of all the creditors who have proved at a subsequent meeting of the creditors, and is approved by the Court.

Any creditor who has proved his debt may assent to, or dissent from such composition or scheme, by a letter addressed to the official assignee, in the form prescribed by rules of Court, and attested by a witness, so as to be received by such official assignee not later than two days preceding such subsequent meeting, and such creditor shall be taken as being present and voting at such meeting.

(3) The subsequent meeting shall be summoned by the official assignee by not less than seven days' notice, and shall not be held until after the public examination of the bankrupt is concluded. The notice shall state generally the terms of the proposal, and it shall be accompanied by a report of the official assignee thereon.

(4) The bankrupt or the official assignee may, after the composition or scheme 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.

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

(6) If the Court is of opinion that the terms of the composition or scheme are not calculated to benefit the general body of creditors, the Court may, in its discretion, refuse to approve the composition or scheme.

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

(8) A composition or scheme accepted or 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.

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

(10) 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 may be deemed a contempt of Court.

(11) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on

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 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. And any debt provable in other respects, which has been contracted before the date of the sequestration order, shall be provable in the bankruptcy.

(12) If under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property or manage his business, the provisions of Parts III and VII of this Act, so far as the nature of the case and the terms of the composition or scheme admit, shall apply to the trustee as if he were a creditor's trustee in a bankruptcy, and as if the terms "bankruptcy," and "bankrupt," included respectively a composition or scheme of arrangement, and a compounding or arranging debtor.

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

(14) No composition or scheme shall be approved of by the Court which does not provide for payment to the creditors of seven shillings and sixpence in the pound, unless in the opinion of the Judge the bankruptcy was caused by misfortune without any misconduct on the part of the debtor: Provided that if at any time after such approval the Court shall be satisfied that such opinion was erroneous it may declare the creditors released from the terms of the composition, but no payment made in the meantime thereunder shall be disturbed.

(15) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by a certificate of discharge.

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

Effect of composition or scheme.
51 Vic. No. 19, s. 20

DIVISION 5.—*Creditors' trustees and committee of inspection.*

21. (1) Whether the creditors resolve to entertain a proposal for a composition or not they may at the first or any meeting elect such persons as they think fit not exceeding two to be trustees of the estate in addition to the official assignee.

Appointment of trustee.
Ibid. s. 21.
60 Vic. No. 29, s. 2 (6).

(2)

(2) Every such trustee may be a creditor or may be one of the official assignees.

(3) Instead of electing trustees as aforesaid the creditors may by resolution leave their appointment to the committee of inspection hereinafter named.

(4) When more persons than one are elected or appointed to the office of trustee, the creditors or the committee of inspection (as the case may be) may at any time declare whether any act or all acts required or authorised to be done by the trustees is or are to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee" (except where the context otherwise requires).

(5) The creditors or the committee (as the case may be) may at the time of the original election or appointment or at any subsequent time elect or appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or not being approved of by the Court.

(6) Trustees shall be joint tenants of the property of the bankrupt.

Security.
51 Vic. No. 19, s. 22.
60 Vic. No. 29, s. 2 (7).

22. (1) Creditors may direct what security (if any) shall be given by every elected trustee and to whom for the due performance of the duties of his office.

(2) No trustee shall be appointed after the termination of the first or single meeting except by leave of the Court.

Confirmation of election.
51 Vic. No. 19, s. 23.

23. (1) Upon the written acceptance by a trustee of his office and proof of his having given the security required of him the Court may make an order confirming his election.

(2) No official assignee shall be required to give security upon being elected trustee.

(3) Any creditor may object to the confirmation of the election of a trustee upon the ground—

(*a*) that it was not made in good faith by a majority in number and value of the creditors voting, or

(*b*) that the majority in number and value of the creditors dissent from his appointment, or

(*c*) that the person appointed is not fit to act as trustee, or

(*d*) that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interest of the creditors generally.

(4) If any such objection appears to the Court to be frivolous the creditor making such objection may be ordered to pay the costs occasioned thereby.

(5)

(5) Notice of every confirmation or removal under this section shall forthwith be published by the Registrar in the Gazette, and the production of such Gazette shall be evidence that the trustee named has been duly elected and confirmed or removed as the case may be.

Vesting of estate in trustee. 51 Vic. No. 19, s. 24.

24. (1) Every order confirming the election of a trustee shall divest the estate, and every right, title, and remedy from the person (if any) ceasing to hold the office of trustee, and shall vest the same jointly in the official assignee and the persons who on the confirmation of the said election are the trustees.

(2) The property of the bankrupt shall pass from trustee to trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

(3) A sequestration order and the order of appointment of a trustee shall for all purposes of any law requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly.

Acts done in good faith to be valid. *Ibid.* s. 25.

25. No defect or irregularity in the election of a trustee, or of a member of the committee of inspection, shall vitiate any act done in good faith, and no act of any trustee or of the committee shall be invalid by reason of any failure to elect a co-trustee or any of its members.

Committee of inspection. *Ibid.* s. 26.

26. (1) The creditors qualified to vote may at their first or any subsequent meeting by resolution appoint from among the creditors qualified to vote, or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property. The committee of inspection shall consist of not more than five or less than three persons.

(2) 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 official assignee or a trustee, or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) 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 at the meeting.

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

(5) 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.

(6)

(6) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the office of a member of the committee the official assignee or 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 other person eligible as above to fill the vacancy.

(8) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it does not exceed five.

DIVISION 6.—*Control over person and property of bankrupt.*

Duties of bankrupts as to discovery and realisation of property.

51 Vic. No. 19, s. 27.

27. (1) Every bankrupt shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall also, if required by the official assignee or a trustee or creditor, attend any and every other meeting or adjournment thereof, and shall submit to such examination and give such information as the meeting may require.

(2) He shall whenever required to do so bring with him, and give such information as may be required about any books of account, vouchers, and other documents in writing in his possession, relating to his estate and dealings, and about his assets, and about any particular in his statement of affairs.

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

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

(5) If a bankrupt wilfully fails to perform any of 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

to the official assignee, or to the trustee, or to any person authorised by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

Arrest of debtor or bankrupt under certain circumstances. 51 Vic. No. 19, s. 28.

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

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

(*b*) If, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official assignee or manager or trustee, or that there is probable ground for believing that he has concealed 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 on him of the notice of a bankruptcy petition, prescribed by rules of Court, he removes any goods in his possession above the value of five pounds, without the leave of the official assignee or trustee, if any.

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

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

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

Redirection of bankrupt's letters. *Ibid.* s. 29.

29. Where a sequestration order is made against a debtor the Court, on the application of the official assignee or trustee, may from time to time order that for such time, not exceeding three months, as the Court thinks fit, post letters addressed to the bankrupt at any place, mentioned

mentioned in the order, shall be redirected, sent, or delivered by the Postmaster-General, or the officers acting under him, to the official assignee, or the trustee, or otherwise as the Court directs, and the same shall be done accordingly.

Discovery of bankrupt's property.

61 Vic. No. 19, s. 30.

60 Vic. No. 29, s. 2 (8).

30. (1) The Court may, on the application of the official assignee or trustee, at any time after a sequestration order has been made against a debtor, summon before it the bankrupt or his wife, or 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 any person whom the Court may deem capable of giving information respecting the bankrupt, his dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the bankrupt, his dealings or property.

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

(3) The Court may examine on oath, or allow to be examined by the official assignee and trustee and any creditor, or by any solicitor or counsel on behalf of such assignee, trustee, or creditor, in such cases where a solicitor or counsel may be employed as provided by this Act, either by word of mouth or by written interrogatories, any person concerning the bankrupt, his dealings or property.

(4) If any person on examination before the Court or in answer to interrogatories admits, or if by other evidence it is proved to the satisfaction of the Court that he is indebted to the bankrupt, the Court may, on the application of the official assignee or trustee, forthwith order him to pay to such assignee or trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination and order.

(5) If any person on examination before the Court or in answer to interrogatories admits, or if by other evidence it is proved to the satisfaction of the Court, that he has in his possession any property belonging to the bankrupt, the Court may, on the application of the official assignee or trustee, forthwith order him to deliver to the official assignee or trustee such property, or any part thereof, at such time, and in such manner, and on such terms as to the Court may seem just, with or without costs of the examination and order.

Committal for refusing to obey or for prevarication. 51 Vic. No. 19, s. 31.

31. If the bankrupt or any other person (including the wife of such bankrupt) at any examination under the preceding section, or any adjournment thereof, being thereto required (and not having any lawful excuse in that behalf), shall refuse to surrender any book, document, or writing relating to the estate, or shall refuse to be sworn, or to answer any lawful question touching any of the matters aforesaid, or to subscribe his examination, the Court may commit him to prison, there to remain, until he shall have done the thing so required of him, or shall be discharged by the Court. And if any such person while under examination is guilty of prevarication, or evasion, or indecent conduct, the Court may commit him to prison for any term not exceeding fourteen days.

As to discharge from commitment. *Ibid.* s. 32.

32. Any person committed under the last preceding section may be discharged from such committal on appeal therefrom to the Full Court if committed by the Judge, and to the Judge if committed by the Registrar, and in such last-mentioned cases a further appeal shall lie to the Full Court. If the committal was for refusing to answer a question, such question shall be set out in the warrant, and if it appears that the person committed has fully answered all lawful questions put to him, or, if committed for refusing to be sworn or to produce a document or for not signing his examination, that he had a sufficient reason for such refusal, the Court shall order the person committed to be discharged.

Answers to questions when admissible. *Ibid.* s. 33.

33. No question put to the bankrupt in any examination shall be deemed unlawful by reason only that the answer thereto may expose him to punishment:

Provided that no answer to any such question shall be admitted in evidence against him on the trial of any indictment other than on a prosecution against him for perjury.

DIVISION 7.—*Release of estate, and annulment of sequestration order*

Release on composition or arrangement. *Ibid.* s. 34.

34. After the acceptance and approval of a composition or scheme of arrangement in manner hereinbefore provided, the bankrupt may apply for an order releasing his estate from sequestration, and, on his satisfying the Court that the approved terms of such composition or scheme have been complied with, so far as is at the time practicable, the Court may make such order on such terms as it thinks just:

Provided that the terms of the composition or scheme may at any time be enforced notwithstanding the release in the same manner as is by this Act provided.

Release on payment, &c. *Ibid.* s. 35.

35. 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 a like order for the release of his estate; and on being satisfied that the creditors have been so paid or have

have released their debts and that no proceedings of a criminal nature are pending or contemplated against the bankrupt, the Court may make a like order upon such terms as it thinks just.

Effect of order.
51 Vic. No. 19, s. 36.

36. Any order, whereby the estate is released from sequestration, shall have the effect of revesting in the bankrupt or such person as the Court may appoint, subject to such conditions as he may prescribe, all the property of the bankrupt undisposed of, as if the estate had never been sequestrated:

Provided that all sales and dispositions of the property and payments made and acts theretofore done by the official assignee or trustee shall be valid; and

Provided that the release of the estate shall not operate as a discharge of the bankrupt unless the Court shall so order.

Power for Court to annul sequestration in certain cases.
Ibid. s. 43.

37. (1) Where in the opinion of the Court a sequestration order ought not to have been made, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may on the application of any person interested by order discharge such order.

(2) Where a sequestration order is discharged under this section all sales and dispositions of property duly made, and all acts theretofore done by the official assignee, trustee, or other person acting under their authority, or by the Judge, Registrar, or District Registrar, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the Court may declare by order.

(3) Notice of the order discharging a sequestration order shall be forthwith published in the Gazette.

Meaning of payment of debts in full.
Ibid. s. 44.

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

Division 8.—*Bankrupt's certificate.*

Certificate how and when applied for.
Ibid. s. 37.
60 Vic. No. 29, ss. 2 (9); 11; 12.

39. Whether a composition or scheme of arrangement has been approved as hereinbefore provided or not, and whether his estate has been released or not, the bankrupt may, after the expiration of three months from the date of sequestration, cause an advertisement to be inserted in the Gazette and a newspaper published in the place where the bankrupt resided at the date of the sequestration order, stating his intention

intention to apply on a day fixed by the Judge or Registrar, and named therein, not less than fourteen nor more than thirty days from the day of first publication for a certificate of discharge under this Act: Provided that where the Court has granted a release of the bankrupt's estate under section thirty-five, the bankrupt may forthwith apply for a certificate of discharge, anything in this section to the contrary notwithstanding.

(1) He shall give fourteen days' notice in writing to the official assignee of such intention.

(2) The application shall be heard on the appointed day and on any day or days of adjournment, and the official assignee and any creditor may be heard in opposition to such application upon giving notice of the grounds thereof.

(3) On the hearing of the application the Court shall take into consideration a report of the official assignee or trustee as to the bankrupt's conduct or affairs, and may either—

(*a*) grant or refuse an absolute order of discharge, or

(*b*) suspend the operation of the order for a specified time, or

(*c*) grant an order of discharge or suspend the operation of such order subject to any conditions with respect to any earnings or income which may then be or afterwards become due to the bankrupt or with respect to his after acquired property.

(4) The Court shall refuse the discharge in all cases where he is satisfied that the bankrupt has done or omitted anything which in the opinion of the Court amounts to a misdemeanour under this Act or any amendment thereof, and shall, on proof of any of the facts hereinafter mentioned, either refuse the order or suspend the operation of the order for a specified time, or suspend the operation of, or grant, an order of discharge subject to such conditions as aforesaid.

(5) The Court may, as one of the conditions of granting an order of discharge under this section, require the bankrupt to consent to judgment being entered against him by the official assignee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, but in no case shall execution be issued without leave of the Court on a judgment consented to by the bankrupt under the provisions of this subsection.

Grounds for refusing or suspending certificate.

51 Vic. No. 19, s. 38.
60 Vic. No. 29, ss. 13, 14.

40. The facts referred to in the last preceding section are—

(*a*) That the bankrupt has omitted to keep such books of account as are usual and proper in the business or occupation carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy.

(*b*)

(*b*) That the bankrupt has wilfully delayed surrendering his estate or avoided its sequestration in order to benefit or assist one creditor or more to the disadvantage of the rest.

(*c*) That the bankrupt has continued to trade or obtained credit in one or more sums to the amount of fifty pounds or upwards after knowing himself to be insolvent.

(*d*) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall be on him) of being able to pay it.

(*e*) That the bankrupt has brought on his bankruptcy by rash and hazardous speculations or unjustifiable extravagance in living.

(*f*) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action or other proceeding properly brought against him.

(*g*) That the bankrupt has within three months preceding the date of the sequestration order, when unable to pay his debts as they become due, given an undue preference to any of his creditors.

(*h*) That the bankrupt has on any previous occasion been adjudged bankrupt or insolvent, or made a statutory composition or arrangement with his creditors, or assignment for the benefit of creditors at common law, unless his estate then produced ten shillings in the pound, or a majority in number and value of the creditors in that estate certify that in their opinion the bankruptcy or insolvency was the result of misfortune only.

(*i*) That the bankrupt has not upon surrendering his estate or after his sequestration made a full and fair disclosure of his property in possession, reversion, or expectancy.

(*j*) That the bankrupt has wilfully violated or omitted to comply with any of the provisions of this Act.

(*k*) That the bankrupt being at the time insolvent has made away with or disposed of any of his property otherwise than in good faith and for valuable consideration.

(*l*) That the bankrupt has unlawfully expended for his own benefit or appropriated to his own use any property of which he at the time had the charge or disposition as a trustee, factor, broker, or agent only, or that he has been guilty of any fraudulent breach of trust.

(*m*) That there is an unsatisfied judgment against the bankrupt in an action for assault, breach of promise, seduction, or any malicious injury, or for damages or costs under any laws relating to divorce.

(*n*) That the bankrupt has carried on business by means of a fictitious capital.

(*o*)

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

(*p*) That the bankrupt has entered into any agreement not to register or to delay the registration of a bill of sale which is in existence at the date of the sequestration order, and has not been duly registered in accordance with the law in force for the time being dealing with the registration of bills of sale.

(*q*) That the bankrupt has given a bill of sale at any time within three months preceding the date of the sequestration order, he being at the time insolvent within the meaning of section fifty-six of this Act.

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

Fraudulent settlements. 51 Vic. No. 19, s. 39.

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

(1) In the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(2) In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

If the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend the certificate of discharge, or suspend or grant one 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 come within the provisions of the last preceding section.

Discharge of bankrupt. *Ibid.* s. 40. 60 Vic. No. 29, ss. 2 (10); 15.

42. (1) For the purposes of the last two preceding sections the report of the official assignee or trustee shall be prima facie evidence of the statements therein contained.

(2) Notice of the appointment by the Judge or Registrar of the day for hearing the application for a certificate of discharge shall be published in the manner prescribed by rules of Court, and the Court may hear the official assignee and the trustee, and may also hear any creditor, either personally or by counsel. At the hearing the Court may put such questions to the bankrupt and receive such evidence as it thinks fit.

(3)

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

(4) No certificate of discharge shall be issued until the bankrupt has paid all fees due by him in respect of any proceedings under this Act including such fees as may be payable upon the granting of and in respect of the said certificate, and no bankrupt shall be deemed to be discharged within the meaning of this Act until such certificate has issued.

(5) A certificate of discharge shall be issued by the Registrar after an order has been made in that behalf by the Court, and such certificate shall bear the seal of the Court, and be in the form prescribed by rules of Court.

(6) If in consequence of the estate not being sufficiently administered, or for want of sufficient evidence, or for any other reason, the Court is unable to decide whether a certificate should or should not be granted, suspended, or refused, he may adjourn the application for such certificate from time to time:

Provided that the Court shall give its decision as soon as may be after the final dividend has been declared as hereinafter provided, and the bankrupt shall then be entitled to demand that such decision be given without delay.

Application after twelve months.
51 Vic. No. 19, s. 41.

43. (1) No application by the bankrupt for a certificate shall be allowed after twelve months from the date of sequestration unless notice of his intention to apply has been duly advertised before the expiration of that period, except by leave of the Court on such terms as it thinks proper.

Proceedings where bankrupt does not apply.

(2) If the bankrupt has not within nine months after sequestration applied for his certificate, the Court may, on application of the official assignee or trustee, require him by summons, and in case of his refusal or neglect may compel him by warrant, to appear before the Court and show cause, if he has any, why a certificate of discharge should not in his case be refused or suspended, and on such appearance the Court may deal with the case, and grant, refuse, or suspend such certificate, and otherwise deal with such bankrupt as if the certificate had been applied for by him.

Effect of certificate of discharge.
Ibid. s. 42.
60 Vic. No. 29, s. 16.

44. (1) A certificate of discharge shall not release the bankrupt from any debt on a recognisance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue

revenue, or at the suit of the sheriff or other public officer, on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Colonial Treasurer certify in writing his consent to his being discharged therefrom.

(2) A certificate of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(3) A certificate of discharge shall not release the bankrupt from any order made under section sixty-one of this Act, or any amendment thereof, or from any liability under a judgment against him as defendant in an action for seduction, libel, or slander, or from liability as a respondent or co-respondent in a suit in the divorce jurisdiction or under an affiliation order, except to such extent and subject to such conditions as the Court may think just.

(4) A certificate of discharge shall release the bankrupt from all other debts provable in bankruptcy.

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

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

(7) Any assignee or trustee becoming bankrupt and being indebted to the estate of which he was such assignee or trustee in respect of money improperly retained or employed by him shall not be discharged from such debt as to any future assets although he may have obtained his certificate.

PART II.

ADMINISTRATION OF PROPERTY.

DIVISION 1.—*Proof of debts.*

45. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of contract, promise, or breach of trust shall out be provable in bankruptcy. Description of debts provable in bankruptcy.

(2) 51 Vic. No. 19, s. 45.

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

(3) Save, as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the 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.

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

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

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

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

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

Mutual credit and set-off.
51 Vic. No. 19, s. 46.

46. Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a sequestration order is made under this Act and any other person proving or claiming to prove a debt under such sequestration order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set

set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed as paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him.

Rules as to proof of debt. 51 Vic. No. 19, s. 47.

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

Division 2.—*Preferential debts.*

Priority of debts. *Ibid.* s. 48.

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

(*a*) All wages or salary of any clerk or servant in respect of the services rendered to the bankrupt during six months before the date of the sequestration order, not exceeding fifty pounds; and

(*b*) All wages of any labourer or workmen, not exceeding fifty pounds, whether payable for time or piece-work in respect of the services rendered to the bankrupt during six months before the date of the sequestration order.

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

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

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

(5) Nothing in this section shall alter the effect of the Act fifty-fifth Victoria number twelve, or shall prejudice the provisions of the Friendly Societies Act thirty-seventh Victoria number four, or of the twenty-sixth Victoria number thirteen, or any Acts amending or consolidating the same or any of them.

Preferential claim in case of apprenticeship. *Ibid.* s. 49.

49. (1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the

the sequestration order shall, if either the bankrupt or apprentice or clerk gives notice in writing to the official assignee or 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 official assignee or trustee may, on the application of the apprentice or clerk or of some person on his behalf, pay such sum as the official assignee or trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture of articles before the commencement of the bankruptcy, and to the other circumstances of the case.

(2) Where it appears expedient to an official assignee or trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

Rent.
51 Vic. No. 19, s. 50.
60 Vic. No. 29, s. 2 (11).

50. No distress for rent which has accrued due before the date of the sequestration order shall be levied or proceeded with as against the estate of the bankrupt after the sequestration order, but the landlord shall receive out of the estate so much rent as was then due or accruing due or as by this Act is made provable, but for a period not exceeding three months, and may prove and share ratably with other creditors for the balance.

Division 3.—*Property available for payment of debts.*

Relation back of official assignee's or trustees title.
51 Vic. No. 19, s. 51.
60 Vic. No. 29, s. 2 (12).

51. (1) The bankruptcy of a debtor, whether the same 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 an order is made for the sequestration of his estate, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within six months next preceding the date of the presentation of the bankruptcy petition; but 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.

Court may make order antedating commencement of bankruptcy.
Ibid. s. 8.

(2) The Court may at any time on the motion of the official assignee and on being satisfied that an act of bankruptcy has been committed by the bankrupt within six months next preceding the date of the presentation of the petition upon which the sequestration order

order was made, order and declare that the bankruptcy shall be deemed to have relation back to and commence on the date of such act of bankruptcy, and such order or declaration shall be prima facie evidence of the fact of the alleged act of bankruptcy and of the commencement of the bankruptcy on such date as aforesaid.

Description of bankrupt's property divisible amongst creditors.

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

51 Vic. No. 19, s. 52.
60 Vic. No. 29, s. 2 (13).

(*a*) Property held by the bankrupt on trust for any other person:

(*b*) The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole:

But it shall comprise the following particulars:

(*c*) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and

(*d*) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and

(*e*) All goods being, at the commencement of the bankruptcy or at any time between that time and the date of the order of sequestration in the possession, order, or disposition of the bankrupt, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

DIVISION 4.—*Effect of bankruptcy on antecedent transactions.*

Restriction of rights of creditor under execution or attachment.

51 Vic. No. 19, s. 53.

53. (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 official assignee or trustee of the bankrupt unless he has completed the execution or attachment before the date of the sequestration order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

(2) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by

by receipt of the debt; and an execution against land is completed by seizure and sale, or, in the case of an equitable interest, by the appointment of a receiver.

Duties of sheriff as to goods taken in execution.
51 Vic. No. 19, s. 54.

54. (1) Where property of a debtor is taken in execution, and before the sale thereof notice is served on the sheriff that a sequestration order has been made against the debtor, the sheriff shall, on request, deliver the property to the official assignee or trustee under the order, but the costs of the execution shall be a charge on the property so delivered, and the official assignee or trustee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

(2) Where the property of a debtor is sold under an execution in respect of a judgment for a sum exceeding twenty pounds, the sheriff shall deduct the costs of the execution from the proceeds of sale, and retain the balance for seven days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and the debtor is adjudged bankrupt thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official assignee or trustee, who shall be entitled to retain the same as against the execution creditor, but otherwise he shall deal with it as if no notice of the presentation of a bankruptcy petition had been served on him.

Avoidance of voluntary settlements.
Ibid. s. 55.

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

(2) Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the official assignee or trustee in the bankruptcy,

(3)

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

(4) Nothing in this section shall be deemed to affect or invalidate the rights of any person deriving title to any property in good faith and for valuable consideration through or under any person taking or claiming as a donee of any settlement. 60 Vic. No. 29, s. 35.

56. (1) Every alienation, transfer, gift, surrender, delivery, mortgage, or pledge of any estate or property, real or personal, every warrant of attorney or judicial proceeding made, taken, or suffered by a person being at the time insolvent or in contemplation of surrendering his estate under this Act, or knowing that proceedings for placing the same under sequestration have been commenced, or within sixty days before the sequestration thereof, and, whether fraudulent or not, having the effect in any such case of preferring any then existing creditor to another shall be absolutely void. Preferences. *Ibid.* s. 17.

(2) For the purpose of this section the word insolvent means the inability of a person to pay his debts as they become due from his own moneys.

(3) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

57. Subject to the 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 subject to the provisions of this Act with respect to the avoidance of certain preferences except as hereinafter provided, nothing in this Act shall invalidate in the case of a bankruptcy :— Protection of bona fide transactions, payments, advances, &c., without notice. *Ibid.* s. 18.

(*a*) Any payment by the bankrupt to any of his creditors for or on account of any just debt due at the time of payment.

(*b*) Any payment or delivery to the bankrupt.

(*c*) Any conveyance or assignment by the bankrupt for valuable consideration.

(*d*) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration.

(*e*) Any transaction to the extent of any present advance bonâ fide made by any existing creditor.

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

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

(2) The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into has not

at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

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

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

Assignment when void.
51 Vic. No. 19, s. 58.
60 Vic. No. 29, ss. 2 (14), 23.

58. Every distribution of property which is under this Act an available act of bankruptcy shall be void as against the official assignee or trustee, save only that in the case of a conveyance or assignment by the bankrupt of property in trust for his creditors registered within one month from the execution thereof by the assignor in accordance with the provisions of subsection ten of section four of this Act, all dealings with such property, and all acts done in good faith by any trustee under such instrument, shall be valid unless at the time of the dealing or act he knew or had notice that proceedings to sequestrate the assignor's estate had been or were about to be taken.

Division 5.—*Realisation of Property.*

Possession of property by official assignee.
51 Vic. No. 19, s. 59.

59. (1) The official assignee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.

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

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

(4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to be assignable and to have been duly assigned to the official assignee; and the official assignee, or the trustee in the event of the estate of the official assignee vesting in a trustee, may sue in any Court in the name of the bankrupt, or continue any action or suit begun by the bankrupt at the date of the sequestration order.

(5)

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

Books, &c., may be destroyed with leave of the Court. 60 Vic. No. 29, s. 25.

(6) After the expiration of five years from the date of the sequestration order, or two years from the date of the certificate of discharge, whichever shall first happen, the official assignee may with the leave of the Court cause all or any of the books and other documents and papers lodged with him by a bankrupt or insolvent to be destroyed.

Seizure of property of bankrupt. 51 Vic. No. 19, s. 60.

60. (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, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and when 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.

(2) Any person acting under such warrant shall make an inventory thereof, and leave with the person in whose possession any such property is attached a copy of the warrant and inventory having subjoined thereto a notice that the property has been attached as belonging to the bankrupt estate, and that any person who knowing the same to have been so attached removes, retains, conceals, or receives any part thereof with intent to defeat the said attachment is guilty of a misdemeanour.

Power to direct payment by Civil Servant, &c., out of salary. 60 Vic. No. 29, s. 19 (1).

61. (1) Where the bankrupt is an officer of the Army or Navy, or of the Colonial Forces, or an officer or clerk, or otherwise employed or engaged in the Civil Service of the Crown, the Court may, on the application of the official assignee or trustee, make an order for the payment to such assignee or trustee for distribution among the creditors of the bankrupt of so much of the bankrupt's pay and salary then due or thereafter to become due as he thinks fit.

(2) Before making any order under the preceding subsection, the Court shall communicate with the chief officer of the department under which the pay or salary is enjoyed as to the amount, times, and manner of such payment, and shall hear and give consideration to any report which such chief officer may make as to the circumstances of the case.

(3)

51 Vic No. 19, s. 61 (2).
60 Vic. No. 29, s. 19 (2).

(3) When the bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay or pension, or any compensation charged on the Consolidated Revenue, the Court, on the application of the official assignee or trustee, may make such order as he thinks just for the payment of the salary, income, half-pay, pension, compensation, or of any part thereof to the official assignee or trustee, to be applied by him in such manner as the Court may direct.

51 Vic. No. 19, s. 61 (3).

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

Disclaimer of onerous property.
Ibid. s. 62.

62. (1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the official assignee or trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may by writing signed by him, at any time within three months after the date of the sequestration order, disclaim the property.

(2) Where any such property has not come to the knowledge of the official assignee or trustee within one month after the date of the sequestration order he may, upon obtaining permission from the Court, disclaim such property at any time within two months after he first became aware thereof.

(3) 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 official assignee or 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 official assignee or trustee from liability) affect the rights or liabilities of any person.

(4) An official assignee or trustee shall not be entitled to disclaim a lease without leave of the Court, except in any cases which may be prescribed by rules of 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, compensation for use or occupation of the premises since the date of sequestration, and other matters arising out of the tenancy as the Court thinks just.

(5)

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

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

(7) The Court may, on application by any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as he thinks fit make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance 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 underlessee or as mortgagee by demise, except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or underlessee declining to accept a vesting order upon such terms shall be excluded from all interest in, and security upon the property, and if there be no person claiming under the bankrupt who is willing to accept an order upon such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

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

Powers of official assignee or trustee independently of committee of inspection.

51 Vic. No. 19, s. 63.

63. Subject to the provisions of this Act the official assignee or trustee may do all or any of the following things :—

(1) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt) by public auction, with power to transfer the whole thereof to any person or company or to sell the same in parcels.

(2) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof.

(3) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt.

(4) Exercise any powers, the capacity to exercise which is vested in the official assignee or trustee under this Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Act.

(5) Deal with any property to which the bankrupt is beneficially entitled as tenant-in-tail in the same manner as the bankrupt might have dealt with it.

Powers exercisable by official assignee or trustee, with permission of committee of inspection.

Ibid. s. 64.

64. The official assignee or trustee may, with the permission of the committee of inspection, do all or any of the following things :—

(1) Carry on the business of the bankrupt so far as may be necessary for the beneficial winding-up of the same.

(2) Bring, institute, or defend any action or other legal proceeding relative to the property of the bankrupt.

(3) Employ a solicitor, counsel, or other agent to take part in any examination of the bankrupt or other person under this Act or to take any proceedings or to do any business which may be sanctioned by the committee of inspection.

(4) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the committee think fit.

(5) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts.

(6) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums payable at such times, and generally on such terms as may be agreed on.

(7)

(7) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy.

(8) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the official assignee or trustee by any person, or by the official assignee or trustee on any person.

(9) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(10) Appoint the bankrupt himself to superintend the management of the property of the bankrupt or any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee or trustee may direct.

(11) Make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding-up his estate, but any such allowance may be reduced by the Court.

(12) 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 private sale.

Permission to be specific.
60 Vic. No. 29, s. 20.
51 Vic. No. 19, s. 65 (2).

65. (1) The permission given for the purposes of the preceding section shall not be a general permission to do all or any of the things therein mentioned, but only a permission to do the particular thing for which permission is sought in the specified case.

(2) It shall not be necessary for persons dealt with by the assignee or trustee to ascertain whether he had the necessary sanction, but its existence shall be conclusively presumed for the purposes of the transaction, if the person dealt with shall in good faith have acted in reliance on the fact that there was such sanction.

Court may give permission.
Ibid. s. 66.

66. If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Court.

Title conveyed by official assignees or trustees.
7 Vic. No. 19, s. 15.
52 Vic. No. 11, s. 5.
60 Vic. No. 29, s. 5.

67. The same title or property whether real or personal belonging to or forming part of any bankrupt or insolvent estate may be conveyed or transferred in fee or otherwise, as the case may be, to any purchaser, mortgagee, or other person by the assignee or trustee of such estate for the time being as the bankrupt or insolvent himself had or was by law entitled or able to convey or transfer immediately before

before the sequestration of his estate, and it shall not be essential to the validity of any such conveyance or transfer (so far as it respects the right of any person to execute the same as assignee) to prove more than the fact of his appointment, or, in the case of a trustee or elected assignee, his confirmation in that character, that at the time of the execution of the instrument he had not been removed from office, and that there was then no assignee or trustee in or of the estate in question other than the assignee or trustee executing the same, of which several facts the certificate of the Chief Commisssoner, Judge, or Registrar indorsed on such instrument of transfer shall be conclusive evidence.

Deeds executed by official assignee or trustee to be deemed effectual to convey.
10 Vic. No. 14, s. 3.
52 Vic. No. 11, s. 5.

68. (1) All deeds duly executed by the assignee or trustee for the time being of any bankrupt or insolvent estate purporting to convey, assign, release, or assure any part of the property of a bankrupt or insolvent to any purchaser, mortgagee, or other person for any estate or interest therein shall be valid both at law and in equity for conveying, assigning, releasing, and assuring such property for the estate and interest in such deed mentioned.

Purchasers relieved from the effect of omissions.

(2) Such purchaser, mortgagee, or other person, and every person claiming under him shall be relieved from inquiring whether the advertisements have been inserted, and meetings of creditors called, or direction of creditors obtained as by law required, notwithstanding the same have not been inserted, called, or obtained.

(3) Any person who deals or contracts with or takes any conveyance or other assurance from any assignee or trustee for the time being as aforesaid of any bankrupt or insolvent estate shall not be bound to inquire into the power or authority of such assignee or trustee with respect to such dealing, contracting, conveyance, or assurance as aforesaid, but such assignee or trustee shall for the purposes aforesaid, and as between him and such person as aforesaid, be deemed and considered as beneficial owner of the real and personal property of the bankrupt or insolvent.

But assignees not exonerated.

(4) Nothing in this Act contained shall be construed to exonerate any such assignee or trustee from any liability for the non-observance or non-performance of his duty as such assignee or trustee as aforesaid.

(5) In this section and the last preceding section the expression "assignee" shall include an official assignee of any bankrupt or insolvent estate and an elected assignee whose election has been confirmed by the Court.

Division 6.—*Distribution of estate.*

Account and plan of distribution.
51 Vic. No. 19, s. 67.

69. As soon as possible, and not later than four months after sequestration (or three months in respect of estates requiring only a single meeting), the official assignee or trustee shall frame and lay before

before the Court an exact account of the balance of the estate, specifying the proceeds of sales and debts collected and all debts outstanding, together with an inventory of all property still unsold, and showing the debts due by the estate, and shall present a plan for distribution of the assets, specifying first such creditors as are entitled to preference in their order of legal preference, and secondly the unsecured creditors and the balance remaining for division amongst them. A similar account and plan shall be submitted from time to time as the Court may direct.

Audit and notice thereof.
51 Vic. No. 19, s. 68.

70. As soon as the Registrar has audited such account and made his report thereon, and the plan for distribution has been approved of by the Court, it shall lie in the office of the Registrar for inspection by the creditors and bankrupt for such reasonable time as may be directed, but not less than fourteen days from the advertisement thereof, and the official assignee or trustee shall cause notice thereof to be given to the creditors and inserted in the Gazette.

As to objections thereto.
Ibid. s. 69.

71. (1) The bankrupt, and any party interested in the estate, and any creditor, may, within the time aforesaid, enter his objection in writing with the Registrar stating the grounds thereof.

(2) The Court may permit such objection to be entered at any time before final confirmation of the plan on such terms as the Court thinks fit.

Proceedings thereon.
Ibid. s. 70.

(3) The person objecting to the account or plan shall apply to the Judge or Registrar for an order calling on the official assignee or trustee and also on the party whose interest may be affected thereby to show cause why the plan should not be amended, and thereupon the Court upon hearing the parties may make such order as it thinks fit.

(4) Whenever any amendment is ordered in the plan, whereby the interest of any party who has not been heard is affected, the plan shall again be open for inspection and notice thereof be given as aforesaid.

Confirmation and effect thereof.
Ibid. s. 71.

72. (1) After expiration of the time appointed for inspection of the account and plan of distribution without any objection being entered thereto, or, if an objection has been entered, then, after disposal thereof, the official assignee or trustee may apply to the Court that the plan may be confirmed, and thereupon the Court may confirm the same; and such confirmation shall have the effect of a final judgment as between the bankrupt and his creditors, except as to the amount of any debt afterwards expunged or reduced, and except against such creditors as are afterwards admitted to prove their debts against the estate at any time before its final distribution.

Bankrupt liable to arrest if he removes out of the jurisdiction before the account and plan is confirmed.
60 Vic. No. 29, s 27.

(2) If a bankrupt removes out of the jurisdiction before the confirmation of the account and plan of distribution in his estate, except with the consent of three-fourths in number and value of the proved creditors in his estate or by leave of the Court, the Court may, on

on the information of the official assignee or trustee or of any creditor, by warrant addressed to the sheriff or any constable or officer of the Court prescribed by rules of Court, cause such bankrupt to be arrested and to be safely kept as prescribed by rules of Court until such time as the Court may order.

Joint and separate dividends.
51 Vic. No. 19, s. 72.

73. (1) Where a sequestration order is made against one partner of a firm, 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 that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the official assignee or trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Right of creditor who has not proved debt before declaration of a dividend.
Ibid. s. 73.

74. (1) 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 official assignee or trustee any dividend he may have 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.

Plan of distribution not to be disturbed in certain cases.
60 Vic. No. 29, s. 26.

(2) After a plan of distribution has been approved of by the Court no creditor shall be entitled by proof of his debt to disturb the plan of distribution unless he satisfy the Court that he could not, by the exercise of due diligence, have proved his debt prior to such approval.

Ibid. s. 26.

(3) In any order allowing a disturbance of the plan of distribution the Court may impose such terms as to costs or otherwise as he may think fit.

Ibid. s. 26.

(4) If an amendment is ordered in the plan under section seventy-one of this Act any creditor who has proved his debt before the order is made directing such amendment shall be entitled to rank for dividend on the amended plan.

No action for dividend.
51 Vic. No. 19, s. 74.

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

Official assignee or trustee to give notice of dividend.
Ibid. s. 57.

76. The official assignee or trustee shall cause notice to be given as prescribed by rules of Court when and where dividends are payable to creditors and others interested in the estate.

Distribution of assets where creditors give indemnity for costs. 60 Vic. No. 29, s. 10.

77. In cases 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 reference to the distribution of such assets with a view to giving the indemnifying creditors an advantage over others in consideration of the risk run by them in giving such indemnity.

Official assignee to file periodical statements. 51 Vic. No. 19, s. 76.

78. (1) The official assignee or trustee shall, at periods prescribed by rules of Court, file with the Colonial Treasurer and the Registrar statements showing how each bankrupt estate has been applied and disposed of under the following heads, that is to say:—

(*a*) Gross amount of assets realised.
(*b*) Costs, charges, allowances, and expenses.
(*c*) Remuneration or commission.
(*d*) Preferential payments.
(*e*) Dividends to general creditors.
(*f*) Balance undisposed of.

(2) If any part of the estate has not then been collected or disposed of such statement shall specify the nature of such unrealised estate.

(3) The official assignee or trustee shall make out and file such further or fuller statements in any case as the Court may think proper.

Court may disallow costs, charges, &c. *Ibid.* s. 77.

79. The Court may, on the complaint of any creditor or person interested, or upon any report or audit by the Colonial Treasurer or Registrar, allow or disallow all or any part of the costs, charges, allowances, and expenses claimed by any official assignee or trustee or of any payment made by such assignee or trustee, and make such order thereon as the Court thinks fit.

Final dividend. *Ibid.* s. 78. 60 Vic. No. 29, s. 2 (15).

80. (1) When the official assignee or trustee has realised all the property of the bankrupt, or so much thereof as can, in the opinion of such official assignee or trustee, or in the joint opinion of himself and of the committee of inspection where such committee has been appointed, be realised without needlessly protracting the winding-up of the estate, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed by rules of Court to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims.

(2) After the expiration of the time so limited, or, if the Court on application by any such claimant grant him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other person.

81.

Right of bankrupt to surplus.
51 Vic. No. 19, s. 79.

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

PART III.

Creditors' Trustees and Official Assignees.

Division 1.—*Remuneration of trustees and assignees.*

Remuneration of trustees.
Ibid. s. 80.

82. (1) Where the creditors appoint any person to be trustee of a bankrupt's estate, his remuneration (if any) shall 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 or percentage, of which one part shall be payable on the amount realized, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

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

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

(4) Where no remuneration has been voted to a trustee he shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him in or about the proceedings of the bankruptcy as the Registrar may allow.

(5) The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as a 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.

Remuneration of official assignee.
Ibid. s. 81.
60 Vic. No. 29, s. 2 (16).

83. (1) Where no trustee is appointed an official assignee shall receive in the absence of any resolution of the creditors allowing a larger amount, a remuneration in the nature of a commission or percentage at the rate of five per centum, of which one half shall be payable on the gross amount coming into the hands of the official assignee in each estate, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other half shall be payable upon each dividend as and when it is declared.

(2)

(2) An official assignee, who is elected to act as trustee, shall receive remuneration as such trustee, provided that it is not less than the remuneration by this section allowed to an official assignee.

(3) Where trustees are duly appointed under this Act (of whom the official assignee is not one), the official assignee shall receive from such trustees such sum for his services as the Registrar may from time to time declare to be reasonable, but such sums in the aggregate shall not exceed (except upon special order of the Court on that behalf and made under the next following section) the amount allowed by this section when no creditors' trustee has been appointed.

Power to increase remuneration for special services.
51 Vic. No. 19, s. 82.

84. The Court may from time to time order that the remuneration of a trustee or official assignee be increased, and may take into account in allowing such increase :—

(*a*) Any special services rendered by such trustee or assignee.

(*b*) Any special circumstance, which, in the opinion of the Judge, increased the difficulty of realizing the estate.

(*c*) The smallness of the amount realizable in the estate.

An official assignee or trustee to be recouped expenses.
Ibid. s. 83.
60 Vic. No. 29, s. 2 (17), (18).

85. (1) An official assignee or trustee is entitled to receive out of the estate in priority to the payment of a dividend payment for moneys disbursed, and for liabilities and costs incurred by him on behalf of the estate and in accordance with the provisions of this Act.

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

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

Allowance and taxation of costs.

(4) All bills and charges of solicitors, managers, accountants, auctioneers, brokers, official assignees, or trustees, and other persons shall be taxed by the Registrar or other taxing officer appointed by the Judge, and no payments in respect thereof shall be allowed in the official assignee's or trustee's accounts without proof of such taxation having been made, and the Registrar or other taxing officer appointed by the Judge shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned.

(5) Every such person shall, on request by the official assignee or trustee (which request the official assignee or trustee shall make a sufficient time before declaring a dividend) deliver his bill of costs or charges to the Registrar or other taxing officer appointed by the Judge for taxation, and if he fails to do so within seven days after receipt of the request, or such further time as the Judge or Registrar, or other taxing officer appointed by the Judge, on application, may grant,

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

(6) The Registrar or other taxing officer appointed by the Judge may refer for taxation any common law charges in any bill of costs or charges to the Prothonotary, and any equity or conveyancing charges to the Master or Deputy Registrar in equity; and in respect of such charges the decision of the Prothonotary or Master or Deputy Registrar shall be deemed to be the decision of the Registrar or other taxing officer appointed by the Judge, and be subject to appeal to the Court under this Act.

(7) An appeal shall lie to the Court from the decision of the Registrar or other taxing officer appointed by the Judge in allowing or disallowing any item on the motion of the official assignee or trustee, or any creditor of the estate or any other person interested.

Prohibition of secret understandings.
51 Vic. No 19, s. 84.

86. (1) No official assignee, trustee, receiver, manager, or member of a committee of inspection shall, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditor or allowed by this Act and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee to the bankrupt, or any solicitor or other person that may be employed about a bankruptcy.

(2) Any person offending against this section shall be guilty of a misdemeanour.

Division 2.—*Official name.*

Official name of trustee.
Ibid. s. 85.

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

Division 3.—*Appointment and removal.*

Official assignees to be appointed by Governor.
Ibid. s. 86.
60 Vic. No. 29, s. 2 (19).

88. The Governor may, with the approval of the Judge, appoint such number of persons official assignees in bankruptcy as may be, in the opinion of the Judge, from time to time required, and both such official and elected assignees shall be under the direction and control of the Judge.

(2)

(2) Every official assignee shall, upon his appointment, give such security as may be prescribed by rules of Court.

(3) For the purpose of affidavits, verifying proofs, petitions, or other proceedings under this Act an official assignee may administer oaths.

Office of trustee vacated by bankruptcy. 51 Vic. No. 19, s. 87.

89. If an order of sequestration is made against an official assignee or a trustee he shall thereby vacate his office.

Removal of trustee. *Ibid.* s. 88.

90. (1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee elected by them, or appointed by the committee of inspection, and may at the same or any subsequent meeting appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.

(2) The Judge may remove any official assignee or trustee for misconduct or neglect or omission in the performance of his duties under this Act, or for absence from New South Wales, or for any other reasonable cause; but if the creditors, by ordinary resolution, disapprove of the removal of a trustee, he or they may appeal against it to the Full Court.

Proceedings in case of a vacancy in the office of trustee. *Ibid.* s. 89.

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

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

(3) If the creditors do not, within three weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the official assignee shall report the matter to the Court, and the Court may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee as in the case of a first appointment.

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

Resignation. *Ibid.* s. 90.

92. (1) Any official assignee or trustee or manager or receiver may apply to the Court for leave to resign his office, and if no valid objection be stated, and if the Court be satisfied that he has complied with the provisions of this Act, and with the rules of Court, his application may be granted; but if any objection be stated thereto the Court shall proceed to determine the same, and shall make such order thereon as it deems fit, and if the application of any such official assignee, or trustee, or manager, or receiver for leave to resign be granted, the Court may make such orders as may be necessary for the preservation and administration of the estate until a new official assignee, or trustee, or manager, or receiver be appointed or elected and confirmed, and for the discharge

discharge and acquittance of such assignee, or trustee, or manager, or receiver, and for the security and payment of any unclaimed dividends to the parties entitled to the same.

(2) No order of the Court allowing such assignee, trustee, manager, or receiver to resign shall prevent the official assignee, trustee, manager, or receiver thereafter appointed or elected and confirmed in his stead from calling upon him to account for anything done or left undone prior to his resignation.

Court may make vesting order.
52 Vic. No. 11, s. 4.

93. For the purpose of transferring any estate vested in an official assignee or trustee (whether such estate were vested before or after the passing of this Act) to, and vesting the same in some other official assignee or trustee, the Court may make such vesting order as in its opinion will effectually carry out such transfer to, and the vesting of such estate in, the person named in such order, and such order when made shall have the effect of vesting in the person therein named the whole right, title, and interest of the official assignee or trustee from whom such right, title, and interest is intended to be divested or transferred.

Provision against abatement in certain cases.
Ibid. s. 6.

94. (1) No action or proceeding of any kind to which an official assignee or trustee has been a party shall be deemed to have abated by the death or resignation, or vacation of, or removal from, office of any such official assignee or trustee; but in every such case such action or proceeding may be continued in the name of the official assignee or trustee appointed in the place of the official assignee or trustee who has died, resigned, or vacated, or been removed from his office: Provided that a suggestion in the usual way is made of such death, resignation, removal, or vacation.

Division 4.—*Control over assignees and trustees.*

Discretionary powers of official assignee and trustee and control thereof.
51 Vic. No. 19, s. 91.

95. (1) Subject to the provisions of this Act the assignee and trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by any resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The assignee or trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, or whenever requested in writing to do so by one fourth in value of the creditors. (3)

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

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

Appeal to Court against official assignees or trustees. 51 Vic. No. 19, s. 92.

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

Control of Judge over official assignees and trustees. *Ibid.* s. 93.

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

(2) The Judge may at any time require an assignee or trustee to answer any inquiry made by him in relation to any bankruptcy in which such assignee or trustee is engaged, and may, if he thinks fit, examine on oath such assignee or trustee or any other person concerning the bankruptcy.

(3) The Judge may also direct an investigation to be made of the books and vouchers of the assignee or trustee by the Colonial Treasurer or Registrar.

Audit of official assignees' or trustees' account. 60 Vic. No. 29, s. 21.

98. (1) Every official assignee and trustee shall, at such times as may be prescribed by rules of Court, but not less than twice in each year during his tenure of office, send to the Registrar and to the Colonial Treasurer, an account of his receipts and payments as such assignee or trustee.

(2) The account shall be in the form prescribed by rules of Court and shall be made in duplicate, and shall be verified by affidavit in the form prescribed by rules of Court.

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

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

The official assignee or trustee to furnish list of creditors.
51 Vic. No. 19, s. 95.

99. The official assignee or trustee shall, whenever required by any creditor so to do, and on payment by such creditor of the fee prescribed by rules of Court, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors.

Books to be kept by official assignee or trustee.
Ibid. s. 96.

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

Annual statement of proceedings.
Ibid. s. 97.
60 Vic. No. 29, s. 2 (20).

101. (1) Every official assignee or trustee in a bankruptcy shall from time to time, as may be prescribed by rules of Court, and not less than once in every year, so long as he has any assets unadministered in his hands, transmit to the Court a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the particulars, and made out in the form prescribed by rules of Court.

(2) The Court shall cause the statement as transmitted to be examined, and call the official assignee or trustee to account for any misfeasance, neglect, or omission which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

Payment of money into Bankruptcy Estates Account.
51 Vic. No. 19, s. 98.

102. (1) An account called the "Bankruptcy Estates Account" shall be kept by the Registrar with such bank as the Colonial Treasurer may from time to time direct, and all moneys received by the Registrar, in respect of proceedings under this Act shall be paid to that account.

(2) Every official assignee and every trustee shall, in such manner and at such times as may be prescribed by rules of Court, pay the money received by him to the Registrar, who shall furnish a receipt of the money so paid.

(3) If it appear to the official assignee or, if a committee of inspection has been appointed, to such committee, that for the purpose of carrying on the debtor's business, or of obtaining advances, or because of the probable amount of the cash balance, or, if the Registrar certify that for any other reason it is for the advantage of the creditors that the official assignee or trustee should have an account with a bank, the Registrar shall authorise the official assignee or trustee to make his payments into and out of such bank as the Registrar may select.

(4) Such account shall be opened and kept by such assignee or trustee in the name of the bankrupt's estate; and any interest receivable in respect of the account shall be part of the assets of the estate.

(5)

(5) If an official assignee or trustee at any time retain for more than ten days a sum exceeding fifty pounds, or such other amount as in any particular case the Registrar authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall have no claim for remuneration, and may be removed from his office, and shall be liable to pay any expenses occasioned by reason of his default.

(6) All payments out of moneys standing to the credit of the Registrar in the "Bankruptcy Estates Account" shall be made by the Registrar or other officer prescribed by rules of Court in the manner thereby prescribed.

(7) The Judge or the Colonial Treasurer may at any time require the production of and inspect any books or accounts kept by the Registrar, and the Colonial Treasurer shall cause the accounts of the Registrar to be audited once at least every quarter, and for the purpose of such audit the Registrar shall furnish the Colonial Treasurer with such vouchers and information as he shall require.

No payments allowed into private accounts. 51 Vic. No. 19, s. 99

103. No official assignee or trustee shall pay any sums received by him as such assignee or trustee into his private banker's account, or otherwise than as hereinbefore directed.

Investment of surplus funds. *Ibid.* s. 100.

104. (1) Whenever the cash balance standing to the credit of the "Bankruptcy Estates Account" is in excess of the amount which in the opinion of the Registrar is required for the time being to answer demands in respect of bankrupt estates, the Registrar shall notify the same to the Colonial Treasurer, and shall pay over the same or any part thereof as the Colonial Treasurer may require to the Colonial Treasurer to such account as the Colonial Treasurer may direct, and the Colonial Treasurer may invest the said sums or any part thereof in Government securities to be placed to the credit of the said account.

(2) Whenever any part of the money so invested is, in the opinion of the Registrar, required to answer any demands in respect of bankrupts' estates the Registrar shall notify to the Colonial Treasurer the amount so required, and the Colonial Treasurer shall thereupon repay to the Registrar such sums as may be required to the credit of the "Bankruptcy Estates Account," and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on the investments under this section shall be paid to such account as the Colonial Treasurer may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of bankruptcy proceedings.

Unclaimed dividends and balances to be paid into Unclaimed Dividend Fund. *Ibid.* s. 101. 60 Vic. No. 29, s. 2 (21).

105. (1) All dividends and balances in estates administered under the provisions of this Act which are unclaimed by the parties entitled thereto for the space of six months next after the same are payable shall, unless the Judge otherwise orders, be paid into the Colonial

Colonial Treasury to the credit of a fund to be called the "Bankruptcy Unclaimed Dividend Fund."

Bankruptcy Suitors' Fund.

(2) The Governor may direct that all sums paid to the credit of the said fund shall be invested in Government debentures, and the interest arising from such investment shall be paid to the credit of a fund to be called the "Bankruptcy Suitors' Fund."

Unclaimed dividends and balances may under circumstances be paid to persons entitled.

(3) Any person entitled to receive any dividend or balance hereby directed to be paid into the said "Unclaimed Dividend Fund" may apply to the Court for the payment of such dividend or balance to him, and the Court may order such dividend or balance to be paid to him, and upon every such order the Governor shall issue his warrant for the payment of the amount specified in such order, and the Treasurer shall pay the same out of the said fund.

Insolvent estates.

Jurisdiction, &c., in respect of estates vested in official assignees before passing of the Act 51 Vic. No. 19. 52 Vic. No. 11, s. 2.

106. (1) In any case where the estate of any person has under the Acts relating to insolvency been vested in any official assignee, the Judge shall, in respect of such official assignee and every estate so vested in him, have, and may exercise, all the powers and all such other jurisdiction as might have been exercised in respect of such official assignee or such estate by the Chief Justice or by the Chief Commissioner of insolvent estates.

(2) The Judge shall also have full power and authority to inquire into, and investigate, the dealings of such official assignees with each estate vested in him or with any part thereof, whether such dealings took place before or since the passing of the Act fifty-first Victoria number nineteen, or before his removal as hereafter provided for.

(3) The Judge shall also have full power and authority to remove such official assignee from being the official assignee of any particular estate, and may appoint any other of the official assignees to be the official assignee of such estate, and in case of such removal, the right, title, and interest of the official assignee so removed shall, by the order appointing the official assignee in his place vest in the official assignee so appointed as aforesaid.

(4) The Judge shall also have full power and authority to order any official assignee to bring into Court any sums of money which he may find to be in the hands of such official assignee, and also may call upon any official assignee to account fully for all moneys which have come to his hands at any time and to show how the same were disposed of, and generally may exercise all necessary powers and authorities to compel any official assignee fully to disclose all his dealings with all or any of the estates so vested in him.

(5)

(5) The Judge may also upon the application of the Colonial Treasurer or of any person interested, direct an investigation by the Colonial Treasurer or by any person instructed by the Colonial Treasurer, or by the Registrar, of the books, accounts, vouchers, papers, and documents of any such official assignee, and may order such books, accounts, vouchers, papers or documents to be handed over to the Colonial Treasurer or to any person instructed by him, or to the Registrar; and may direct an inquiry as to the conduct, omissions, and dealings of any such assignee, and may remove him from his office for misconduct or neglect.

(6) Every official assignee appointed an official assignee of any estate under the provisions of this section shall be subject to all the provisions of this section, in respect of the estate to which he is so appointed.

PART IV.

PROCEDURE.

Discretionary powers of the Court. 51 Vic. No. 19, s. 102.

107. (1) Subject to the provisions of this Act and to rules of Court, the costs of and incidental to any proceeding under this Act shall be in the discretion of the Court.

(2) Where any issue is tried by a jury the costs shall follow the event, unless the Court otherwise orders.

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

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

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

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

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

Consolidation of petitions. *Ibid.* s. 103.

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

109.

Power to change carriage of proceedings.
51 Vic. No. 19, s. 104.

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

Continuance of proceedings on death of debtor.
Ibid. s. 105.
60 Vic. No. 29, s. 2 (22).

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

Power to stay proceedings.
51 Vic. No. 19, s. 106.

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

Power to present petition against one partner.
Ibid. s. 107.

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

Power to dismiss petition against one partner.
Ibid. s. 108.

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

PART V.

Application of Act.

Exclusion of limited companies.
Ibid. s. 109.

114. A sequestration order shall not be made against any corporation, or against any partnership or association or company registered under the Act thirty-seventh Victoria number nineteen or any Act consolidating or amending the same.

Sequestration of partnership estate.
Ibid. s. 110.

115. (1) Any creditor of a partnership may present a bankruptcy petition against such partnership, if he would be entitled to present such a petition against any one of the members of such partnership.

(2) An order of sequestration may be made against a partnership estate although all the partners be not included therein.

Voluntary sequestration of partnership estate.
Ibid. s. 111.

116. The estate of a partnership trading or having any estate in New South Wales may be sequestrated upon the petition of the greater number of the partners resident in New South Wales.

Consolidation of proceedings in case of partnerships.
Ibid. s. 112.

117. Where an order for sequestration has been made on a bankruptcy petition against or by one member of a partnership, and another bankruptcy petition against or by a member of the same partnership is filed, the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Actions by official assignee or trustee and bankrupt's partners.
Ibid. s. 113.

118. Where a sequestration order is made against a member of a partnership the Court may authorise the official assignee or trustee to commence and prosecute any action in the names of the assignee or

trustee

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

Actions in joint contracts. 51 Vic. No. 19, s. 114.

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

Proceedings in partnership's name. *Ibid.* s. 115.

120. Any two or more 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 such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise as the Court may direct.

Petition against estate of a deceased person. *Ibid.* s. 116.

121. Any creditor of the estate of a person deceased may present a bankruptcy petition, if any executor or administrator of such estate has committed an act of bankruptcy whereby the creditors may be defeated or delayed in obtaining payment of their debts, praying that the estate may be sequestrated—and the like proceedings may be taken concerning such estate and its representatives as in the case of other estates and persons.

Voluntary sequestration by executor or administrator. *Ibid.* s. 117.

122. Any person in whom the administration of the estate of a person deceased is vested, or in whom the estate of any person is vested in trust for creditors, may present a bankruptcy petition, and the like proceedings may be taken against and concerning such estate and its representatives as in the case of other estates and persons.

Married women. *Ibid.* s. 118.

123. A bankruptcy petition may be presented by and against a married woman in respect of her separate estate.

General rules. *Ibid.* s. 119.

124. (1) The Judges or any three of them may make general rules for regulating the practice, procedure, and forms in respect of all matters under this Act.

(2) A copy of every such rule shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in session, or otherwise within fourteen days after the commencement of the next ensuing session.

Saving of rights under Life Assurance Act. *Ibid.* s. 120.

125. Nothing in this Act shall affect the operation of or prejudice the provisions of the Life Assurance Encouragement Act of 1862 or any Act amending or consolidating the same.

PART

PART VI.

INDICTABLE OFFENCES.

51 Vic. No. 19, s. 121.

126. Whosoever commits any of the offences mentioned in this section shall be guilty of a misdemeanour and be liable to imprisonment with or without hard labour for any time not exceeding three years, and may be ordered to pay damages to any person whom he has injured by such offence, that is to say:—

Concealing property.

(*a*) Whosoever wilfully conceals any property being part of the estate of a bankrupt with intent to defraud his creditors.

Forging process.

(*b*) Whosoever forges the signature of the Judge or Registrar or District Registrar to any order, certificate, or process of the Court or Judge, or serves or enforces any such forged order or process knowing the same 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 such paper or writing to be false, or who acts or endeavours to act under colour or pretence of such process.

Removing property under attachment.

(*c*) Whoever 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 the same to have been so attached, and with intent to defeat the attachment, or obstructs or endeavours to obstruct the sheriff, messenger, or other person authorised to make the same in the discharge of his duty.

Receiving property from bankrupt.

(*d*) Whosoever, whether before or after the sequestration of an estate, receives any property from the bankrupt or from any person on his behalf with intent to defraud or to assist such bankrupt in defrauding his creditors.

Inserting false advertisements.

(*e*) Whosoever inserts or causes to be inserted in any newspaper any advertisement purporting to be under this Act without authority or knowing the same to be false in any material particular with intent in any such case to defraud or deceive.

False claim, &c.

(*f*) Whosoever in any proceeding in bankruptcy or while an estate is under liquidation by arrangement or composition with creditors makes any false claim or any declaration or statement of account which is untrue in any material particular with intent to defraud.

Offences by bankrupt.

Ibid. s. 122.

127. A bankrupt who with intent either to defraud his creditors, or dishonestly to conceal the state of his affairs, or otherwise to violate or defeat the law—

(*a*) does not to the best of his knowledge and belief fully disclose on examination under this Act or to his assignee or trustee all his property real and personal, and how, and to whom,

whom, and for what consideration, and when he has disposed thereof except such part as has been disposed of in the ordinary way of his business or laid out in the ordinary expense of his family; or

(*b*) does not deliver to the assignee or trustee, or as such assignee or trustee directs, all his property or such as is under his control, and which he is required by law so to deliver; or

(*c*) does not deliver to the assignee or trustee, or as such assignee or trustee directs, all books, documents, papers, and writings under his control relating to his property or affairs; or

(*d*) whether before or after sequestration conceals any part of his property to the value of ten pounds or any debt due to or by him, or after sequestration removes any part of his property of that value; or

(*e*) makes any material omission in any statement relating to his affairs; or

(*f*) knowing that a false debt has been proved under the bankruptcy fails for one month to inform his assignee thereof; or

(*g*) after sequestration prevents the production of any book, document, paper, or writing relating to his property or affairs; or

(*h*) whether before or after sequestration conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document relating to his property or affairs; or

(*i*) whether before or after sequestration makes or is privy to making a false entry in any book or document relating to his property or affairs; or

(*j*) whether before or after sequestration parts with any book or document relating to his property or affairs or alters or makes any omission therein; or

(*k*) after or within four months before sequestration attempts to account for his insolvency by fictitious losses or expenses; or

(*l*) within four months before sequestration has, by any false representation or under the pretence of carrying on business in the ordinary way of trade, obtained any property for which he has not paid; or

(*m*) within four months before sequestration pledges or disposes of otherwise than in the ordinary way of trade any property which he has obtained on credit and for which he has not paid; or

(*n*) makes any false representation 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

(*o*) within four months before sequestration departs or makes preparation for departing from New South Wales with any of his property to the amount of twenty pounds which ought by law to be divided among his creditors;

shall be guilty of a misdemeanour and be liable to imprisonment with or without hard labour for any time not exceeding three years.

Fraudulently obtaining credit.
51 Vic. No. 19, s. 123.

128. A bankrupt shall, in each of the cases mentioned in this section, be guilty of a misdemeanour and be liable to imprisonment for any time not exceeding two years with or without hard labour, that is to say:—

(*a*) If in incurring any debt or liability he has obtained credit by false representations or by means of any other fraud.

(*b*) If he has made, or caused to be made, any gift, delivery, or transfer of his property, or any part thereof, or created any charge thereon, with intent to defraud his creditors or any of them.

(*c*) If he has concealed or removed any part of his property after or within two months before the date of any unsatisfied judgment against him with intent to defraud his creditors.

General provision as to punishment.
Ibid. s. 123.

129. Where a person is liable to punishment under any other Act or at Common Law for an offence punishable by this Act, he may be proceeded against under such other Act or at Common Law or under this Act, but so always that he be not punished twice for the same offence.

Power of Court to commit for trial.
Ibid. s. 124.

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

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

(3) Any offence under this part of this Act shall be deemed to be included in the term "fraudulent insolvency" within the meaning of any treaty or convention between Great Britain and any foreign power for the extradition of criminals.

Criminal liability after discharge or composition.
Ibid. s. 125.

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

Court may order certain expenses to be paid out of "Bankruptcy Suitors' Fund."
Ibid. s. 126.

132. If it appears to the Court upon the application of the assignee or trustee that inquiries or proceedings relating to a bankrupt estate ought to be instituted or carried on, or any prosecution ought to be carried on against any person for any offence under this Act, and that there are no funds in the particular estate available for such inquiries,

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 upon every such order the Governor shall issue his warrant for the payment of the amount of such taxed costs, and the Treasurer shall pay the same out of the said fund.

PART VII.

JURISDICTION.

DIVISION 1.—*Bankruptcy Division in Supreme Court.*

Composition and jurisdiction of Court.

133. (1) The jurisdiction in insolvency as exercised prior to the coming into operation of the Act fifty-first Victoria number nineteen, by the Supreme Court, or by a Judge thereof, or by the Chief Commissioner of Insolvent Estates respectively, shall be vested in and exercised by the Court, and shall, together with the jurisdiction of the Court under this Act, be the bankruptcy jurisdiction of the Supreme Court. 51 Vic. No. 19, ss. 127 (1), 131.

(2) The bankruptcy jurisdiction of the Supreme Court shall, except as is herein otherwise provided, be exercised by such Judge of the Supreme Court as may from time to time be duly appointed in that behalf by the Governor under the title of the Judge in Bankruptcy, and the Court shall be holden before such Judge for the determination of all matters in its bankruptcy jurisdiction subject to appeal as is hereinafter provided.

(3) Whenever the terms "Insolvency" or "Insolvent" are used in any Statute now in force, such terms shall include the terms "Bankruptcy" and "Bankrupt" respectively, and wherever the "Chief Commissioner of Insolvent Estates" is mentioned or signified in any such Statute, the term shall be interpreted to mean the Judge. *Ibid.* s. 127 (2).

Jurisdiction. *Ibid.* s. 130.

134. (1) The Court shall, for the purposes of such jurisdiction in bankruptcy, have full powers to decide all questions of priorities, and all questions whatsoever, whether at law or in equity or of fact, in any case of bankruptcy coming within the cognizance of the Court, or which it may deem expedient or necessary to decide for the purpose of doing complete justice or making complete distribution of property in any such case.

(2) If in any proceeding in bankruptcy there arise any question of fact which either of the parties desires to be tried by a jury, or which the Court thinks ought to be tried by a jury, then a trial may be directed to be had before the Judge, or before any other

Judge

Judge of the Supreme Court, and a jury, or before any Judge of a District Court and a jury, and the trial may be had accordingly in the Supreme Court in the same manner as if it were a trial of an issue of fact in an action, and in the District Court in the manner in which jury trials in ordinary cases are by law held in that Court. In every such case the Court may grant a new trial if it thinks fit.

(3) No such issue of fact shall be tried as above in a District Court unless all parties to the proceeding consent thereto, or the money, money's worth, or right in dispute does not in the opinion of the Court exceed in value two hundred pounds.

(4) Whenever the official assignee or trustee claims any property as part of the bankrupt's estate, or claims any right against any person, whether such person is or is not a party to the bankruptcy, the Court may upon motion by the assignee or trustee or any person interested in such property hear and determine, either upon affidavit or upon oral evidence, or both upon affidavits and oral evidence, the question raised by such claim, and make such order thereupon as he may deem expedient or necessary, for the purpose of doing complete justice between all the parties interested.

(5) The notice of such motion shall contain the grounds of such claim and shall be served in the manner prescribed by rules of Court, and the Court may require service of such notice to be made upon any person who in its opinion is a proper party to such motion:

Provided that the grounds of such claim may be amended at the hearing of the motion upon such terms as the Court may think fit.

(6) Every order of the Court made under this Act in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment of the Supreme Court to the same effect.

(7) The Court shall have the same power of giving relief to any party interested in any matter or proceeding before him under this Act as the Supreme Court would have if such matter or proceeding were pending before it in either its common law or equitable jurisdiction.

(8) The Court shall not be subject to be restrained in the execution of its power under this Act by the order of any other Court, nor shall any appeal lie from its decision except in the manner directed by this Act.

Jurisdiction of Judge.
51 Vic. No. 19, s. 131.

135. Subject to any general rule of the Supreme Court, the Judge may assign to the appropriate ministerial officer as he may direct any of the matters in respect of which jurisdiction is given to the Court by this Act.

Exercise of jurisdiction in chambers.
Ibid. s. 132.

136. Subject to the provisions of this Act and to rules of Court the Judge may exercise in chambers the whole or any part of his jurisdiction.

137. The Judge may delegate to the Registrar such of the powers vested in the Court as it may be deemed expedient for the Judge to delegate to him, subject nevertheless to review on summary application to the Judge.

Power to delegate authority to Registrar.
51 Vic. No. 19, s. 133.
52 Vic. No. 11, s. 2.

138. (1) An appeal to the Full Court shall lie against any order, decision, or ruling of the Judge, and such appeal shall be by way of rehearing and shall be subject to such terms and conditions as may be prescribed by rules of Court, and subject thereto according to the practice for the time being in force with reference to appeals in the equitable jurisdiction of the Supreme Court.

Appeal to be by way of rehearing.
51 Vic. No. 19, s. 135.
60 Vic. No. 29, s. 29 (1).

(2) An appeal shall lie against any order or decision or ruling of the Registrar or of any District Registrar to the Judge within such time and on such terms and in such manner as may be prescribed by rules of Court.

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

All orders to be subject to review.
60 Vic. No. 29, s. 29 (11).

DIVISION 2.—*Officers of Court.*

139. (1) The Governor may from time to time appoint a Registrar and may also appoint persons resident in the country parts of New South Wales as District Registrars, and may also appoint ministerial officers to carry into effect the provisions of this Act, and all persons so appointed shall be officers of the Supreme Court.

Appointment and salaries of ministerial officers.
51 Vic. No. 19, s. 136.

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

Judge may appoint District Registrar for special purposes.
60 Vic. No. 29, s. 24.

(3) The salaries to be paid to the Registrar and to the clerks and officers of the bankruptcy jurisdiction shall be paid out of the Consolidated Revenue, and the Court fees to the amount provided by the Fourth Schedule hereto shall be collected and paid into the Colonial Treasury.

Salaries to be paid out of Consolidated Revenue, and fees collected and paid into Treasury.

140. Every official assignee or trustee shall, out of every estate being administered after the coming into operation of the Act fifty-first Victoria number nineteen, pay into the Colonial Treasury towards the expenses of administering this Act such sum not less than one-eighth of a pound or not exceeding four pounds per centum on the gross amount coming into his hands from time to time in any such estate, after deducting any sums paid to secured creditors out of the proceeds of their securities, and a scale within the limits aforesaid, and the time of payment shall be fixed and varied from time to time by any regulations

Payment of percentage.
51 Vic. No. 19, s. 137.
60 Vic. No. 23, s. 2 (23).

regulations by the Judge with the approval of the Colonial Treasurer, and such regulations, with the approval thereof, shall be submitted to Parliament.

Power to transfer special proceedings, or proceedings generally to country districts.
51 Vic. No. 19, ss. 138, 139.

141. The Court, at any time after sequestration, on the application of the official assignee, trustee, or a creditor, or upon its own motion, may, if it is for the advantage of the creditors, order that an examination, single meeting, enquiry, or account may be held or taken before a District Registrar, or that any future proceedings in the administration of an estate, or any part thereof, be taken at such place or places as it may name in the order.

Points of law.
Ibid. s. 140.

142. If any question of law arises in any bankruptcy proceedings the Judge may, with the consent of all parties interested, state the facts in the form of a special case, for the opinion of the Full Court.

Jurisdiction in bankruptcy of Registrar.
Ibid. s. 141.

143. (1) The Registrar shall have, in addition to the powers which may be delegated to him by the Judge under the provisions of this Act, the powers, duties, and jurisdiction of the Court in this section mentioned, and any order made or act done by such Registrar, in the exercise of the said powers, duties, and jurisdiction shall, except for the purposes of appeal, be deemed the order or act of the Court, that is to say,—

Ibid. s. 9 (2). (*a*) to hear debtors' petitions and to make sequestration orders thereon, or to give leave to withdraw the same;

Ibid. s. 14 (2). (*b*) to extend the time for submitting statements of affairs;

60 Vic. No. 29, s. 9. (*c*) to approve of a resolution of creditors to allow a bankrupt to retain any of his personal property;

51 Vic. No. 19, s. 18, subs. 1, 3, 8, 9.
60 Vic. No. 29, s. 2 (4). (*d*) 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 such examination or further or adjourned examination; to put such questions to the bankrupt as he thinks expedient, and to declare any such examination concluded;

51 Vic. No. 19, s. 141. (*e*) to approve compositions or schemes of arrangement when they are not opposed;

Ibid. ss. 30, 31, 141. (*f*) to summon and examine the bankrupt or his wife, 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 dealings, or property, and otherwise to exercise the powers of the Court contained in section thirty of this Act, and to exercise the power of committal and discharge contained in section thirty-one of this Act;

Ibid. s. 141. (*g*) to do any act or thing or give any direction or permission by this Act, authorised or required to be done or given by the committee of inspection, where there is no such committee;

(*h*)

(*h*) to grant certificates of discharge where the application is not opposed; 51 Vic. No. 19, s. 141.

(*i*) to direct payment out of salary, income, half-pay, pension, or compensation of any bankrupt, and the application of the same; *Ibid.* s. 61. 60 Vic. No. 29, s. 19 (1).

(*k*) to order an official assignee or trustee, or party interested, to show cause why a plan of distribution should not be amended; 51 Vic. No. 19, s. 70.

(*l*) to give directions to the official assignee or trustee in relation to any matter relating to a bankruptcy; *Ibid.* s. 91.

(*m*) to adjourn any proceedings before him, to amend any written process or proceeding under this Act, and to take the whole or any part of the evidence in any matter either viva voce or otherwise; *Ibid.* s. 102 (2), (3), (5).

(*n*) to authorise the official assignee or trustee to commence and prosecute any action in the name of the assignee or trustee and of the bankrupt's partner; *Ibid.* s. 113.

(*o*) to postpone any application or proceeding before him under this Act; *Ibid.* s. 150 (2).

(*p*) to declare any proceeding in bankruptcy invalidated by a formal defect or irregularity; *Ibid.* s. 151 (1).

(*q*) to remit or reduce fees; 60 Vic. No. 29, s. 30.

(*r*) to extend the time for the summoning of the first meeting of creditors; 51 Vic. No. 19, Sch. I, cl. 1.

(*s*) to declare that a secured creditor voting in respect of his whole debt shall not be deemed to have surrendered his security; *Ibid.* Sch. I, cl. 10.

(*t*) to declare invalid any vote given by a claimant who has not proved his debt; 60 Vic. No. 29, s. 3 (*c*).

(*u*) to make orders with respect to the cost of a creditor proving his debt; 51 Vic. No. 19, Sch. II, cl. 6. 60 Vic. No. 29, s. 4 (*a*).

(*v*) to give directions as to sale of property comprised in any security; 51 Vic. No. 19, Sch. II, cl. 12 (*b*).

(*w*) to expunge a proof or reduce its amount; *Ibid.* Sch. II, cl. 23. 60 Vic. No. 29, s. 4 (*b*).

(*x*) to make interim orders in any case of urgency, and to hear and determine any unopposed or ex parte application; 51 Vic. No. 19, s. 141.

(*y*) to make any order or exercise any jurisdiction which is prescribed by any rule of Court as proper to be made or exercised in Chambers; *Ibid.* s. 141.

(*z*) to administer oaths where necessary in all proceedings within his jurisdiction under this Act. *Ibid.* s. 141.

(2) The powers given to the Registrar by virtue of subsection 1 (*e*), (*h*), (*x*), (*y*), (*z*), and the power to hear debtors' petitions may be limited by rules of Court.

144. (1) All schedules, statements, accounts, examinations, plans of distribution, reports, and all other documents or proceedings whatsoever required by the provisions of this Act to be submitted to, produced, Documents, &c., to be filled. *Ibid.* s. 142.

or

or held before the Court, Judge, Registrar, District Registrar, official assignee, or trustee, shall be filed of record by the Registrar, and the same shall be under the custody of the Registrar, and shall when filed be open to inspection, and extracts may be taken therefrom, as and upon payment of such fee as may be from time to time prescribed by rules of Court.

(2) If the Registrar be satisfied that it is undesirable to file the originals of any of the beforementioned documents or proceedings, he may file certified copies of the same in lieu thereof.

Jurisdiction of district registrar. 51 Vic. No. 19, ss. 102 (2), (5), 143.

145. A District Registrar shall have the same powers and jurisdiction as the Registrar in respect of any examination, issuing of summonses, enquiry, or account held or taken before him, the adjournment of proceedings before him, and the taking of evidence viva voce or otherwise.

PART VIII.

Miscellaneous provisions.

Gazette to be evidence. *Ibid.* s. 144.

146. (1) A copy of the Gazette containing any notice inserted therein in pursuance of this Act shall be primâ facie evidence of the facts stated in the notice.

(2) The production of a copy of the Gazette containing any notice of an order for sequestration 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. *Ibid.* s. 145.

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

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

Death of witness. *Ibid.* s. 147.

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

Certificate of appointment of trustee. *Ibid.* s. 148.

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

150.

150. Where anything is directed or authorised to be done by the creditors under this Act, and no method is prescribed by which the creditors may signify their wishes, they may do so by ordinary resolution. Method of procedure by creditors. 51 Vic. No. 19, s. 149.

151. (1) 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. *Ibid.* s. 150.

(2) Such notice shall date from the date at which in due course of post they would be received by the person to whom they are directed.

(3) The Court may postpone any application or proceedings under this Act, if in its opinion sufficient notice of the same has not been given to any party interested.

152. (1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court before whom an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court. Formal defects not to invalidate. *Ibid.* s. 151.

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

153. Every deed, conveyance, assignment, surrender, admission, or other assurance relating solely to freehold, leasehold, copyhold, or customary property, or to any mortgage, charge, or other encumbrance on, or any estate, right, or interest in any real or personal property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment, surrender, admission, or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the official assignee or trustee under the bankruptcy, and every power of attorney, proxy, paper, writ, order, certificate, affidavit, bond relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Act. Exemption of deeds, &c., from stamp duty. *Ibid.* s. 152.

154. For all or any of the purposes of this Act a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic, or insane or incapable person, or insane patient, may act by his committee or curator bonis, or such other person in whom the management and control of the estate of such person is for the time being vested. Acting of corporations, partners, &c. *Ibid.* s. 153.

155. Whenever any person shall at any time at or after the coming into operation of this Act have been imprisoned— Sequestration of estates of persons under imprisonment for debt.

(*a*) in execution of a judgment for defamation or libel obtained under the Act eleventh Victoria number thirteen, or any Act consolidating or amending the same for a period of twelve months; or 60 Vic. No. 29, s. 28

(*b*) in virtue of any order made under the Matrimonial Causes Act or any Act consolidating or amending the same for a period of twelve months for nonpayment of a sum due in respect of alimony or maintenance, or for a period of six months for nonpayment of costs; or

(*c*) in any other case for debt for a period of three months,

and has not presented a bankruptcy petition against himself, the Minister for Justice may present a petition against such person, and a sequestration order may thereupon be made, and shall have effect in all respects as if made upon the petition of such person himself.

Remission of fees in certain cases. 60 Vic. No. 29, s. 30.

156. The Court may, upon good cause shown, remit or reduce any of the fees payable under the Fourth Schedule to this Act.

SCHEDULES.

Section 15.

FIRST SCHEDULE.

Date of Act.	Title of Act.	Extent of repeal.
7 Vic. No. 19 ...	An Act to amend an Act intituled "*An Act for giving relief to insolvent persons and providing for the administration of Insolvent Estates and to abolish imprisonment for debt.*"	Section 15 (the unrepealed section).
10 Vic. No. 14...	An Act to remove difficulties in the disposal, administration, and distribution of Insolvent Estates.	Section 3 (the unrepealed section).
38 Vic. No. 1 ...	An Act to expedite and lessen the expense of proceedings in Insolvency.	Sections 6, 7, and 8 (the unrepealed sections).
51 Vic. No. 19...	Bankruptcy Act, 1887	The whole, except sections 128, 129, 135, and 146.
52 Vic. No. 11...	Bankruptcy Act Amendment Act, 1888... ...	The whole.
60 Vic. No. 29...	Bankruptcy Acts Amendment Act, 1896 ...	Sections 1–30 and section 35.

THE SECOND SCHEDULE.

MEETINGS OF CREDITORS.

Time of first meeting. 51 Vic. No. 19, Sch. I, cl. 1. 60 Vic. No. 29, s. 3(*a*)

1. The first meeting of creditors shall be summoned for a day not later than twenty-one days after the date of the sequestration order, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.

Advertisement thereof. 51 Vic. No. 19, Sch. I, cl. 2. 60 Vic. No. 29, s. 3(*b*).

2. The Registrar shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the Gazette and in a local paper. The official assignee shall also whenever practicable give notice of the time and place thereof to each creditor named in the statement of affairs then resident in New South Wales or his authorised agent.

Provisional report. 51 Vic. No. 19, Sch. I, cl. 3.

3. The official assignee shall at such first meeting bring up a provisional report based upon the bankrupt's statement of affairs.

4. The meeting shall be held at such place as is in the opinion of the official assignee most convenient for the majority of the creditors. Place. 51 Vic. No. 19, Sch. I, cl. 4.

5. The official assignee or 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-fourth in value of the creditors. Subsequent meetings. 51 Vic. No. 19, Sch. I, cl. 5.

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 bankrupt's statement of affairs, or at such other address as may be known to the person summoning the meeting. Mode of summoning. 51 Vic. No. 19, Sch. I, cl. 6.

7. The official assignee, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint. Chairman. 51 Vic. No. 19, Sch. I, cl. 7.

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 bankrupt, and the proof has been duly lodged before the time appointed for the meeting. Right to vote. 51 Vic. No. 19, Sch. I, cl. 8.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained. Unascertained debts. 51 Vic. No. 19, Sch. I, cl. 9.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence. Vote by secured creditor. 51 Vic. No. 19, Sch. I, cl. 10.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the bankrupt, and against whom a sequestration order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof. Note on bill or note. *Ibid.* cl. 11.

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

13. 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. Vote by joint creditor. *Ibid.* cl. 13.

14. When, for any cause appearing to the Registrar, the Registrar shall be of opinion that a claimant who has not proved his debt may eventually be able to establish the same, the Registrar may allow such claim to be entered for the purpose of voting, and may give such time as he may think fit for establishing the same, and the official assignee shall make provision for the same in any account and plan of distribution filed prior to the expiration of such time: Provided that any vote given by the claimant may be declared invalid in the event of the claim not being established within the time allowed, but subject to such terms as the Court may think fit. Admission of votes. 60 Vic. No. 29, s. 3 (3).

15. A creditor may vote either in person or by proxy. Mode of voting. 51 Vic. No. 19, Sch. I, cl. 15.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official assignee, and every insertion therein shall be in the handwriting of the person giving the proxy. Proxy form. *Ibid.* cl. 16.

17.

General proxy. 51 Vic. No. 19, Sch. 1, cl. 17.

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

Special proxy. *Ibid.* cl. 18.

18. A creditor may give a special proxy to any person to vote at any specified meeting, or adjournment thereof, for or against any specific resolution, or for or against any specified person as trustee, or member of a committee of inspection.

Deposit of proxy. *Ibid.* cl. 19. 60 Vic. No. 29, s. 3 (d).

19. A proxy shall not be used unless it is deposited with the official assignee before the meeting at which it is to be used except with the leave of the Judge or Registrar.

Canvassing for votes. *Ibid.* cl. 20.

20. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of an official assignee, trustee, or manager, or receiver in obtaining proxies, or in procuring the trusteeship, managership, or receivership, except by the direction of a meeting of creditors, the Court may 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.

Official receiver as proxy. 51 Vic. No. 19, Sch. I, cl. 21.

21. A creditor may appoint the official assignee of the bankrupt's estate to act in manner prescribed as his general or special proxy.

Adjournment. *Ibid.* cl. 22.

22. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place.

Quorum. *Ibid.* s. 23.

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

Quorum not present. *Ibid.* cl. 24.

24. 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 the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

Minutes. *Ibid.* cl. 25.

25. 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.

Interested vote. *Ibid.* cl. 26.

26. 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 ratably with the other creditors of the debtor: Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly.

Single meetings. 60 Vic. No. 29, s. 3 (e).

27. Nothing in clauses twenty-three and twenty-four of this Schedule shall apply to the case of a single meeting.

THE THIRD SCHEDULE.

Proof of Debts.

Proof in ordinary cases.

Time for proof. 51 Vic. No. 19, Sch. II, cl. 1.

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

Mode of proof. *Ibid.* cl. 2.

2. A debt may be proved by delivering or sending through the post in a pre-paid letter to the Registrar an affidavit verifying the debt.

Who may prove. *Ibid.* cl. 3.

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

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The Registrar and official assignee or trustee may at any time call for the production of the vouchers. Particulars and vouchers. 51 Vic. No. 19, Sch. II, cl. 4.

5. The affidavit shall state whether the creditor is or is not a secured creditor. Security. *Ibid.* cl. 5.

6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders. Cost. *Ibid.* cl. 6. 60 Vic. No. 29, s. 4 (*a*).

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. Inspection of proof 51 Vic. No. 19, Sch. II, cl. 7.

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

Proof by secured creditors.

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

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

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

12. (*a*) Where a security is so valued the official assignee or trustee may at any time redeem it on payment to the creditor of the assessed value. Redemption. *Ibid.* cl. 12.

(*b*) If the official assignee or trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official assignee or trustee, or as, in default of such agreement, the Court may direct. If the sale be by public auction the creditors or the official assignee 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 official assignee or trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the official assignee or 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 official assignee or trustee shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee, or the trustee, or the Registrar, 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 Registrar shall order. Revaluation. *Ibid.* cl. 13.

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

15.

Realisation after valuation. 51 Vic. No. 19, Sch. II, cl. 15.

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

Exclusion from dividend. *Ibid.* cl. 16.

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

Maximum dividend. *Ibid.* cl. 17.

17. Subject to the provisions of Rule twelve, 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.

Distinct contracts. *Ibid.* cl. 18.

18. If a debtor was at the date of the order of sequestration liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as a 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.

Periodical payments. *Ibid.* cl. 19.

19. When any rent or other payment falls due at stated periods, and the order of sequestration 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.

Interest. *Ibid.* cl. 20.

20. (1) 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 order of sequestration and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding six 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 was 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.

60 Vic. No. 29, s. 22.

(2) Where a debt has been proved upon a bankrupt's estate under this Act, and such debt includes interest or any pecuniary consideration in lieu of interest, such interest or consideration shall for the purposes of dividend be calculated at a rate not exceeding eight 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.

Debt payable at a future time.

Future debts. 51 Vic. No. 19, Sch. II, cl. 21.

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

Admission or rejection of proofs.

Admission of proofs. *Ibid.* cl. 22.

22. The Registrar 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.

Expunging. 60 Vic. No. 29, s. 4 (b).

23. The official assignee or a trustee may upon further evidence, and upon notice to the creditor who has made the proof, apply to the Court to expunge such proof or reduce its amount.

24. If a creditor or official assignee or trustee is dissatisfied with the decision of the Registrar in respect of a proof, the Court may, upon the application of the creditor or official assignee or trustee, reverse or vary the decision. Appeal. 51 Vic. No. 19, Sch. II, cl. 24. 60 Vic. No. 29, s. 4 (c).

25. The Court may also expunge or reduce a proof upon the application of a creditor if the official assignee or trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the bankrupt. Who may apply. 51 Vic. No. 19, Sch. II, cl. 25.

FOURTH SCHEDULE.

Court and other Fees to be taken.

Registrar in Bankruptcy.	s.	d.
Every declaration by a debtor of inability to pay debts	2	6
Upon filing every petition surrendering an estate as bankrupt including the order of the Court thereon where the assets shall appear not to exceed £200	2	6
When above that amount	15	0
For drawing and inserting each advertisement besides the expenses paid for advertising when required to be done	2	6
Upon receiving and filing every petition against a person having committed an act of bankruptcy	15	0
For filing every affidavit	1	0
For every order of the Court	5	0
For every bankruptcy notice	5	0
For filing same or any other proceeding	1	0
For every person examined or document exhibited	1	0
For taxing costs in any case—same as in the Supreme Court Office.		
For making every necessary application and report to the Court and minute of the order thereon...	2	6
For every warrant of attachment of movable property	2	6
For every summons for the attendance of a person to give evidence or be examined	5	0
For every certified extract from or copy of proceedings relating to bankrupt estates of less than seventy-two words	2	6
And above that number per folio	0	4
For every inspection of proceeding in each estate for each half hour	1	0
For every certificate of discharge	10	0
For every other process before the Court—same as in the Supreme Court either at Law or in Equity as the case may be.		
For each meeting of creditors or examination in estates under £200 assets	10	0
For any other meeting of creditors or examination per diem ...	20	0
For every proof of debt to be paid by the person offering it ...	1	0
For swearing every affidavit by the party sworn	1	0
For every person examined by the party producing him	1	0
For every warrant for apprehension of bankrupt	5	0
For every warrant of commitment of any person	7	6
Sheriff's Fee.		
For registering every order for sequestration or bankruptcy notice	1	0
The Registrar-General's Fee.		
For registering every order of sequestration	1	0

FIFTH

FIFTH SCHEDULE.

In the Supreme Court of New South Wales— In Bankruptcy.

BANKRUPTCY NOTICE.

(*Title.*)

To A.B. [*or* A.B. & Co. of .]

TAKE notice that within [seven] days after service of this notice on you, excluding the day of such service, you must pay to C.D., of , the sum of £ claimed by him as being the amount due on a final judgment obtained by him against you in the Court, dated ; whereon execution has not been stayed, or you must secure or compound for the said sum to [his] satisfaction or the satisfaction of the Judge; or you must satisfy the Judge that you have a counter-claim, set-off, or cross-demand against C.D., which equals or exceeds the sum claimed by him, and which you could not set up in the action in which the judgment was obtained.

Dated

By the Court,
Registrar.

INDORSEMENT ON NOTICE.

You are specially to note,—

THAT the consequences of not complying with the requisitions of this notice are that you will have committed an act of bankruptcy, on which bankruptcy proceedings may be taken against you.

If, however, you have a counter-claim, set-off, or cross-demand, which equals or exceeds the amount claimed by C.D. in respect of the judgment, and which you could not set up in the action in which the said judgment was obtained, you must within days apply to the Judge to set aside this notice, by filing with the Registrar an affidavit to the above effect, setting out the particulars thereof and the reasons why you could not set up the same in the said action.

[*Name and address of Solicitor suing out the notice*] or

This notice is sued out by [C.D.] in person.

By Authority: Reprinted by WILLIAM APPLEGATE GULLICK, Government Printer, Sydney, 1920.

[2*s.* 4*d.*

New South Wales.

ANNO SEXAGESIMO SECUNDO

VICTORIÆ REGINÆ.

Act No. 25, 1898.

An Act to consolidate the Law relating to Bankruptcy.
[Assented to, 27th July, 1898.]

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

1. This Act may be cited as the "Bankruptcy Act, 1898," and is divided into parts and divisions as follows:— Short title of Act. 51 Vic. No. 19, s. 1.

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

DIVISION 1.—*Section* 4—*Acts of bankruptcy.*

DIVISION 2.—*Sections* 5–12—*Sequestration order.*

DIVISION 3.—*Sections* 13–18—*Proceedings consequent on order.*

DIVISION 4.—*Sections* 19–20—*Composition or scheme of arrangement.*

DIVISION 5.—*Sections* 21–26—*Creditors' trustees and committee of inspection.*

DIVISION 6.—*Sections* 27–33—*Control over person and property of bankrupt.*

DIVISION 7.—*Sections* 34–38—*Release of estate, and annulment of sequestration order.*

DIVISION 8.—*Sections* 39–44—*Bankrupt's certificate.*

PART II.—ADMINISTRATION OF PROPERTY.

DIVISION 1.—*Sections* 45–47—*Proof of debts.*

DIVISION 2.—*Sections* 48–50—*Preferential debts.*

DIVISION 3.—*Sections* 51–52—*Property available for payment of debts.*

DIVISION 4.—*Sections* 53–58—*Effect of bankruptcy on antecedent transactions.*

DIVISION 5.—*Sections* 59–68—*Realisation of property.*

DIVISION 6.—*Sections* 69–81—*Distribution of estate.*

PART III.—CREDITORS' TRUSTEES AND OFFICIAL ASSIGNEES.

DIVISION 1.—*Sections* 82–86—*Remuneration of trustees or assignees.*

DIVISION 2.—*Section* 87—*Official name.*

DIVISION 3.—*Sections* 88–94—*Appointment and removal.*

DIVISION 4.—*Sections* 95–106—*Control over assignees and trustees.*

PART IV.—PROCEDURE.

Sections 107–113.

PART V.—APPLICATION OF ACT.

Sections 114–125.

PART VI.—INDICTABLE OFFENCES.

Sections 126–132.

PART VII.—JURISDICTION.

DIVISION 1.—*Sections* 133–138—*Bankruptcy Division of Supreme Court.*

DIVISION 2.—*Sections* 139–145—*Officers of the Court.*

PART VIII.—MISCELLANEOUS PROVISIONS.

Sections 146–156.

Repeal. First Schedule.

2. (1) The several enactments mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed.

(2) All persons appointed by virtue of any Act hereby repealed and holding office at the passing of this Act, shall be deemed to have been appointed hereunder.

(3) All rules of Court made under the authority of any Act hereby repealed and being in force at the passing of this Act, shall be deemed to have been made under the authority of this Act.

Interpretation of terms. 51 Vic. No. 19, s. 3.

3. (1) In this Act, unless the context otherwise requires :—

"The Judge" means the Judge having jurisdiction in bankruptcy under this Act or any Judge acting as such :

"Available Act of bankruptcy" means any Act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the sequestration order is made :

"Debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy :

"Goods" include all chattels personal :

"The Court" means the Supreme Court in its bankruptcy jurisdiction :

"Local Bank" means any bank in or in the neighbourhood of the district in which the proceedings are taken :

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

"Property" includes money, goods, things in action, land, and every description of property, whether real or personal, and whether situate in New South Wales 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 :

"Secured creditor" means a person holding a mortgage, charge, or lien on the property of the debtor, or any part thereof :

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

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

The term "trustee" shall in all cases where not inconsistent with the context include the official assignee when he fills the office of trustee.

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

PART

PART I.

PROCEEDINGS FROM ACT OF BANKRUPTCY TO BANKRUPT'S EXAMINATION.

DIVISION 1.—*Acts of Bankruptcy.*

Acts of bankruptcy.
51 Vic. No. 19, s. 4.

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

(*a*) If in New South Wales or elsewhere he makes a conveyance or assignment of his property to a trustee for the benefit of his creditors generally :

(*b*) If in New South Wales or elsewhere he makes a conveyance, gift, delivery, assignment, or transfer of his property, or of any part thereof, with intent to defeat or delay his creditors, or any of them :

(*c*) If in New South Wales or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon which would under this or any other Act be void as a fraudulent preference if a sequestration order were made against him:

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

52 Vic. No. 11, s. 2.

(*e*) If execution issued against him has been levied by seizure and sale of his goods under process in an action in any Court, or in any civil proceeding in the Supreme Court, and if he has not within five days of such sale, satisfied the debt by payment :

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

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

(*h*)

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

(*i*) If he has been adjudged bankrupt or insolvent by a British Court of competent jurisdiction in or out of New South Wales, and has not received a certificate of discharge or other corresponding release—of any of which facts a copy of the order or orders or certificate or release made or given by such Court certified under its seal shall be sufficient evidence:

(*j*) If he has not presented a bankruptcy petition against himself or filed in the Court a declaration of his inability to pay his debt within forty-eight hours after having at a convened meeting of his creditors admitted that he is unable to pay his debts, and been thereupon required by a majority in number of his creditors present to present such petition or file such declaration.

(2) A bankruptcy notice under this Act shall be in the form prescribed in the Fifth Schedule hereto, and shall state the consequences of non-compliance therewith, and shall be served in the manner prescribed by the rules of Court; it shall be under the hand of the Registrar, and may be granted upon the application of the creditor claiming to be entitled thereto.

(3) Upon the debtor satisfying the Court that such notice ought not to have issued, the Court may order the payment to him by the creditor applying for such notice of all the costs occasioned by the issue thereof, and if satisfied that the notice was issued maliciously and without reasonable and probable cause may at the request of the debtor assess the damages occasioned thereby.

(4) Upon security being given by the debtor for payment of the debt and the cost of establishing it, the Court may stay all proceedings on the notice, and may stay execution on the judgment in respect of which such notice was issued, for such a time, in either case, as it thinks fit.

(5) Upon the affidavit of any creditor who would be entitled to present a bankruptcy petition that a debtor, being a trader, has committed an act of bankruptcy and is diminishing his assets to the prejudice of his creditors, whether voluntarily or for consideration, by conveyance, gift, delivery, assignment, pledge, mortgage, transfer, or execution upon a collusive judgment, the Court may grant an injunction restraining such debtor and all other persons from disposing of or dealing with such assets or any part thereof until the hearing of the bankruptcy petition against such debtor:

Provided that before such injunction be granted the creditor applying shall give security to the satisfaction of the Registrar to present a bankruptcy petition forthwith, and to be responsible for all damages which may be occasioned by issuing such injunction.

60 Vic. No. 29, s. 6 (1).

(6) Any person who is for the time being entitled to enforce a final judgment shall be deemed a creditor who has obtained a final judgment within the meaning of this section.

Married women. *Ibid.* s. 6 (2).

(7) Any final judgment obtained against a married woman shall be deemed to be a final judgment within the meaning of subsection (1) (*g*) of this section, and a bankruptcy notice in the form prescribed by the Fifth Schedule hereto may issue and be served upon her in respect thereof as if judgment had been obtained against her as a feme sole, and the fact that no execution can issue at law on such judgment shall not prevent the non-compliance with such notice being deemed an act of bankruptcy under the said subsection.

Ibid. s. 6 (2).

(8) Nothing herein contained shall be construed to render a married woman liable to be made bankrupt except in respect of her separate estate and upon evidence that she is possessed of separate estate, or to alter or repeal anything contained in the Married Woman's Property Act, 1893, or any Act consolidating or amending the same.

Ibid. s. 6 (3).

(9) Any decree or order which is in its terms or effect final shall be deemed to be a final judgment within the meaning of this section.

Unregistered deeds of assignment. *Ibid.* s. 23.

(10) Every deed of conveyance or assignment for the benefit of creditors may be registered by filing in the office of the Registrar-General an examined copy signed by one or more of the parties to the original deed of assignment and certified by the oath of some credible person taken before a Judge or before the Registrar-General or his deputy, or before any commissioner for affidavits; and if so registered within one month from the execution of the same by the assignor shall be within the protection of this Act.

Ibid. s. 23.

(11) The Registrar-General shall upon the said copy being so filed as aforesaid register the same accordingly.

Division 2.—*Sequestration order.*

Jurisdiction to make sequestration order. 51 Vic. No. 19, s. 5.

5. (1) Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a sequestration order.

(2) When a sequestration order has been made, the debtor thereby becomes a bankrupt, and continues a bankrupt until a certificate of discharge has been issued to him, or the order for sequestration be discharged or annulled in manner hereinafter provided.

Conditions on which creditor may or may not petition. *Ibid.* s. 6. 60 Vic. No. 29, s. 23.

6. A creditor shall not be entitled to present a bankruptcy petition against a debtor unless—

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

(*b*)

(*b*) The debt is a liquidated sum, payable either immediately or at some certain future time, whether due at law or in equity; and

(*c*) The act of bankruptcy on which the petition is grounded has occurred within six months before the presentation of the petition:

Provided that, if the alleged act of bankruptcy is one of those mentioned in subsection (*i*) of section four, the petition may be presented within three months after the alleged act came to the knowledge of the petitioning creditor; and unless

(*d*) The debtor is domiciled in New South Wales, 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 New South Wales:

Provided that when the alleged act of bankruptcy is that set forth in subsection (*a*) of section four, and the deed of conveyance or assignment has been registered within one month from the execution thereof by the assignor in accordance with the provisions of subsection ten of the said fourth section, no sequestration order shall be made upon the petition of a creditor or creditors, if such creditor or creditors do not represent at least one-fifth in value of all the creditors.

Secured creditor.
51 Vic. No. 19, s. 7.

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

Proceedings and order on creditor's petition.
Ibid. s. 8.
60 Vic. No. 29, s. 2 (1); s. 23.

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

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

Trustees shall receive notice of hearing.

(3) If the debtor has made a conveyance or assignment of his property to a trustee for the benefit of his creditors generally, and the same has been registered within one month from the execution thereof by the assignor in accordance with the provisions of subsection ten of section four of this Act, the trustee under such assignment shall also receive the prescribed notice of the hearing, and may appear and show cause for the dismissal of the petition, and if it appears to the Court

Court that it will be for the advantage of the creditors that the estate should be administered under the said deed such petition may be dismissed.

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

(5) If it appears to the Court upon the hearing of the petition that the petition was unfounded and vexatious or malicious, he may allow the respondent then, or at some other fixed time, to prove any damage sustained thereby, and may award such sum in respect thereof not exceeding two hundred pounds as the Court deems fit:

Provided that nothing herein shall affect the right of the respondent to sue the petitioner for damages beyond the amount awarded by the Court.

Staying proceedings on petition upon security being given.

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

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

(8) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a 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 stayed as aforesaid.

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

Proviso for revival on proceeding being stayed.

(10) Where a petition is withdrawn or discharged, or where proceedings upon a petition are stayed in consequence of the petitioning creditor's default, or his collusion with the debtor, the Court, within six months after such withdrawal or discharge or stay of proceedings, may, on the petition of any other creditor or creditors, whose debt or debts existed at the date of the service of the said petition, direct that a sequestration order shall be made. (11)

(11) If any person against whom a sequestration order has been made pays any money to any petitioning creditor or to any one on his behalf, or gives to such creditor any security for his debt or part thereof, such payment, gift, or security shall be a new act of bankruptcy, and the person receiving such money, gift, or security shall deliver up such security and repay or deliver the money or gift or its full value to the assignee for the benefit of the creditors, and shall pay all the costs incurred by any other creditor in obtaining a sequestration order upon such act of bankruptcy.

Preference to petitioning creditor to be a new act of bankruptcy.

9. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and upon the presentation thereof the Court shall make a sequestration order.

Debtor's petition and order thereon. 51 Vic. No. 19, s. 9.

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

10. (1) Upon the making of a sequestration order the property of the bankrupt shall vest in one of the official assignees to be named in such order, and be divisible among the creditors of the bankrupt in accordance with the provisions of this Act.

Effect of sequestration order. *Ibid.* s. 10. 60 Vic. No. 29, ss. 2 (2); 7.

(2) Upon the making of an order for the sequestration of the estate of an undischarged bankrupt or insolvent, the property of such bankrupt or insolvent possessed by him at the date of the second order of sequestration shall, if the official assignee or trustee appointed under the prior order has not intervened, vest in the official assignee named in the subsequent order, and be divisible in the first instance among the creditors of the bankrupt in the subsequent bankruptcy.

Sequestration of estate of undischarged bankrupt.

(3) After a sequestration order has been made, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence or take any fresh step in any action or other legal proceedings unless with the leave of the Court and on such terms as the Court may impose.

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

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

Power to stay legal proceedings.

(6) 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 such proceeding.

(7) All actions or proceedings at law or in equity commenced by any person, against whom a sequestration order is afterwards made, shall, upon such order being made, be stayed until the official assignee or trustee make election to prosecute or discontinue the same, and such official assignee 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 such action or proceedings, or otherwise shall be deemed to have abandoned the same :

Provided that any bankrupt shall be permitted to 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 of his family.

Registration of sequestration order and bankruptcy notice.
51 Vic. No. 19, s. 11.
52 Vic. No. 11, s. 2.

11. The Registrar shall forthwith publish in the Gazette a notice of every sequestration order, and also send a like notice to the Registrar-General, who shall make a note of the same in every index and registered instrument kept in his office for public inspection. The Registrar shall also send notice of every such order and notice of the issue of any bankruptcy notice to the sheriff, who shall forthwith register the same respectively in his office.

Agent of creditor may act for him.
51 Vic. No. 19, s. 12.

12. Where a creditor entitled to present a bankruptcy petition is absent from New South Wales, his agent, if authorised to recover his debts or effects, may present the petition and make the proof required in lieu of such creditor :

Provided that the person whom it is sought to make bankrupt shall have, in addition, the same rights and remedies in every such case against such agent as he has against the person in whose name such proceeding is taken, and all notices, summonses, orders, and documents may be served upon such agent, and shall have the same effect as if served upon the creditor.

Division 3.—*Proceedings consequent on order.*

Power to appoint special manager.
Ibid. s. 13.

13. (1) At any time after the making of a sequestration order, the official assignee 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 the appointment of a special manager or receiver of the estate or business, or any part thereof, other than the official assignee, appoint a manager or receiver thereof accordingly to act until a trustee is appointed, or so long as the creditors may by resolution require.

(2)

(2) Every such special manager or receiver shall, for all the purposes of obtaining and retaining possession of the property or business of the bankrupt, be in the same position in all respects as a receiver and manager appointed by the Supreme Court in its equitable jurisdiction, and the Court may enforce such acquisition or retention accordingly.

(3) Every person aggrieved by any act of a receiver or manager may apply to the Court, who may confirm or disallow the act complained of, and make such order in the premises as is just.

(4) Such special manager or receiver shall receive such remuneration as the creditors may by resolution determine, or in default of any such resolution as may be prescribed.

Bankrupt's statement of affairs.
51 Vic. No. 19, s. 14.

14. (1) Where a sequestration order is made the bankrupt shall make out and lodge in the office of the Registrar and furnish to the official assignee a copy of a statement of and in relation to his affairs in the form prescribed by rules of Court verified by affidavit, and showing :—

(*a*) the particulars of the bankrupt's assets, debts, and liabilities ;

(*b*) the names, residences, and occupations of the debtors to his estate and of his creditors ;

(*c*) the amounts due by and to each, and the securities given or held by them respectively ;

(*d*) the dates when such debts and securities arose and were granted ; and

(*e*) such further or other information as may be prescribed or as the official assignee may require.

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

(*a*) If the order is made on the petition of the debtor, upon the making of the sequestration order.

(*b*) If the order is made on the petition of a creditor, within seven days from the date of the service of the order.

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

(3) The bankrupt shall also deliver to the official assignee all books of account, vouchers, and other documents and writings in the possession or power of such bankrupt relating to his estate and dealings, and shall at all times as far as lies in his power assist the official assignee, trustee, and manager in the collection and realisation of the assets.

(4) If the bankrupt fails without reasonable excuse to comply with the requirements of this section the Court may, on the application of the official assignee or of any creditor, adjudge him guilty of contempt of Court and punish him accordingly.

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

First creditors meeting.
51 Vic. No. 19, s. 15.

15. (1) As soon as may be after the lodgment of the bankrupt's statement of affairs as aforesaid a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held at an advertised time and place.

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

(3) In the interpretation of the said rules the words first meeting shall include single meeting, except that such single meeting shall be presided over by the Judge or Registrar, anything in the said rules to the contrary notwithstanding.

Proceedings at first meeting.
Ibid. s. 16.

16. At such first meeting the following business may be transacted:—

(1) The creditors may consider whether any and what proposal for a composition or scheme of arrangement shall be entertained.

60 Vic. No. 29, s. 9.

(2) The official assignee may, with the consent of the creditors given by resolution at the first or any other meeting of creditors and with the approval of the Court, allow the bankrupt to retain any of his personal property; and such approval shall have the effect of vesting the said property in the bankrupt as from the date of such resolution. Notice of the intention to allow a bankrupt to retain any of his personal property shall be given to all proved creditors seven days at least before a vote is taken on the resolution.

(3) A trustee or committee of inspection may be appointed as hereinafter provided.

(4) Other business may also be transacted at such meeting, and the business specified in this section may be transacted at any other meeting as well as at the first meeting.

Single meetings for small bankruptcies.
51 Vic. No. 19, s. 17.
60 Vic. No. 29, s. 2 (3).

17. (1) If the estate of the bankrupt does not appear to the official assignee to be of the value of two hundred pounds or upwards, there shall ordinarily be only a single meeting of creditors, which shall specially be so termed and be advertised accordingly.

(2) At such single meeting the bankrupt shall attend, and all such matters may be done and directions given as are authorised to be done or given at any meeting of creditors where the value of the estate exceeds two hundred pounds.

(3)

(3) If the assets appear at a single meeting to exceed two hundred pounds other meetings may be summoned, and all proceedings and directions shall be given or taken as provided in the case of a bankruptcy where the estate exceeds two hundred pounds.

Public examination of bankrupt. 51 Vic. No. 19, s. 18. 60 Vic. No. 29, s. 2 (4).

18. (1) Where the Court makes a sequestration order it shall hold a public 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, dealings, and property.

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

(3) The Court may adjourn the examination from time to time, and may direct such further examinations to be had from time to time as it may think fit at a date and place to be appointed by it.

(4) Any creditor who has proved, or his representative authorised in writing, may question the bankrupt concerning his affairs and the causes of his failure; and any creditor who has tendered a proof or his representative authorised in writing, may question the bankrupt upon any matters which may serve to establish his alleged claim to be counted as a creditor.

(5) The official assignee may take part in the examination of the bankrupt.

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

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

(8) The bankrupt shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. The evidence shall be taken down in writing or in shorthand, and when transcribed, shall be read over to and signed by the bankrupt before the Judge or Registrar either at the same or at a future time, and it shall be open to the inspection of any creditor at all reasonable times.

(9) When the Court is of opinion that the affairs of the bankrupt have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors, and the Court may at any time direct a further examination on being satisfied of its propriety.

Division 4.—*Composition or scheme of arrangement.*

Power for creditors to accept and Court to approve composition or arrangement.

19. (1) The creditors may at the first or any other meeting, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the bankrupt, or a proposal for a scheme of arrangement of the bankrupt's affairs. (2)

51 Vic. No. 19, s. 19.
52 Vic. No. 11, s. 2.
60 Vic. No. 29, s. 2 (5).

(2) The composition or scheme shall not be binding on the creditors unless it is confirmed by a resolution passed by a majority in number representing three-fourths in value of all the creditors who have proved at a subsequent meeting of the creditors, and is approved by the Court.

Any creditor who has proved his debt may assent to, or dissent from such composition or scheme, by a letter addressed to the official assignee, in the form prescribed by rules of Court, and attested by a witness, so as to be received by such official assignee not later than two days preceding such subsequent meeting, and such creditor shall be taken as being present and voting at such meeting.

(3) The subsequent meeting shall be summoned by the official assignee by not less than seven days' notice, and shall not be held until after the public examination of the bankrupt is concluded. The notice shall state generally the terms of the proposal, and it shall be accompanied by a report of the official assignee thereon.

(4) The bankrupt or the official assignee may, after the composition or scheme 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.

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

(6) If the Court is of opinion that the terms of the composition or scheme are not calculated to benefit the general body of creditors, the Court may, in its discretion, refuse to approve the composition or scheme.

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

(8) A composition or scheme accepted or 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.

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

(10) 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 may be deemed a contempt of Court.

(11) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on

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 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. And any debt provable in other respects, which has been contracted before the date of the sequestration order, shall be provable in the bankruptcy.

(12) If under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property or manage his business, the provisions of Parts III and VII of this Act, so far as the nature of the case and the terms of the composition or scheme admit, shall apply to the trustee as if he were a creditor's trustee in a bankruptcy, and as if the terms "bankruptcy," and "bankrupt," included respectively a composition or scheme of arrangement, and a compounding or arranging debtor.

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

(14) No composition or scheme shall be approved of by the Court which does not provide for payment to the creditors of seven shillings and sixpence in the pound, unless in the opinion of the Judge the bankruptcy was caused by misfortune without any misconduct on the part of the debtor: Provided that if at any time after such approval the Court shall be satisfied that such opinion was erroneous it may declare the creditors released from the terms of the composition, but no payment made in the meantime thereunder shall be disturbed.

(15) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by a certificate of discharge.

Effect of composition or scheme.
51 Vic. No. 19, s. 20

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

DIVISION 5.—*Creditors' trustees and committee of inspection.*

Appointment of trustee.
Ibid. s. 21.
60 Vic. No. 29, s. 2 (6).

21. (1) Whether the creditors resolve to entertain a proposal for a composition or not they may at the first or any meeting elect such persons as they think fit not exceeding two to be trustees of the estate in addition to the official assignee.

(2)

(2) Every such trustee may be a creditor or may be one of the official assignees.

(3) Instead of electing trustees as aforesaid the creditors may by resolution leave their appointment to the committee of inspection hereinafter named.

(4) When more persons than one are elected or appointed to the office of trustee, the creditors or the committee of inspection (as the case may be) may at any time declare whether any act or all acts required or authorised to be done by the trustees is or are to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee" (except where the context otherwise requires).

(5) The creditors or the committee (as the case may be) may at the time of the original election or appointment or at any subsequent time elect or appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or not being approved of by the Court.

(6) Trustees shall be joint tenants of the property of the bankrupt.

Security.
51 Vic. No. 19, s. 22.
60 Vic. No. 29, s. 2 (7).

22. (1) Creditors may direct what security (if any) shall be given by every elected trustee and to whom for the due performance of the duties of his office.

(2) No trustee shall be appointed after the termination of the first or single meeting except by leave of the Court.

Confirmation of election.
51 Vic. No. 19, s. 23.

23. (1) Upon the written acceptance by a trustee of his office and proof of his having given the security required of him the Court may make an order confirming his election.

(2) No official assignee shall be required to give security upon being elected trustee.

(3) Any creditor may object to the confirmation of the election of a trustee upon the ground—

(*a*) that it was not made in good faith by a majority in number and value of the creditors voting, or

(*b*) that the majority in number and value of the creditors dissent from his appointment, or

(*c*) that the person appointed is not fit to act as trustee, or

(*d*) that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interest of the creditors generally.

(4) If any such objection appears to the Court to be frivolous the creditor making such objection may be ordered to pay the costs occasioned thereby.

(5)

(5) Notice of every confirmation or removal under this section shall forthwith be published by the Registrar in the Gazette, and the production of such Gazette shall be evidence that the trustee named has been duly elected and confirmed or removed as the case may be.

Vesting of estate in trustee. 51 Vic. No. 19, s. 24.

24. (1) Every order confirming the election of a trustee shall divest the estate, and every right, title, and remedy from the person (if any) ceasing to hold the office of trustee, and shall vest the same jointly in the official assignee and the persons who on the confirmation of the said election are the trustees.

(2) The property of the bankrupt shall pass from trustee to trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

(3) A sequestration order and the order of appointment of a trustee shall for all purposes of any law requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly.

Acts done in good faith to be valid. *Ibid.* s. 25.

25. No defect or irregularity in the election of a trustee, or of a member of the committee of inspection, shall vitiate any act done in good faith, and no act of any trustee or of the committee shall be invalid by reason of any failure to elect a co-trustee or any of its members.

Committee of inspection. *Ibid.* s. 26.

26. (1) The creditors qualified to vote may at their first or any subsequent meeting by resolution appoint from among the creditors qualified to vote, or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property. The committee of inspection shall consist of not more than five or less than three persons.

(2) 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 official assignee or a trustee, or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) 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 at the meeting.

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

(5) 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.

(6) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the office of a member of the committee the official assignee or 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 other person eligible as above to fill the vacancy.

(8) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it does not exceed five.

DIVISION 6.—*Control over person and property of bankrupt.*

Duties of bankrupts as to discovery and realisation of property.

51 Vic. No. 19, s. 27.

27. (1) Every bankrupt shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall also, if required by the official assignee or a trustee or creditor, attend any and every other meeting or adjournment thereof, and shall submit to such examination and give such information as the meeting may require.

(2) He shall whenever required to do so bring with him, and give such information as may be required about any books of account, vouchers, and other documents in writing in his possession, relating to his estate and dealings, and about his assets, and about any particular in his statement of affairs.

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

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

(5) If a bankrupt wilfully fails to perform any of 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

to the official assignee, or to the trustee, or to any person authorised by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

Arrest of debtor or bankrupt under certain circumstances. 51 Vic. No. 19, s. 28.

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

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

(*b*) If, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official assignee or manager or trustee, or that there is probable ground for believing that he has concealed 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 on him of the notice of a bankruptcy petition, prescribed by rules of Court, he removes any goods in his possession above the value of five pounds, without the leave of the official assignee or trustee, if any.

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

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

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

Redirection of bankrupt's letters. *Ibid.* s. 29.

29. Where a sequestration order is made against a debtor the Court, on the application of the official assignee or trustee, may from time to time order that for such time, not exceeding three months, as the Court thinks fit, post letters addressed to the bankrupt at any place, mentioned

mentioned in the order, shall be redirected, sent, or delivered by the Postmaster-General, or the officers acting under him, to the official assignee, or the trustee, or otherwise as the Court directs, and the same shall be done accordingly.

Discovery of bankrupt's property.
51 Vic. No. 19, s. 30.
60 Vic. No. 29, s. 2 (3).

30. (1) The Court may, on the application of the official assignee or trustee, at any time after a sequestration order has been made against a debtor, summon before it the bankrupt or his wife, or 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 any person whom the Court may deem capable of giving information respecting the bankrupt, his dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the bankrupt, his dealings or property.

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

(3) The Court may examine on oath, or allow to be examined by the official assignee and trustee and any creditor, or by any solicitor or counsel on behalf of such assignee, trustee, or creditor, in such cases where a solicitor or counsel may be employed as provided by this Act, either by word of mouth or by written interrogatories, any person concerning the bankrupt, his dealings or property.

(4) If any person on examination before the Court or in answer to interrogatories admits, or if by other evidence it is proved to the satisfaction of the Court that he is indebted to the bankrupt, the Court may, on the application of the official assignee or trustee, forthwith order him to pay to such assignee or trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination and order.

(5) If any person on examination before the Court or in answer to interrogatories admits, or if by other evidence it is proved to the satisfaction of the Court, that he has in his possession any property belonging to the bankrupt, the Court may, on the application of the official assignee or trustee, forthwith order him to deliver to the official assignee or trustee such property, or any part thereof, at such time, and in such manner, and on such terms as to the Court may seem just, with or without costs of the examination and order.

Committal for refusing to obey or for prevarication. 51 Vic. No. 19, s. 31.

31. If the bankrupt or any other person (including the wife of such bankrupt) at any examination under the preceding section, or any adjournment thereof, being thereto required (and not having any lawful excuse in that behalf), shall refuse to surrender any book, document, or writing relating to the estate, or shall refuse to be sworn, or to answer any lawful question touching any of the matters aforesaid, or to subscribe his examination, the Court may commit him to prison, there to remain, until he shall have done the thing so required of him, or shall be discharged by the Court. And if any such person while under examination is guilty of prevarication, or evasion, or indecent conduct, the Court may commit him to prison for any term not exceeding fourteen days.

As to discharge from commitment. *Ibid.* s. 32.

32. Any person committed under the last preceding section may be discharged from such committal on appeal therefrom to the Full Court if committed by the Judge, and to the Judge if committed by the Registrar, and in such last-mentioned cases a further appeal shall lie to the Full Court. If the committal was for refusing to answer a question, such question shall be set out in the warrant, and if it appears that the person committed has fully answered all lawful questions put to him, or, if committed for refusing to be sworn or to produce a document or for not signing his examination, that he had a sufficient reason for such refusal, the Court shall order the person committed to be discharged.

Answers to questions when admissible. *Ibid.* s. 33.

33. No question put to the bankrupt in any examination shall be deemed unlawful by reason only that the answer thereto may expose him to punishment:

Provided that no answer to any such question shall be admitted in evidence against him on the trial of any indictment other than on a prosecution against him for perjury.

Division 7.—*Release of estate, and annulment of sequestration order*

Release on composition or arrangement. *Ibid.* s. 34.

34. After the acceptance and approval of a composition or scheme of arrangement in manner hereinbefore provided, the bankrupt may apply for an order releasing his estate from sequestration, and, on his satisfying the Court that the approved terms of such composition or scheme have been complied with, so far as is at the time practicable, the Court may make such order on such terms as it thinks just:

Provided that the terms of the composition or scheme may at any time be enforced notwithstanding the release in the same manner as is by this Act provided.

Release on payment, &c. *Ibid.* s. 35.

35. 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 a like order for the release of his estate; and on being satisfied that the creditors have been so paid or have

have released their debts and that no proceedings of a criminal nature are pending or contemplated against the bankrupt, the Court may make a like order upon such terms as it thinks just.

Effect of order.
51 Vic. No. 19, s. 36.

36. Any order, whereby the estate is released from sequestration, shall have the effect of revesting in the bankrupt or such person as the Court may appoint, subject to such conditions as he may prescribe, all the property of the bankrupt undisposed of, as if the estate had never been sequestrated:

Provided that all sales and dispositions of the property and payments made and acts theretofore done by the official assignee or trustee shall be valid; and

Provided that the release of the estate shall not operate as a discharge of the bankrupt unless the Court shall so order.

Power for Court to annul sequestration in certain cases.
Ibid. s. 43.

37. (1) Where in the opinion of the Court a sequestration order ought not to have been made, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may on the application of any person interested by order discharge such order.

(2) Where a sequestration order is discharged under this section all sales and dispositions of property duly made, and all acts theretofore done by the official assignee, trustee, or other person acting under their authority, or by the Judge, Registrar, or District Registrar, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the Court may declare by order.

(3) Notice of the order discharging a sequestration order shall be forthwith published in the Gazette.

Meaning of payment of debts in full.
Ibid. s. 44.

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

Division 8.—*Bankrupt's certificate.*

Certificate how and when applied for.
Ibid. s. 37.
60 Vic. No. 29, ss. 2 (9); 11; 12.

39. Whether a composition or scheme of arrangement has been approved as hereinbefore provided or not, and whether his estate has been released or not, the bankrupt may, after the expiration of three months from the date of sequestration, cause an advertisement to be inserted in the Gazette and a newspaper published in the place where the bankrupt resided at the date of the sequestration order, stating his intention

intention to apply on a day fixed by the Judge or Registrar, and named therein, not less than fourteen nor more than thirty days from the day of first publication for a certificate of discharge under this Act: Provided that where the Court has granted a release of the bankrupt's estate under section thirty-five, the bankrupt may forthwith apply for a certificate of discharge, anything in this section to the contrary notwithstanding.

(1) He shall give fourteen days' notice in writing to the official assignee of such intention.

(2) The application shall be heard on the appointed day and on any day or days of adjournment, and the official assignee and any creditor may be heard in opposition to such application upon giving notice of the grounds thereof.

(3) On the hearing of the application the Court shall take into consideration a report of the official assignee or trustee as to the bankrupt's conduct or affairs, and may either—

(*a*) grant or refuse an absolute order of discharge, or

(*b*) suspend the operation of the order for a specified time, or

(*c*) grant an order of discharge or suspend the operation of such order subject to any conditions with respect to any earnings or income which may then be or afterwards become due to the bankrupt or with respect to his after acquired property.

(4) The Court shall refuse the discharge in all cases where he is satisfied that the bankrupt has done or omitted anything which in the opinion of the Court amounts to a misdemeanour under this Act or any amendment thereof, and shall, on proof of any of the facts hereinafter mentioned, either refuse the order or suspend the operation of the order for a specified time, or suspend the operation of, or grant, an order of discharge subject to such conditions as aforesaid.

(5) The Court may, as one of the conditions of granting an order of discharge under this section, require the bankrupt to consent to judgment being entered against him by the official assignee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, but in no case shall execution be issued without leave of the Court on a judgment consented to by the bankrupt under the provisions of this subsection.

Grounds for refusing or suspending certificate.
51 Vic. No. 19, s. 38.
60 Vic. No. 29, ss. 13, 14.

40. The facts referred to in the last preceding section are—

(*a*) That the bankrupt has omitted to keep such books of account as are usual and proper in the business or occupation carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy.

(*b*)

(*b*) That the bankrupt has wilfully delayed surrendering his estate or avoided its sequestration in order to benefit or assist one creditor or more to the disadvantage of the rest.

(*c*) That the bankrupt has continued to trade or obtained credit in one or more sums to the amount of fifty pounds or upwards after knowing himself to be insolvent.

(*d*) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall be on him) of being able to pay it.

(*e*) That the bankrupt has brought on his bankruptcy by rash and hazardous speculations or unjustifiable extravagance in living.

(*f*) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action or other proceeding properly brought against him.

(*g*) That the bankrupt has within three months preceding the date of the sequestration order, when unable to pay his debts as they become due, given an undue preference to any of his creditors.

(*h*) That the bankrupt has on any previous occasion been adjudged bankrupt or insolvent, or made a statutory composition or arrangement with his creditors, or assignment for the benefit of creditors at common law, unless his estate then produced ten shillings in the pound, or a majority in number and value of the creditors in that estate certify that in their opinion the bankruptcy or insolvency was the result of misfortune only.

(*i*) That the bankrupt has not upon surrendering his estate or after his sequestration made a full and fair disclosure of his property in possession, reversion, or expectancy.

(*j*) That the bankrupt has wilfully violated or omitted to comply with any of the provisions of this Act.

(*k*) That the bankrupt being at the time insolvent has made away with or disposed of any of his property otherwise than in good faith and for valuable consideration.

(*l*) That the bankrupt has unlawfully expended for his own benefit or appropriated to his own use any property of which he at the time had the charge or disposition as a trustee, factor, broker, or agent only, or that he has been guilty of any fraudulent breach of trust.

(*m*) That there is an unsatisfied judgment against the bankrupt in an action for assault, breach of promise, seduction, or any malicious injury, or for damages or costs under any laws relating to divorce.

(*n*) That the bankrupt has carried on business by means of a fictitious capital.

(*o*)

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

(*p*) That the bankrupt has entered into any agreement not to register or to delay the registration of a bill of sale which is in existence at the date of the sequestration order, and has not been duly registered in accordance with the law in force for the time being dealing with the registration of bills of sale.

(*q*) That the bankrupt has given a bill of sale at any time within three months preceding the date of the sequestration order, he being at the time insolvent within the meaning of section fifty-six of this Act.

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

Fraudulent settlements. 51 Vic. No. 19, s. 39.

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

(1) In the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(2) In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

If the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend the certificate of discharge, or suspend or grant one 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 come within the provisions of the last preceding section.

Discharge of bankrupt. *Ibid.* s. 40. 60 Vic. No. 29, ss. 2 (10); 15.

42. (1) For the purposes of the last two preceding sections the report of the official assignee or trustee shall be prima facie evidence of the statements therein contained.

(2) Notice of the appointment by the Judge or Registrar of the day for hearing the application for a certificate of discharge shall be published in the manner prescribed by rules of Court, and the Court may hear the official assignee and the trustee, and may also hear any creditor, either personally or by counsel. At the hearing the Court may put such questions to the bankrupt and receive such evidence as it thinks fit.

(3)

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

(4) No certificate of discharge shall be issued until the bankrupt has paid all fees due by him in respect of any proceedings under this Act including such fees as may be payable upon the granting of and in respect of the said certificate, and no bankrupt shall be deemed to be discharged within the meaning of this Act until such certificate has issued.

(5) A certificate of discharge shall be issued by the Registrar after an order has been made in that behalf by the Court, and such certificate shall bear the seal of the Court, and be in the form prescribed by rules of Court.

(6) If in consequence of the estate not being sufficiently administered, or for want of sufficient evidence, or for any other reason, the Court is unable to decide whether a certificate should or should not be granted, suspended, or refused, he may adjourn the application for such certificate from time to time:

Provided that the Court shall give its decision as soon as may be after the final dividend has been declared as hereinafter provided, and the bankrupt shall then be entitled to demand that such decision be given without delay.

Application after twelve months. 51 Vic. No. 19, s. 41.

43. (1) No application by the bankrupt for a certificate shall be allowed after twelve months from the date of sequestration unless notice of his intention to apply has been duly advertised before the expiration of that period, except by leave of the Court on such terms as it thinks proper.

Proceedings where bankrupt does not apply.

(2) If the bankrupt has not within nine months after sequestration applied for his certificate, the Court may, on application of the official assignee or trustee, require him by summons, and in case of his refusal or neglect may compel him by warrant, to appear before the Court and show cause, if he has any, why a certificate of discharge should not in his case be refused or suspended, and on such appearance the Court may deal with the case, and grant, refuse, or suspend such certificate, and otherwise deal with such bankrupt as if the certificate had been applied for by him.

Effect of certificate of discharge. *Ibid.* s. 42. 60 Vic. No. 29, s. 16.

44. (1) A certificate of discharge shall not release the bankrupt from any debt on a recognisance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue

revenue, or at the suit of the sheriff or other public officer, on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Colonial Treasurer certify in writing his consent to his being discharged therefrom.

(2) A certificate of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(3) A certificate of discharge shall not release the bankrupt from any order made under section sixty-one of this Act, or any amendment thereof, or from any liability under a judgment against him as defendant in an action for seduction, libel, or slander, or from liability as a respondent or co-respondent in a suit in the divorce jurisdiction or under an affiliation order, except to such extent and subject to such conditions as the Court may think just.

(4) A certificate of discharge shall release the bankrupt from all other debts provable in bankruptcy.

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

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

(7) Any assignee or trustee becoming bankrupt and being indebted to the estate of which he was such assignee or trustee in respect of money improperly retained or employed by him shall not be discharged from such debt as to any future assets although he may have obtained his certificate.

PART II.

ADMINISTRATION OF PROPERTY.

DIVISION 1.—*Proof of debts.*

Description of debts provable in bankruptcy.

45. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of contract, promise, or breach of trust shall out be provable in bankruptcy.

(2) 51 Vic. No. 19, s. 45.

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

(3) Save, as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the 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.

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

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

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

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

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

Mutual credit and set-off.
51 Vic. No. 19, s. 46.

46. Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a sequestration order is made under this Act and any other person proving or claiming to prove a debt under such sequestration order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set

set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed as paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him.

Rules as to proof of debt. 51 Vic. No. 19, s. 47.

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

Division 2.—*Preferential debts.*

Priority of debts. *Ibid.* s. 48.

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

(*a*) All wages or salary of any clerk or servant in respect of the services rendered to the bankrupt during six months before the date of the sequestration order, not exceeding fifty pounds; and

(*b*) All wages of any labourer or workmen, not exceeding fifty pounds, whether payable for time or piece-work in respect of the services rendered to the bankrupt during six months before the date of the sequestration order.

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

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

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

(5) Nothing in this section shall alter the effect of the Act fifty-fifth Victoria number twelve, or shall prejudice the provisions of the Friendly Societies Act thirty-seventh Victoria number four, or of the twenty-sixth Victoria number thirteen, or any Acts amending or consolidating the same or any of them.

Preferential claim in case of apprenticeship. *Ibid.* s. 49.

49. (1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the

the sequestration order shall, if either the bankrupt or apprentice or clerk gives notice in writing to the official assignee or 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 official assignee or trustee may, on the application of the apprentice or clerk or of some person on his behalf, pay such sum as the official assignee or trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture of articles before the commencement of the bankruptcy, and to the other circumstances of the case.

(2) Where it appears expedient to an official assignee or trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

Rent.
51 Vic. No. 19, s. 50.
60 Vic. No. 29, s. 2 (11).

50. No distress for rent which has accrued due before the date of the sequestration order shall be levied or proceeded with as against the estate of the bankrupt after the sequestration order, but the landlord shall receive out of the estate so much rent as was then due or accruing due or as by this Act is made provable, but for a period not exceeding three months, and may prove and share ratably with other creditors for the balance.

Division 3.—*Property available for payment of debts.*

Relation back of official assignee's or trustees title.
51 Vic. No. 19, s. 51.
60 Vic. No. 29, s. 2 (12).

51. (1) The bankruptcy of a debtor, whether the same 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 an order is made for the sequestration of his estate, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within six months next preceding the date of the presentation of the bankruptcy petition; but 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.

Court may make order antedating commencement of bankruptcy.
Ibid. s. 8.

(2) The Court may at any time on the motion of the official assignee and on being satisfied that an act of bankruptcy has been committed by the bankrupt within six months next preceding the date of the presentation of the petition upon which the sequestration order

order was made, order and declare that the bankruptcy shall be deemed to have relation back to and commence on the date of such act of bankruptcy, and such order or declaration shall be prima facie evidence of the fact of the alleged act of bankruptcy and of the commencement of the bankruptcy on such date as aforesaid.

Description of bankrupt's property divisible amongst creditors.

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

51 Vic. No. 19, s. 52.
60 Vic. No. 29, s. 2 (13).

(*a*) Property held by the bankrupt on trust for any other person:

(*b*) The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole:

But it shall comprise the following particulars:

(*c*) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and

(*d*) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and

(*e*) All goods being, at the commencement of the bankruptcy or at any time between that time and the date of the order of sequestration in the possession, order, or disposition of the bankrupt, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

DIVISION 4.—*Effect of bankruptcy on antecedent transactions.*

Restriction of rights of creditor under execution or attachment.

53. (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 official assignee or trustee of the bankrupt unless he has completed the execution or attachment before the date of the sequestration order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

51 Vic. No. 19, s. 53.

(2) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by

by receipt of the debt; and an execution against land is completed by seizure and sale, or, in the case of an equitable interest, by the appointment of a receiver.

Duties of sheriff as to goods taken in execution.
51 Vic. No. 19, s. 54.

54. (1) Where property of a debtor is taken in execution, and before the sale thereof notice is served on the sheriff that a sequestration order has been made against the debtor, the sheriff shall, on request, deliver the property to the official assignee or trustee under the order, but the costs of the execution shall be a charge on the property so delivered, and the official assignee or trustee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

(2) Where the property of a debtor is sold under an execution in respect of a judgment for a sum exceeding twenty pounds, the sheriff shall deduct the costs of the execution from the proceeds of sale, and retain the balance for seven days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and the debtor is adjudged bankrupt thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official assignee or trustee, who shall be entitled to retain the same as against the execution creditor, but otherwise he shall deal with it as if no notice of the presentation of a bankruptcy petition had been served on him.

Avoidance of voluntary settlements.
Ibid. s. 55.

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

(2) Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the official assignee or trustee in the bankruptcy.

(3)

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

(4) Nothing in this section shall be deemed to affect or invalidate the rights of any person deriving title to any property in good faith and for valuable consideration through or under any person taking or claiming as a donee of any settlement. 60 Vic. No. 29, s. 35.

Preferences. *Ibid.* s. 17.

56. (1) Every alienation, transfer, gift, surrender, delivery, mortgage, or pledge of any estate or property, real or personal, every warrant of attorney or judicial proceeding made, taken, or suffered by a person being at the time insolvent or in contemplation of surrendering his estate under this Act, or knowing that proceedings for placing the same under sequestration have been commenced, or within sixty days before the sequestration thereof, and, whether fraudulent or not, having the effect in any such case of preferring any then existing creditor to another shall be absolutely void.

(2) For the purpose of this section the word insolvent means the inability of a person to pay his debts as they become due from his own moneys.

(3) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Protection of bona fide transactions, payments, advances, &c., without notice. *Ibid.* s. 18.

57. Subject to the 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 subject to the provisions of this Act with respect to the avoidance of certain preferences except as hereinafter provided, nothing in this Act shall invalidate in the case of a bankruptcy :—

(*a*) Any payment by the bankrupt to any of his creditors for or on account of any just debt due at the time of payment.

(*b*) Any payment or delivery to the bankrupt.

(*c*) Any conveyance or assignment by the bankrupt for valuable consideration.

(*d*) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration.

(*e*) Any transaction to the extent of any present advance bonâ fide made by any existing creditor.

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

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

(2) The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into has not

at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

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

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

Assignment when void.
51 Vic. No. 19, s. 58.
60 Vic. No. 29, ss. 2 (14), 23.

58. Every distribution of property which is under this Act an available act of bankruptcy shall be void as against the official assignee or trustee, save only that in the case of a conveyance or assignment by the bankrupt of property in trust for his creditors registered within one month from the execution thereof by the assignor in accordance with the provisions of subsection ten of section four of this Act, all dealings with such property, and all acts done in good faith by any trustee under such instrument, shall be valid unless at the time of the dealing or act he knew or had notice that proceedings to sequestrate the assignor's estate had been or were about to be taken.

Division 5.—*Realisation of Property.*

Possession of property by official assignee.
51 Vic. No. 19, s. 59.

59. (1) The official assignee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.

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

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

(4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to be assignable and to have been duly assigned to the official assignee; and the official assignee, or the trustee in the event of the estate of the official assignee vesting in a trustee, may sue in any Court in the name of the bankrupt, or continue any action or suit begun by the bankrupt at the date of the sequestration order.

(5)

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

Books, &c., may be destroyed with leave of the Court. 60 Vic. No. 29, s. 25.

(6) After the expiration of five years from the date of the sequestration order, or two years from the date of the certificate of discharge, whichever shall first happen, the official assignee may with the leave of the Court cause all or any of the books and other documents and papers lodged with him by a bankrupt or insolvent to be destroyed.

Seizure of property of bankrupt. 51 Vic. No. 19, s. 60.

60. (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, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and when 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.

(2) Any person acting under such warrant shall make an inventory thereof, and leave with the person in whose possession any such property is attached a copy of the warrant and inventory having subjoined thereto a notice that the property has been attached as belonging to the bankrupt estate, and that any person who knowing the same to have been so attached removes, retains, conceals, or receives any part thereof with intent to defeat the said attachment is guilty of a misdemeanour.

Power to direct payment by Civil Servant, &c., out of salary. 60 Vic. No. 29, s. 19 (1).

61. (1) Where the bankrupt is an officer of the Army or Navy, or of the Colonial Forces, or an officer or clerk, or otherwise employed or engaged in the Civil Service of the Crown, the Court may, on the application of the official assignee or trustee, make an order for the payment to such assignee or trustee for distribution among the creditors of the bankrupt of so much of the bankrupt's pay and salary then due or thereafter to become due as he thinks fit.

(2) Before making any order under the preceding subsection, the Court shall communicate with the chief officer of the department under which the pay or salary is enjoyed as to the amount, times, and manner of such payment, and shall hear and give consideration to any report which such chief officer may make as to the circumstances of the case.

(3)

51 Vic No. 19, s. 61 (2).
60 Vic. No. 29, s. 19 (2).

(3) When the bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay or pension, or any compensation charged on the Consolidated Revenue, the Court, on the application of the official assignee or trustee, may make such order as he thinks just for the payment of the salary, income, half-pay, pension, compensation, or of any part thereof to the official assignee or trustee, to be applied by him in such manner as the Court may direct.

51 Vic. No. 19, s. 61 (3).

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

Disclaimer of onerous property.
Ibid. s. 62.

62. (1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the official assignee or trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may by writing signed by him, at any time within three months after the date of the sequestration order, disclaim the property.

(2) Where any such property has not come to the knowledge of the official assignee or trustee within one month after the date of the sequestration order he may, upon obtaining permission from the Court, disclaim such property at any time within two months after he first became aware thereof.

(3) 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 official assignee or 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 official assignee or trustee from liability) affect the rights or liabilities of any person.

(4) An official assignee or trustee shall not be entitled to disclaim a lease without leave of the Court, except in any cases which may be prescribed by rules of 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, compensation for use or occupation of the premises since the date of sequestration, and other matters arising out of the tenancy as the Court thinks just.

(5)

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

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

(7) The Court may, on application by any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as he thinks fit make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance 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 underlessee or as mortgagee by demise, except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or underlessee declining to accept a vesting order upon such terms shall be excluded from all interest in, and security upon the property, and if there be no person claiming under the bankrupt who is willing to accept an order upon such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

(9)

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

Powers of official assignee or trustee independently of committee of inspection.
51 Vic. No. 19, s. 63.

63. Subject to the provisions of this Act the official assignee or trustee may do all or any of the following things :—

(1) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt) by public auction, with power to transfer the whole thereof to any person or company or to sell the same in parcels.

(2) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof.

(3) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt.

(4) Exercise any powers, the capacity to exercise which is vested in the official assignee or trustee under this Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Act.

(5) Deal with any property to which the bankrupt is beneficially entitled as tenant-in-tail in the same manner as the bankrupt might have dealt with it.

Powers exercisable by official assignee or trustee, with permission of committee of inspection.
Ibid. s. 64.

64. The official assignee or trustee may, with the permission of the committee of inspection, do all or any of the following things :—

(1) Carry on the business of the bankrupt so far as may be necessary for the beneficial winding-up of the same.

(2) Bring, institute, or defend any action or other legal proceeding relative to the property of the bankrupt.

(3) Employ a solicitor, counsel, or other agent to take part in any examination of the bankrupt or other person under this Act or to take any proceedings or to do any business which may be sanctioned by the committee of inspection.

(4) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the committee think fit.

(5) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts.

(6) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums payable at such times, and generally on such terms as may be agreed on.

(7)

(7) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy.

(8) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the official assignee or trustee by any person, or by the official assignee or trustee on any person.

(9) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(10) Appoint the bankrupt himself to superintend the management of the property of the bankrupt or any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee or trustee may direct.

(11) Make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding-up his estate, but any such allowance may be reduced by the Court.

(12) 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 private sale.

Permission to be specific.
60 Vic. No. 29, s. 20.
51 Vic. No. 19, s. 65 (2).

65. (1) The permission given for the purposes of the preceding section shall not be a general permission to do all or any of the things therein mentioned, but only a permission to do the particular thing for which permission is sought in the specified case.

(2) It shall not be necessary for persons dealt with by the assignee or trustee to ascertain whether he had the necessary sanction, but its existence shall be conclusively presumed for the purposes of the transaction, if the person dealt with shall in good faith have acted in reliance on the fact that there was such sanction.

Court may give permission.
Ibid. s. 66.

66. If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Court.

Title conveyed by official assignees or trustees.
7 Vic. No. 19, s. 15.
52 Vic. No. 11, s. 5.
60 Vic. No. 29, s. 5.

67. The same title or property whether real or personal belonging to or forming part of any bankrupt or insolvent estate may be conveyed or transferred in fee or otherwise, as the case may be, to any purchaser, mortgagee, or other person by the assignee or trustee of such estate for the time being as the bankrupt or insolvent himself had or was by law entitled or able to convey or transfer immediately before

before the sequestration of his estate, and it shall not be essential to the validity of any such conveyance or transfer (so far as it respects the right of any person to execute the same as assignee) to prove more than the fact of his appointment, or, in the case of a trustee or elected assignee, his confirmation in that character, that at the time of the execution of the instrument he had not been removed from office, and that there was then no assignee or trustee in or of the estate in question other than the assignee or trustee executing the same, of which several facts the certificate of the Chief Commisssoner, Judge, or Registrar indorsed on such instrument of transfer shall be conclusive evidence.

Deeds executed by official assignee or trustee to be deemed effectual to convey.
10 Vic. No. 14, s. 3.
52 Vic. No. 11, s. 5.

68. (1) All deeds duly executed by the assignee or trustee for the time being of any bankrupt or insolvent estate purporting to convey, assign, release, or assure any part of the property of a bankrupt or insolvent to any purchaser, mortgagee, or other person for any estate or interest therein shall be valid both at law and in equity for conveying, assigning, releasing, and assuring such property for the estate and interest in such deed mentioned.

Purchasers relieved from the effect of omissions.

(2) Such purchaser, mortgagee, or other person, and every person claiming under him shall be relieved from inquiring whether the advertisements have been inserted, and meetings of creditors called, or direction of creditors obtained as by law required, notwithstanding the same have not been inserted, called, or obtained.

(3) Any person who deals or contracts with or takes any conveyance or other assurance from any assignee or trustee for the time being as aforesaid of any bankrupt or insolvent estate shall not be bound to inquire into the power or authority of such assignee or trustee with respect to such dealing, contracting, conveyance, or assurance as aforesaid, but such assignee or trustee shall for the purposes aforesaid, and as between him and such person as aforesaid, be deemed and considered as beneficial owner of the real and personal property of the bankrupt or insolvent.

But assignees not exonerated.

(4) Nothing in this Act contained shall be construed to exonerate any such assignee or trustee from any liability for the non-observance or non-performance of his duty as such assignee or trustee as aforesaid.

(5) In this section and the last preceding section the expression "assignee" shall include an official assignee of any bankrupt or insolvent estate and an elected assignee whose election has been confirmed by the Court.

Division 6.—*Distribution of estate.*

Account and plan of distribution.
51 Vic. No. 19, s. 67.

69. As soon as possible, and not later than four months after sequestration (or three months in respect of estates requiring only a single meeting), the official assignee or trustee shall frame and lay before

before the Court an exact account of the balance of the estate, specifying the proceeds of sales and debts collected and all debts outstanding, together with an inventory of all property still unsold, and showing the debts due by the estate, and shall present a plan for distribution of the assets, specifying first such creditors as are entitled to preference in their order of legal preference, and secondly the unsecured creditors and the balance remaining for division amongst them. A similar account and plan shall be submitted from time to time as the Court may direct.

Audit and notice thereof. 51 Vic. No. 19, s. 68.

70. As soon as the Registrar has audited such account and made his report thereon, and the plan for distribution has been approved of by the Court, it shall lie in the office of the Registrar for inspection by the creditors and bankrupt for such reasonable time as may be directed, but not less than fourteen days from the advertisement thereof, and the official assignee or trustee shall cause notice thereof to be given to the creditors and inserted in the Gazette.

As to objections thereto. *Ibid.* s. 69.

71. (1) The bankrupt, and any party interested in the estate, and any creditor, may, within the time aforesaid, enter his objection in writing with the Registrar stating the grounds thereof.

(2) The Court may permit such objection to be entered at any time before final confirmation of the plan on such terms as the Court thinks fit.

Proceedings thereon. *Ibid.* s. 70.

(3) The person objecting to the account or plan shall apply to the Judge or Registrar for an order calling on the official assignee or trustee and also on the party whose interest may be affected thereby to show cause why the plan should not be amended, and thereupon the Court upon hearing the parties may make such order as it thinks fit.

(4) Whenever any amendment is ordered in the plan, whereby the interest of any party who has not been heard is affected, the plan shall again be open for inspection and notice thereof be given as aforesaid.

Confirmation and effect thereof. *Ibid.* s. 71.

72. (1) After expiration of the time appointed for inspection of the account and plan of distribution without any objection being entered thereto, or, if an objection has been entered, then, after disposal thereof, the official assignee or trustee may apply to the Court that the plan may be confirmed, and thereupon the Court may confirm the same; and such confirmation shall have the effect of a final judgment as between the bankrupt and his creditors, except as to the amount of any debt afterwards expunged or reduced, and except against such creditors as are afterwards admitted to prove their debts against the estate at any time before its final distribution.

Bankrupt liable to arrest if he removes out of the jurisdiction before the account and plan is confirmed. 60 Vic. No. 29, s 27.

(2) If a bankrupt removes out of the jurisdiction before the confirmation of the account and plan of distribution in his estate, except with the consent of three-fourths in number and value of the proved creditors in his estate or by leave of the Court, the Court may, on

on the information of the official assignee or trustee or of any creditor, by warrant addressed to the sheriff or any constable or officer of the Court prescribed by rules of Court, cause such bankrupt to be arrested and to be safely kept as prescribed by rules of Court until such time as the Court may order.

Joint and separate dividends.
51 Vic. No. 19, s. 72.

73. (1) Where a sequestration order is made against one partner of a firm, 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 that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the official assignee or trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Right of creditor who has not proved debt before declaration of a dividend.
Ibid. s. 73.

74. (1) 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 official assignee or trustee any dividend he may have 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.

Plan of distribution not to be disturbed in certain cases.
60 Vic. No. 29, s. 26.

(2) After a plan of distribution has been approved of by the Court no creditor shall be entitled by proof of his debt to disturb the plan of distribution unless he satisfy the Court that he could not, by the exercise of due diligence, have proved his debt prior to such approval.

Ibid. s. 26.

(3) In any order allowing a disturbance of the plan of distribution the Court may impose such terms as to costs or otherwise as he may think fit.

Ibid. s. 26.

(4) If an amendment is ordered in the plan under section seventy-one of this Act any creditor who has proved his debt before the order is made directing such amendment shall be entitled to rank for dividend on the amended plan.

No action for dividend.
51 Vic. No. 19, s. 74.

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

Official assignee or trustee to give notice of dividend.
Ibid. s. 57.

76. The official assignee or trustee shall cause notice to be given as prescribed by rules of Court when and where dividends are payable to creditors and others interested in the estate.

77. In cases 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 reference to the distribution of such assets with a view to giving the indemnifying creditors an advantage over others in consideration of the risk run by them in giving such indemnity.

Distribution of assets where creditors give indemnity for costs. 60 Vic. No. 29, s. 10.

78. (1) The official assignee or trustee shall, at periods prescribed by rules of Court, file with the Colonial Treasurer and the Registrar statements showing how each bankrupt estate has been applied and disposed of under the following heads, that is to say:—

Official assignee to file periodical statements. 51 Vic. No. 19, s. 76.

(*a*) Gross amount of assets realised.
(*b*) Costs, charges, allowances, and expenses.
(*c*) Remuneration or commission.
(*d*) Preferential payments.
(*e*) Dividends to general creditors.
(*f*) Balance undisposed of.

(2) If any part of the estate has not then been collected or disposed of such statement shall specify the nature of such unrealised estate.

(3) The official assignee or trustee shall make out and file such further or fuller statements in any case as the Court may think proper.

79. The Court may, on the complaint of any creditor or person interested, or upon any report or audit by the Colonial Treasurer or Registrar, allow or disallow all or any part of the costs, charges, allowances, and expenses claimed by any official assignee or trustee or of any payment made by such assignee or trustee, and make such order thereon as the Court thinks fit.

Court may disallow costs, charges, &c. *Ibid.* s. 77.

80. (1) When the official assignee or trustee has realised all the property of the bankrupt, or so much thereof as can, in the opinion of such official assignee or trustee, or in the joint opinion of himself and of the committee of inspection where such committee has been appointed, be realised without needlessly protracting the winding-up of the estate, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed by rules of Court to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims.

Final dividend. *Ibid.* s. 78. 60 Vic. No. 29, s. 2 (15).

(2) After the expiration of the time so limited, or, if the Court on application by any such claimant grant him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other person.

81.

Right of bankrupt to surplus.
51 Vic. No. 19, s. 79.

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

PART III.

Creditors' Trustees and Official Assignees.

Division 1.—*Remuneration of trustees and assignees.*

Remuneration of trustees.
Ibid. s. 80.

82. (1) Where the creditors appoint any person to be trustee of a bankrupt's estate, his remuneration (if any) shall 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 or percentage, of which one part shall be payable on the amount realized, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

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

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

(4) Where no remuneration has been voted to a trustee he shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him in or about the proceedings of the bankruptcy as the Registrar may allow.

(5) The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as a 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.

Remuneration of official assignee.
Ibid. s. 81.
60 Vic. No. 29, s. 2 (16).

83. (1) Where no trustee is appointed an official assignee shall receive in the absence of any resolution of the creditors allowing a larger amount, a remuneration in the nature of a commission or percentage at the rate of five per centum, of which one half shall be payable on the gross amount coming into the hands of the official assignee in each estate, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other half shall be payable upon each dividend as and when it is declared.

(2)

(2) An official assignee, who is elected to act as trustee, shall receive remuneration as such trustee, provided that it is not less than the remuneration by this section allowed to an official assignee.

(3) Where trustees are duly appointed under this Act (of whom the official assignee is not one), the official assignee shall receive from such trustees such sum for his services as the Registrar may from time to time declare to be reasonable, but such sums in the aggregate shall not exceed (except upon special order of the Court on that behalf and made under the next following section) the amount allowed by this section when no creditors' trustee has been appointed.

Power to increase remuneration for special services.
51 Vic. No. 19, s. 82.

84. The Court may from time to time order that the remuneration of a trustee or official assignee be increased, and may take into account in allowing such increase :—

(*a*) Any special services rendered by such trustee or assignee.

(*b*) Any special circumstance, which, in the opinion of the Judge, increased the difficulty of realizing the estate.

(*c*) The smallness of the amount realizable in the estate.

An official assignee or trustee to be recouped expenses.
Ibid. s. 83.
60 Vic. No. 29, s. 2 (17), (18).

85. (1) An official assignee or trustee is entitled to receive out of the estate in priority to the payment of a dividend payment for moneys disbursed, and for liabilities and costs incurred by him on behalf of the estate and in accordance with the provisions of this Act.

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

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

Allowance and taxation of costs.

(4) All bills and charges of solicitors, managers, accountants, auctioneers, brokers, official assignees, or trustees, and other persons shall be taxed by the Registrar or other taxing officer appointed by the Judge, and no payments in respect thereof shall be allowed in the official assignee's or trustee's accounts without proof of such taxation having been made, and the Registrar or other taxing officer appointed by the Judge shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned.

(5) Every such person shall, on request by the official assignee or trustee (which request the official assignee or trustee shall make a sufficient time before declaring a dividend) deliver his bill of costs or charges to the Registrar or other taxing officer appointed by the Judge for taxation, and if he fails to do so within seven days after receipt of the request, or such further time as the Judge or Registrar, or other taxing officer appointed by the Judge, on application, may grant,

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

(6) The Registrar or other taxing officer appointed by the Judge may refer for taxation any common law charges in any bill of costs or charges to the Prothonotary, and any equity or conveyancing charges to the Master or Deputy Registrar in equity; and in respect of such charges the decision of the Prothonotary or Master or Deputy Registrar shall be deemed to be the decision of the Registrar or other taxing officer appointed by the Judge, and be subject to appeal to the Court under this Act.

(7) An appeal shall lie to the Court from the decision of the Registrar or other taxing officer appointed by the Judge in allowing or disallowing any item on the motion of the official assignee or trustee, or any creditor of the estate or any other person interested.

Prohibition of secret understandings.
51 Vic. No 19, s. 84.

86. (1) No official assignee, trustee, receiver, manager, or member of a committee of inspection shall, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditor or allowed by this Act and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee to the bankrupt, or any solicitor or other person that may be employed about a bankruptcy.

(2) Any person offending against this section shall be guilty of a misdemeanour.

Division 2.—*Official name.*

Official name of trustee.
Ibid. s. 85.

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

Division 3.—*Appointment and removal.*

Official assignees to be appointed by Governor.
Ibid. s. 86.
60 Vic. No. 29, s. 2 (19).

88. The Governor may, with the approval of the Judge, appoint such number of persons official assignees in bankruptcy as may be, in the opinion of the Judge, from time to time required, and both such official and elected assignees shall be under the direction and control of the Judge.

(2)

(2) Every official assignee shall, upon his appointment, give such security as may be prescribed by rules of Court.

(3) For the purpose of affidavits, verifying proofs, petitions, or other proceedings under this Act an official assignee may administer oaths.

Office of trustee vacated by bankruptcy. 51 Vic. No. 19, s. 87.

89. If an order of sequestration is made against an official assignee or a trustee he shall thereby vacate his office.

Removal of trustee. *Ibid.* s. 88.

90. (1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee elected by them, or appointed by the committee of inspection, and may at the same or any subsequent meeting appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.

(2) The Judge may remove any official assignee or trustee for misconduct or neglect or omission in the performance of his duties under this Act, or for absence from New South Wales, or for any other reasonable cause; but if the creditors, by ordinary resolution, disapprove of the removal of a trustee, he or they may appeal against it to the Full Court.

Proceedings in case of a vacancy in the office of trustee. *Ibid.* s. 89.

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

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

(3) If the creditors do not, within three weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the official assignee shall report the matter to the Court, and the Court may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee as in the case of a first appointment.

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

Resignation. *Ibid.* s. 90.

92. (1) Any official assignee or trustee or manager or receiver may apply to the Court for leave to resign his office, and if no valid objection be stated, and if the Court be satisfied that he has complied with the provisions of this Act, and with the rules of Court, his application may be granted; but if any objection be stated thereto the Court shall proceed to determine the same, and shall make such order thereon as it deems fit, and if the application of any such official assignee, or trustee, or manager, or receiver for leave to resign be granted, the Court may make such orders as may be necessary for the preservation and administration of the estate until a new official assignee, or trustee, or manager, or receiver be appointed or elected and confirmed, and for the discharge

discharge and acquittance of such assignee, or trustee, or manager, or receiver, and for the security and payment of any unclaimed dividends to the parties entitled to the same.

(2) No order of the Court allowing such assignee, trustee, manager, or receiver to resign shall prevent the official assignee, trustee, manager, or receiver thereafter appointed or elected and confirmed in his stead from calling upon him to account for anything done or left undone prior to his resignation.

Court may make vesting order.
52 Vic. No. 11, s. 4.

93. For the purpose of transferring any estate vested in an official assignee or trustee (whether such estate were vested before or after the passing of this Act) to, and vesting the same in some other official assignee or trustee, the Court may make such vesting order as in its opinion will effectually carry out such transfer to, and the vesting of such estate in, the person named in such order, and such order when made shall have the effect of vesting in the person therein named the whole right, title, and interest of the official assignee or trustee from whom such right, title, and interest is intended to be divested or transferred.

Provision against abatement in certain cases.
Ibid. s. 6.

94. (1) No action or proceeding of any kind to which an official assignee or trustee has been a party shall be deemed to have abated by the death or resignation, or vacation of, or removal from, office of any such official assignee or trustee; but in every such case such action or proceeding may be continued in the name of the official assignee or trustee appointed in the place of the official assignee or trustee who has died, resigned, or vacated, or been removed from his office: Provided that a suggestion in the usual way is made of such death, resignation, removal, or vacation.

Division 4.—*Control over assignees and trustees.*

Discretionary powers of official assignee and trustee and control thereof.
51 Vic. No. 19, s. 91.

95. (1) Subject to the provisions of this Act the assignee and trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by any resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

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

(3)

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

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

Appeal to Court against official assignees or trustees. 51 Vic. No. 19, s. 92.

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

Control of Judge over official assignees and trustees. *Ibid.* s. 93.

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

(2) The Judge may at any time require an assignee or trustee to answer any inquiry made by him in relation to any bankruptcy in which such assignee or trustee is engaged, and may, if he thinks fit, examine on oath such assignee or trustee or any other person concerning the bankruptcy.

(3) The Judge may also direct an investigation to be made of the books and vouchers of the assignee or trustee by the Colonial Treasurer or Registrar.

Audit of official assignees' or trustees' account. 60 Vic. No. 29, s. 21.

98. (1) Every official assignee and trustee shall, at such times as may be prescribed by rules of Court, but not less than twice in each year during his tenure of office, send to the Registrar and to the Colonial Treasurer, an account of his receipts and payments as such assignee or trustee.

(2) The account shall be in the form prescribed by rules of Court and shall be made in duplicate, and shall be verified by affidavit in the form prescribed by rules of Court.

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

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

The official assignee or trustee to furnish list of creditors.
51 Vic. No. 19, s. 95.

99. The official assignee or trustee shall, whenever required by any creditor so to do, and on payment by such creditor of the fee prescribed by rules of Court, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors.

Books to be kept by official assignee or trustee.
Ibid. s. 96.

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

Annual statement of proceedings.
Ibid. s. 97.
60 Vic. No. 29, s. 2 (20).

101. (1) Every official assignee or trustee in a bankruptcy shall from time to time, as may be prescribed by rules of Court, and not less than once in every year, so long as he has any assets unadministered in his hands, transmit to the Court a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the particulars, and made out in the form prescribed by rules of Court.

(2) The Court shall cause the statement as transmitted to be examined, and call the official assignee or trustee to account for any misfeasance, neglect, or omission which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

Payment of money into Bankruptcy Estates Account.
51 Vic. No. 19, s. 98.

102. (1) An account called the "Bankruptcy Estates Account" shall be kept by the Registrar with such bank as the Colonial Treasurer may from time to time direct, and all moneys received by the Registrar, in respect of proceedings under this Act shall be paid to that account.

(2) Every official assignee and every trustee shall, in such manner and at such times as may be prescribed by rules of Court, pay the money received by him to the Registrar, who shall furnish a receipt of the money so paid.

(3) If it appear to the official assignee or, if a committee of inspection has been appointed, to such committee, that for the purpose of carrying on the debtor's business, or of obtaining advances, or because of the probable amount of the cash balance, or, if the Registrar certify that for any other reason it is for the advantage of the creditors that the official assignee or trustee should have an account with a bank, the Registrar shall authorise the official assignee or trustee to make his payments into and out of such bank as the Registrar may select.

(4) Such account shall be opened and kept by such assignee or trustee in the name of the bankrupt's estate; and any interest receivable in respect of the account shall be part of the assets of the estate.

(5)

(5) If an official assignee or trustee at any time retain for more than ten days a sum exceeding fifty pounds, or such other amount as in any particular case the Registrar authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall have no claim for remuneration, and may be removed from his office, and shall be liable to pay any expenses occasioned by reason of his default.

(6) All payments out of moneys standing to the credit of the Registrar in the "Bankruptcy Estates Account" shall be made by the Registrar or other officer prescribed by rules of Court in the manner thereby prescribed.

(7) The Judge or the Colonial Treasurer may at any time require the production of and inspect any books or accounts kept by the Registrar, and the Colonial Treasurer shall cause the accounts of the Registrar to be audited once at least every quarter, and for the purpose of such audit the Registrar shall furnish the Colonial Treasurer with such vouchers and information as he shall require.

No payments allowed into private accounts. 51 Vic. No. 19, s. 99.

103. No official assignee or trustee shall pay any sums received by him as such assignee or trustee into his private banker's account, or otherwise than as hereinbefore directed.

Investment of surplus funds. *Ibid.* s. 100.

104. (1) Whenever the cash balance standing to the credit of the "Bankruptcy Estates Account" is in excess of the amount which in the opinion of the Registrar is required for the time being to answer demands in respect of bankrupt estates, the Registrar shall notify the same to the Colonial Treasurer, and shall pay over the same or any part thereof as the Colonial Treasurer may require to the Colonial Treasurer to such account as the Colonial Treasurer may direct, and the Colonial Treasurer may invest the said sums or any part thereof in Government securities to be placed to the credit of the said account.

(2) Whenever any part of the money so invested is, in the opinion of the Registrar, required to answer any demands in respect of bankrupts' estates the Registrar shall notify to the Colonial Treasurer the amount so required, and the Colonial Treasurer shall thereupon repay to the Registrar such sums as may be required to the credit of the "Bankruptcy Estates Account," and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on the investments under this section shall be paid to such account as the Colonial Treasurer may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of bankruptcy proceedings.

Unclaimed dividends and balances to be paid into Unclaimed Dividend Fund. *Ibid.* s. 101. 60 Vic. No. 29, s. 2 (21).

105. (1) All dividends and balances in estates administered under the provisions of this Act which are unclaimed by the parties entitled thereto for the space of six months next after the same are payable shall, unless the Judge otherwise orders, be paid into the Colonial

Colonial Treasury to the credit of a fund to be called the "Bankruptcy Unclaimed Dividend Fund."

Bankruptcy Suitors' Fund.

(2) The Governor may direct that all sums paid to the credit of the said fund shall be invested in Government debentures, and the interest arising from such investment shall be paid to the credit of a fund to be called the "Bankruptcy Suitors' Fund."

Unclaimed dividends and balances may under circumstances be paid to persons entitled.

(3) Any person entitled to receive any dividend or balance hereby directed to be paid into the said "Unclaimed Dividend Fund" may apply to the Court for the payment of such dividend or balance to him, and the Court may order such dividend or balance to be paid to him, and upon every such order the Governor shall issue his warrant for the payment of the amount specified in such order, and the Treasurer shall pay the same out of the said fund.

Insolvent estates.

Jurisdiction, &c., in respect of estates vested in official assignees before passing of the Act 51 Vic. No. 19.
52 Vic. No. 11, s. 7.

106. (1) In any case where the estate of any person has under the Acts relating to insolvency been vested in any official assignee, the Judge shall, in respect of such official assignee and every estate so vested in him, have, and may exercise, all the powers and all such other jurisdiction as might have been exercised in respect of such official assignee or such estate by the Chief Justice or by the Chief Commissioner of insolvent estates.

(2) The Judge shall also have full power and authority to inquire into, and investigate, the dealings of such official assignees with each estate vested in him or with any part thereof, whether such dealings took place before or since the passing of the Act fifty-first Victoria number nineteen, or before his removal as hereafter provided for.

(3) The Judge shall also have full power and authority to remove such official assignee from being the official assignee of any particular estate, and may appoint any other of the official assignees to be the official assignee of such estate, and in case of such removal, the right, title, and interest of the official assignee so removed shall, by the order appointing the official assignee in his place vest in the official assignee so appointed as aforesaid.

(4) The Judge shall also have full power and authority to order any official assignee to bring into Court any sums of money which he may find to be in the hands of such official assignee, and also may call upon any official assignee to account fully for all moneys which have come to his hands at any time and to show how the same were disposed of, and generally may exercise all necessary powers and authorities to compel any official assignee fully to disclose all his dealings with all or any of the estates so vested in him.

(5)

(5) The Judge may also upon the application of the Colonial Treasurer or of any person interested, direct an investigation by the Colonial Treasurer or by any person instructed by the Colonial Treasurer, or by the Registrar, of the books, accounts, vouchers, papers, and documents of any such official assignee, and may order such books, accounts, vouchers, papers or documents to be handed over to the Colonial Treasurer or to any person instructed by him, or to the Registrar; and may direct an inquiry as to the conduct, omissions, and dealings of any such assignee, and may remove him from his office for misconduct or neglect.

(6) Every official assignee appointed an official assignee of any estate under the provisions of this section shall be subject to all the provisions of this section, in respect of the estate to which he is so appointed.

PART IV.

PROCEDURE.

Discretionary powers of the Court. 51 Vic. No. 19, s. 102.

107. (1) Subject to the provisions of this Act and to rules of Court, the costs of and incidental to any proceeding under this Act shall be in the discretion of the Court.

(2) Where any issue is tried by a jury the costs shall follow the event, unless the Court otherwise orders.

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

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

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

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

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

Consolidation of petitions. *Ibid.* s. 103.

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

Power to change carriage of proceedings.
51 Vic. No. 19, s. 104.

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

Continuance of proceedings on death of debtor.
Ibid. s. 105.
60 Vic. No. 29, s. 2 (22).

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

Power to stay proceedings.
51 Vic. No. 19, s. 106.

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

Power to present petition against one partner.
Ibid. s. 107.

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

Power to dismiss petition against one partner.
Ibid. s. 108.

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

PART V.

Application of Act.

Exclusion of limited companies.
Ibid. s. 109.

114. A sequestration order shall not be made against any corporation, or against any partnership or association or company registered under the Act thirty-seventh Victoria number nineteen or any Act consolidating or amending the same.

Sequestration of partnership estate.
Ibid. s. 110.

115. (1) Any creditor of a partnership may present a bankruptcy petition against such partnership, if he would be entitled to present such a petition against any one of the members of such partnership.

(2) An order of sequestration may be made against a partnership estate although all the partners be not included therein.

Voluntary sequestration of partnership estate.
Ibid. s. 111.

116. The estate of a partnership trading or having any estate in New South Wales may be sequestrated upon the petition of the greater number of the partners resident in New South Wales.

Consolidation of proceedings in case of partnerships.
Ibid. s. 112.

117. Where an order for sequestration has been made on a bankruptcy petition against or by one member of a partnership, and another bankruptcy petition against or by a member of the same partnership is filed, the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Actions by official assignee or trustee and bankrupt's partners.
Ibid. s. 113.

118. Where a sequestration order is made against a member of a partnership the Court may authorise the official assignee or trustee to commence and prosecute any action in the names of the assignee or trustee

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

Actions in joint contracts. 51 Vic. No. 19, s. 114.

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

Proceedings in partnership's name. *Ibid.* s. 115.

120. Any two or more 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 such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise as the Court may direct.

Petition against estate of a deceased person. *Ibid.* s. 116.

121. Any creditor of the estate of a person deceased may present a bankruptcy petition, if any executor or administrator of such estate has committed an act of bankruptcy whereby the creditors may be defeated or delayed in obtaining payment of their debts, praying that the estate may be sequestrated—and the like proceedings may be taken concerning such estate and its representatives as in the case of other estates and persons.

Voluntary sequestration by executor or administrator. *Ibid.* s. 117.

122. Any person in whom the administration of the estate of a person deceased is vested, or in whom the estate of any person is vested in trust for creditors, may present a bankruptcy petition, and the like proceedings may be taken against and concerning such estate and its representatives as in the case of other estates and persons.

Married women. *Ibid.* s. 118.

123. A bankruptcy petition may be presented by and against a married woman in respect of her separate estate.

General rules. *Ibid.* s. 119.

124. (1) The Judges or any three of them may make general rules for regulating the practice, procedure, and forms in respect of all matters under this Act.

(2) A copy of every such rule shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in session, or otherwise within fourteen days after the commencement of the next ensuing session.

Saving of rights under Life Assurance Act. *Ibid.* s. 120.

125. Nothing in this Act shall affect the operation of or prejudice the provisions of the Life Assurance Encouragement Act of 1862 or any Act amending or consolidating the same.

PART

PART VI.

INDICTABLE OFFENCES.

51 Vic. No. 19, s. 121.

126. Whosoever commits any of the offences mentioned in this section shall be guilty of a misdemeanour and be liable to imprisonment with or without hard labour for any time not exceeding three years, and may be ordered to pay damages to any person whom he has injured by such offence, that is to say:—

Concealing property.

(*a*) Whosoever wilfully conceals any property being part of the estate of a bankrupt with intent to defraud his creditors.

Forging process.

(*b*) Whosoever forges the signature of the Judge or Registrar or District Registrar to any order, certificate, or process of the Court or Judge, or serves or enforces any such forged order or process knowing the same 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 such paper or writing to be false, or who acts or endeavours to act under colour or pretence of such process.

Removing property under attachment.

(*c*) Whoever 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 the same to have been so attached, and with intent to defeat the attachment, or obstructs or endeavours to obstruct the sheriff, messenger, or other person authorised to make the same in the discharge of his duty.

Receiving property from bankrupt.

(*d*) Whosoever, whether before or after the sequestration of an estate, receives any property from the bankrupt or from any person on his behalf with intent to defraud or to assist such bankrupt in defrauding his creditors.

Inserting false advertisements.

(*e*) Whosoever inserts or causes to be inserted in any newspaper any advertisement purporting to be under this Act without authority or knowing the same to be false in any material particular with intent in any such case to defraud or deceive.

False claim, &c.

(*f*) Whosoever in any proceeding in bankruptcy or while an estate is under liquidation by arrangement or composition with creditors makes any false claim or any declaration or statement of account which is untrue in any material particular with intent to defraud.

Offences by bankrupt.

Ibid. s. 122.

127. A bankrupt who with intent either to defraud his creditors, or dishonestly to conceal the state of his affairs, or otherwise to violate or defeat the law—

(*a*) does not to the best of his knowledge and belief fully disclose on examination under this Act or to his assignee or trustee all his property real and personal, and how, and to whom,

whom, and for what consideration, and when he has disposed thereof except such part as has been disposed of in the ordinary way of his business or laid out in the ordinary expense of his family; or

(*b*) does not deliver to the assignee or trustee, or as such assignee or trustee directs, all his property or such as is under his control, and which he is required by law so to deliver; or

(*c*) does not deliver to the assignee or trustee, or as such assignee or trustee directs, all books, documents, papers, and writings under his control relating to his property or affairs; or

(*d*) whether before or after sequestration conceals any part of his property to the value of ten pounds or any debt due to or by him, or after sequestration removes any part of his property of that value; or

(*e*) makes any material omission in any statement relating to his affairs; or

(*f*) knowing that a false debt has been proved under the bankruptcy fails for one month to inform his assignee thereof; or

(*g*) after sequestration prevents the production of any book, document, paper, or writing relating to his property or affairs; or

(*h*) whether before or after sequestration conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document relating to his property or affairs; or

(*i*) whether before or after sequestration makes or is privy to making a false entry in any book or document relating to his property or affairs; or

(*j*) whether before or after sequestration parts with any book or document relating to his property or affairs or alters or makes any omission therein; or

(*k*) after or within four months before sequestration attempts to account for his insolvency by fictitious losses or expenses; or

(*l*) within four months before sequestration has, by any false representation or under the pretence of carrying on business in the ordinary way of trade, obtained any property for which he has not paid; or

(*m*) within four months before sequestration pledges or disposes of otherwise than in the ordinary way of trade any property which he has obtained on credit and for which he has not paid; or

(*n*) makes any false representation 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

(*o*) within four months before sequestration departs or makes preparation for departing from New South Wales with any of his property to the amount of twenty pounds which ought by law to be divided among his creditors;

shall be guilty of a misdemeanour and be liable to imprisonment with or without hard labour for any time not exceeding three years.

Fraudulently obtaining credit.
51 Vic. No. 19, s. 123.

128. A bankrupt shall, in each of the cases mentioned in this section, be guilty of a misdemeanour and be liable to imprisonment for any time not exceeding two years with or without hard labour, that is to say:—

(*a*) If in incurring any debt or liability he has obtained credit by false representations or by means of any other fraud.

(*b*) If he has made, or caused to be made, any gift, delivery, or transfer of his property, or any part thereof, or created any charge thereon, with intent to defraud his creditors or any of them.

(*c*) If he has concealed or removed any part of his property after or within two months before the date of any unsatisfied judgment against him with intent to defraud his creditors.

General provision as to punishment.
Ibid. s. 123.

129. Where a person is liable to punishment under any other Act or at Common Law for an offence punishable by this Act, he may be proceeded against under such other Act or at Common Law or under this Act, but so always that he be not punished twice for the same offence.

Power of Court to commit for trial.
Ibid. s. 124.

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

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

(3) Any offence under this part of this Act shall be deemed to be included in the term "fraudulent insolvency" within the meaning of any treaty or convention between Great Britain and any foreign power for the extradition of criminals.

Criminal liability after discharge or composition.
Ibid. s. 125.

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

Court may order certain expenses to be paid out of "Bankruptcy Suitors' Fund."
Ibid. s. 126.

132. If it appears to the Court upon the application of the assignee or trustee that inquiries or proceedings relating to a bankrupt estate ought to be instituted or carried on, or any prosecution ought to be carried on against any person for any offence under this Act, and that there are no funds in the particular estate available for such inquiries,

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 upon every such order the Governor shall issue his warrant for the payment of the amount of such taxed costs, and the Treasurer shall pay the same out of the said fund.

PART VII.

JURISDICTION.

DIVISION 1.—*Bankruptcy Division in Supreme Court.*

Composition and jurisdiction of Court.

51 Vic. No. 19, ss. 127 (1), 131.

133. (1) The jurisdiction in insolvency as exercised prior to the coming into operation of the Act fifty-first Victoria number nineteen, by the Supreme Court, or by a Judge thereof, or by the Chief Commissioner of Insolvent Estates respectively, shall be vested in and exercised by the Court, and shall, together with the jurisdiction of the Court under this Act, be the bankruptcy jurisdiction of the Supreme Court.

(2) The bankruptcy jurisdiction of the Supreme Court shall, except as is herein otherwise provided, be exercised by such Judge of the Supreme Court as may from time to time be duly appointed in that behalf by the Governor under the title of the Judge in Bankruptcy, and the Court shall be holden before such Judge for the determination of all matters in its bankruptcy jurisdiction subject to appeal as is hereinafter provided.

Ibid. s. 127 (2).

(3) Whenever the terms "Insolvency" or "Insolvent" are used in any Statute now in force, such terms shall include the terms "Bankruptcy" and "Bankrupt" respectively, and wherever the "Chief Commissioner of Insolvent Estates" is mentioned or signified in any such Statute, the term shall be interpreted to mean the Judge.

Jurisdiction.

Ibid. s. 130.

134. (1) The Court shall, for the purposes of such jurisdiction in bankruptcy, have full powers to decide all questions of priorities, and all questions whatsoever, whether at law or in equity or of fact, in any case of bankruptcy coming within the cognizance of the Court, or which it may deem expedient or necessary to decide for the purpose of doing complete justice or making complete distribution of property in any such case.

(2) If in any proceeding in bankruptcy there arise any question of fact which either of the parties desires to be tried by a jury, or which the Court thinks ought to be tried by a jury, then a trial may be directed to be had before the Judge, or before any other

Judge

Judge of the Supreme Court, and a jury, or before any Judge of a District Court and a jury, and the trial may be had accordingly in the Supreme Court in the same manner as if it were a trial of an issue of fact in an action, and in the District Court in the manner in which jury trials in ordinary cases are by law held in that Court. In every such case the Court may grant a new trial if it thinks fit.

(3) No such issue of fact shall be tried as above in a District Court unless all parties to the proceeding consent thereto, or the money, money's worth, or right in dispute does not in the opinion of the Court exceed in value two hundred pounds.

(4) Whenever the official assignee or trustee claims any property as part of the bankrupt's estate, or claims any right against any person, whether such person is or is not a party to the bankruptcy, the Court may upon motion by the assignee or trustee or any person interested in such property hear and determine, either upon affidavit or upon oral evidence, or both upon affidavits and oral evidence, the question raised by such claim, and make such order thereupon as he may deem expedient or necessary, for the purpose of doing complete justice between all the parties interested.

(5) The notice of such motion shall contain the grounds of such claim and shall be served in the manner prescribed by rules of Court, and the Court may require service of such notice to be made upon any person who in its opinion is a proper party to such motion:

Provided that the grounds of such claim may be amended at the hearing of the motion upon such terms as the Court may think fit.

(6) Every order of the Court made under this Act in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment of the Supreme Court to the same effect.

(7) The Court shall have the same power of giving relief to any party interested in any matter or proceeding before him under this Act as the Supreme Court would have if such matter or proceeding were pending before it in either its common law or equitable jurisdiction.

(8) The Court shall not be subject to be restrained in the execution of its power under this Act by the order of any other Court, nor shall any appeal lie from its decision except in the manner directed by this Act.

Jurisdiction of Judge.
51 Vic. No. 19, s. 131.

135. Subject to any general rule of the Supreme Court, the Judge may assign to the appropriate ministerial officer as he may direct any of the matters in respect of which jurisdiction is given to the Court by this Act.

Exercise of jurisdiction in chambers.
Ibid. s. 132.

136. Subject to the provisions of this Act and to rules of Court the Judge may exercise in chambers the whole or any part of his jurisdiction.

137.

137. The Judge may delegate to the Registrar such of the powers vested in the Court as it may be deemed expedient for the Judge to delegate to him, subject nevertheless to review on summary application to the Judge. Power to delegate authority to Registrar. 51 Vic. No. 19, s. 133. 52 Vic. No. 11, s. 2.

138. (1) An appeal to the Full Court shall lie against any order, decision, or ruling of the Judge, and such appeal shall be by way of rehearing and shall be subject to such terms and conditions as may be prescribed by rules of Court, and subject thereto according to the practice for the time being in force with reference to appeals in the equitable jurisdiction of the Supreme Court. Appeal to be by way of rehearing. 51 Vic. No. 19, s. 135. 60 Vic. No. 29, s. 29 (1).

(2) An appeal shall lie against any order or decision or ruling of the Registrar or of any District Registrar to the Judge within such time and on such terms and in such manner as may be prescribed by rules of Court.

(3) The Court or Judge or Registrar may review, rescind, or vary any order made by it or him respectively in the bankruptcy jurisdiction. All orders to be subject to review. 60 Vic. No. 29, s. 29 (11).

DIVISION 2.—*Officers of Court.*

139. (1) The Governor may from time to time appoint a Registrar and may also appoint persons resident in the country parts of New South Wales as District Registrars, and may also appoint ministerial officers to carry into effect the provisions of this Act, and all persons so appointed shall be officers of the Supreme Court. Appointment and salaries of ministerial officers. 51 Vic. No. 19, s. 136.

(2) Whenever it is made to appear to the Judge that a District Registrar is prevented by illness or any other cause from holding any meeting or examination which under the provisions of this Act or any Act amending the same is required to be held before such District Registrar, the Judge may appoint a person to act as District Registrar for the purpose of holding such meeting or examination who shall have, for the purpose aforesaid, the same powers and duties as a District Registrar. Judge may appoint District Registrar for special purposes. 60 Vic. No. 29, s. 24.

(3) The salaries to be paid to the Registrar and to the clerks and officers of the bankruptcy jurisdiction shall be paid out of the Consolidated Revenue, and the Court fees to the amount provided by the Fourth Schedule hereto shall be collected and paid into the Colonial Treasury. Salaries to be paid out of Consolidated Revenue, and fees collected and paid into Treasury.

140. Every official assignee or trustee shall, out of every estate being administered after the coming into operation of the Act fifty-first Victoria number nineteen, pay into the Colonial Treasury towards the expenses of administering this Act such sum not less than one-eighth of a pound or not exceeding four pounds per centum on the gross amount coming into his hands from time to time in any such estate, after deducting any sums paid to secured creditors out of the proceeds of their securities, and a scale within the limits aforesaid, and the time of payment shall be fixed and varied from time to time by any regulations Payment of percentage. 51 Vic. No. 19, s. 137. 60 Vic. No. 23, s. 2 (23).

regulations by the Judge with the approval of the Colonial Treasurer, and such regulations, with the approval thereof, shall be submitted to Parliament.

Power to transfer special proceedings, or proceedings generally to country districts.
51 Vic. No. 19, ss. 138, 139.

141. The Court, at any time after sequestration, on the application of the official assignee, trustee, or a creditor, or upon its own motion, may, if it is for the advantage of the creditors, order that an examination, single meeting, enquiry, or account may be held or taken before a District Registrar, or that any future proceedings in the administration of an estate, or any part thereof, be taken at such place or places as it may name in the order.

Points of law.
Ibid. s. 140.

142. If any question of law arises in any bankruptcy proceedings the Judge may, with the consent of all parties interested, state the facts in the form of a special case, for the opinion of the Full Court.

Jurisdiction in bankruptcy of Registrar.
Ibid. s. 141.

143. (1) The Registrar shall have, in addition to the powers which may be delegated to him by the Judge under the provisions of this Act, the powers, duties, and jurisdiction of the Court in this section mentioned, and any order made or act done by such Registrar, in the exercise of the said powers, duties, and jurisdiction shall, except for the purposes of appeal, be deemed the order or act of the Court, that is to say,—

Ibid. s. 9 (2). (*a*) to hear debtors' petitions and to make sequestration orders thereon, or to give leave to withdraw the same;

Ibid. s. 14 (2). (*b*) to extend the time for submitting statements of affairs;

60 Vic. No. 29, s. 9. (*c*) to approve of a resolution of creditors to allow a bankrupt to retain any of his personal property;

51 Vic. No. 19, s. 18, subs. 1, 3, 8, 9.
60 Vic. No. 29, s. 2 (4). (*d*) 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 such examination or further or adjourned examination; to put such questions to the bankrupt as he thinks expedient, and to declare any such examination concluded;

51 Vic. No. 19, s. 141. (*e*) to approve compositions or schemes of arrangement when they are not opposed;

Ibid. ss. 30, 31, 141. (*f*) to summon and examine the bankrupt or his wife, 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 dealings, or property, and otherwise to exercise the powers of the Court contained in section thirty of this Act, and to exercise the power of committal and discharge contained in section thirty-one of this Act;

Ibid. s. 141. (*g*) to do any act or thing or give any direction or permission by this Act, authorised or required to be done or given by the committee of inspection, where there is no such committee;

(*h*)

(*h*) to grant certificates of discharge where the application is not opposed; 51 Vic. No. 19, s. 141.

(*i*) to direct payment out of salary, income, half-pay, pension, or compensation of any bankrupt, and the application of the same; *Ibid.* s. 61. 60 Vic. No. 29, s. 19 (1).

(*k*) to order an official assignee or trustee, or party interested, to show cause why a plan of distribution should not be amended; 51 Vic. No. 19, s. 70.

(*l*) to give directions to the official assignee or trustee in relation to any matter relating to a bankruptcy; *Ibid.* s. 91.

(*m*) to adjourn any proceedings before him, to amend any written process or proceeding under this Act, and to take the whole or any part of the evidence in any matter either viva voce or otherwise; *Ibid.* s. 102 (2), (3), (5).

(*n*) to authorise the official assignee or trustee to commence and prosecute any action in the name of the assignee or trustee and of the bankrupt's partner; *Ibid.* s. 113.

(*o*) to postpone any application or proceeding before him under this Act; *Ibid.* s. 150 (2).

(*p*) to declare any proceeding in bankruptcy invalidated by a formal defect or irregularity; *Ibid.* s. 151 (1).

(*q*) to remit or reduce fees; 60 Vic. No. 29, s. 30.

(*r*) to extend the time for the summoning of the first meeting of creditors; 51 Vic. No. 19, Sch. I, cl. 1.

(*s*) to declare that a secured creditor voting in respect of his whole debt shall not be deemed to have surrendered his security; *Ibid.* Sch. I, cl. 10.

(*t*) to declare invalid any vote given by a claimant who has not proved his debt; 60 Vic. No. 29, s. 3 (*c*).

(*u*) to make orders with respect to the cost of a creditor proving his debt; 51 Vic. No. 19, Sch. II, cl. 6.

(*v*) to give directions as to sale of property comprised in any security; 60 Vic. No. 29, s. 4 (*a*). 51 Vic. No. 19, Sch. II, cl. 12 (*b*).

(*w*) to expunge a proof or reduce its amount; *Ibid.* Sch. II, cl. 23.

(*x*) to make interim orders in any case of urgency, and to hear and determine any unopposed or ex parte application; 60 Vic. No. 29, s. 4 (*b*). 51 Vic. No. 19, s. 141.

(*y*) to make any order or exercise any jurisdiction which is prescribed by any rule of Court as proper to be made or exercised in Chambers; *Ibid.* s. 141.

(*z*) to administer oaths where necessary in all proceedings within his jurisdiction under this Act. *Ibid.* s. 141.

(2) The powers given to the Registrar by virtue of subsection 1 (*e*), (*h*), (*x*), (*y*), (*z*), and the power to hear debtors' petitions may be limited by rules of Court.

144. (1) All schedules, statements, accounts, examinations, plans of distribution, reports, and all other documents or proceedings whatsoever required by the provisions of this Act to be submitted to, produced, Documents, &c., to be filed. *Ibid.* s. 142.

or

or held before the Court, Judge, Registrar, District Registrar, official assignee, or trustee, shall be filed of record by the Registrar, and the same shall be under the custody of the Registrar, and shall when filed be open to inspection, and extracts may be taken therefrom, as and upon payment of such fee as may be from time to time prescribed by rules of Court.

(2) If the Registrar be satisfied that it is undesirable to file the originals of any of the beforementioned documents or proceedings, he may file certified copies of the same in lieu thereof.

Jurisdiction of district registrar. 51 Vic. No. 19, ss. 102 (2), (5), 143.

145. A District Registrar shall have the same powers and jurisdiction as the Registrar in respect of any examination, issuing of summonses, enquiry, or account held or taken before him, the adjournment of proceedings before him, and the taking of evidence viva voce or otherwise.

PART VIII.

MISCELLANEOUS PROVISIONS.

Gazette to be evidence. *Ibid.* s. 144.

146. (1) A copy of the Gazette containing any notice inserted therein in pursuance of this Act shall be primâ facie evidence of the facts stated in the notice.

(2) The production of a copy of the Gazette containing any notice of an order for sequestration 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. *Ibid.* s. 145.

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

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

Death of witness. *Ibid.* s. 147.

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

Certificate of appointment of trustee. *Ibid.* s. 148.

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

150.

150. Where anything is directed or authorised to be done by the creditors under this Act, and no method is prescribed by which the creditors may signify their wishes, they may do so by ordinary resolution. Method of procedure by creditors. 51 Vic. No. 19, s. 149.

151. (1) 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. *Ibid.* s. 150.

(2) Such notice shall date from the date at which in due course of post they would be received by the person to whom they are directed.

(3) The Court may postpone any application or proceedings under this Act, if in its opinion sufficient notice of the same has not been given to any party interested.

152. (1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court before whom an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court. Formal defects not to invalidate. *Ibid.* s. 151.

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

153. Every deed, conveyance, assignment, surrender, admission, or other assurance relating solely to freehold, leasehold, copyhold, or customary property, or to any mortgage, charge, or other encumbrance on, or any estate, right, or interest in any real or personal property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment, surrender, admission, or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the official assignee or trustee under the bankruptcy, and every power of attorney, proxy, paper, writ, order, certificate, affidavit, bond relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Act. Exemption of deeds, &c., from stamp duty. *Ibid.* s. 152.

154. For all or any of the purposes of this Act a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic, or insane or incapable person, or insane patient, may act by his committee or curator bonis, or such other person in whom the management and control of the estate of such person is for the time being vested. Acting of corporations, partners, &c. *Ibid.* s. 153.

155. Whenever any person shall at any time at or after the coming into operation of this Act have been imprisoned— Sequestration of estates of persons under imprisonment for debt.

(*a*) in execution of a judgment for defamation or libel obtained under the Act eleventh Victoria number thirteen, or any Act consolidating or amending the same for a period of twelve months; or 60 Vic. No. 29, s. 28

(*b*) in virtue of any order made under the Matrimonial Causes Act or any Act consolidating or amending the same for a period of twelve months for nonpayment of a sum due in respect of alimony or maintenance, or for a period of six months for nonpayment of costs; or

(*c*) in any other case for debt for a period of three months,

and has not presented a bankruptcy petition against himself, the Minister for Justice may present a petition against such person, and a sequestration order may thereupon be made, and shall have effect in all respects as if made upon the petition of such person himself.

Remission of fees in certain cases. 60 Vic. No. 29, s. 30.

156. The Court may, upon good cause shown, remit or reduce any of the fees payable under the Fourth Schedule to this Act.

SCHEDULES.

Section 15.

FIRST SCHEDULE.

Date of Act.	Title of Act.	Extent of repeal.
7 Vic. No. 19 ...	An Act to amend an Act intituled "*An Act for giving relief to insolvent persons and providing for the administration of Insolvent Estates and to abolish imprisonment for debt.*"	Section 15 (the unrepealed section).
10 Vic. No. 14...	An Act to remove difficulties in the disposal, administration, and distribution of Insolvent Estates.	Section 3 (the unrepealed section).
38 Vic. No. 1 ...	An Act to expedite and lessen the expense of proceedings in Insolvency.	Sections 6, 7, and 8 (the unrepealed sections).
51 Vic. No. 19...	Bankruptcy Act, 1887	The whole, except sections 128, 129, 135, and 146.
52 Vic. No. 11...	Bankruptcy Act Amendment Act, 1888... ...	The whole.
60 Vic. No. 29...	Bankruptcy Acts Amendment Act, 1896 ...	Sections 1–30 and section 35.

THE SECOND SCHEDULE.

MEETINGS OF CREDITORS.

Time of first meeting. 51 Vic. No. 19, Sch. I, cl. 1. 60 Vic. No. 29, s. 3(*a*)

1. The first meeting of creditors shall be summoned for a day not later than twenty-one days after the date of the sequestration order, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.

Advertisement thereof. 51 Vic. No. 19, Sch. I, cl. 2. 60 Vic. No. 29, s. 3(*b*).

2. The Registrar shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the Gazette and in a local paper. The official assignee shall also whenever practicable give notice of the time and place thereof to each creditor named in the statement of affairs then resident in New South Wales or his authorised agent.

Provisional report. 51 Vic. No. 19, Sch. I, cl. 3.

3. The official assignee shall at such first meeting bring up a provisional report based upon the bankrupt's statement of affairs.

4.

4. The meeting shall be held at such place as is in the opinion of the official assignee most convenient for the majority of the creditors. Place. 51 Vic. No. 19, Sch. I, cl. 4.

5. The official assignee or 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-fourth in value of the creditors. Subsequent meetings. 51 Vic. No. 19, Sch. I, cl. 5.

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 bankrupt's statement of affairs, or at such other address as may be known to the person summoning the meeting. Mode of summoning. 51 Vic. No. 19, Sch. I, cl. 6.

7. The official assignee, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint. Chairman. 51 Vic. No. 19, Sch. I, cl. 7.

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 bankrupt, and the proof has been duly lodged before the time appointed for the meeting. Right to vote. 51 Vic. No. 19, Sch. I, cl. 8.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained. Unascertained debts. 51 Vic. No. 19, Sch. I, cl. 9.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence. Vote by secured creditor. 51 Vic. No. 19, Sch. I, cl. 10.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the bankrupt, and against whom a sequestration order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof. Note on bill or note. *Ibid.* cl. 11.

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

13. 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. Vote by joint creditor. *Ibid.* cl. 13.

14. When, for any cause appearing to the Registrar, the Registrar shall be of opinion that a claimant who has not proved his debt may eventually be able to establish the same, the Registrar may allow such claim to be entered for the purpose of voting, and may give such time as he may think fit for establishing the same, and the official assignee shall make provision for the same in any account and plan of distribution filed prior to the expiration of such time: Provided that any vote given by the claimant may be declared invalid in the event of the claim not being established within the time allowed, but subject to such terms as the Court may think fit. Admission of votes. 60 Vic. No. 29, s. 3 (c).

15. A creditor may vote either in person or by proxy. Mode of voting. 51 Vic. No. 19, Sch. I, cl. 15.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official assignee, and every insertion therein shall be in the handwriting of the person giving the proxy. Proxy form. *Ibid.* cl. 16.

17.

General proxy. 51 Vic. No. 19, Sch. 1, cl. 17.

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

Special proxy. *Ibid.* cl. 18.

18. A creditor may give a special proxy to any person to vote at any specified meeting, or adjournment thereof, for or against any specific resolution, or for or against any specified person as trustee, or member of a committee of inspection.

Deposit of proxy. *Ibid.* cl. 19. 60 Vic. No. 29, s. 3 (d).

19. A proxy shall not be used unless it is deposited with the official assignee before the meeting at which it is to be used except with the leave of the Judge or Registrar.

Canvassing for votes. *Ibid.* cl. 20.

20. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of an official assignee, trustee, or manager, or receiver in obtaining proxies, or in procuring the trusteeship, managership, or receivership, except by the direction of a meeting of creditors, the Court may 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.

Official receiver as proxy. 51 Vic. No. 19, Sch. I, cl. 21.

21. A creditor may appoint the official assignee of the bankrupt's estate to act in manner prescribed as his general or special proxy.

Adjournment. *Ibid.* cl. 22.

22. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place.

Quorum. *Ibid.* s. 23.

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

Quorum not present. *Ibid.* cl. 24.

24. 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 the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

Minutes. *Ibid.* cl. 25.

25. 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.

Interested vote. *Ibid.* cl. 26.

26. 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 ratably with the other creditors of the debtor: Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly.

Single meetings. 60 Vic. No. 29, s. 3 (e).

27. Nothing in clauses twenty-three and twenty-four of this Schedule shall apply to the case of a single meeting.

THE THIRD SCHEDULE.

Proof of Debts.

Proof in ordinary cases.

Time for proof. 51 Vic. No. 19, Sch. II, cl. 1.

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

Mode of proof. *Ibid.* cl. 2.

2. A debt may be proved by delivering or sending through the post in a pre-paid letter to the Registrar an affidavit verifying the debt.

Who may prove. *Ibid.* cl. 3.

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

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The Registrar and official assignee or trustee may at any time call for the production of the vouchers. Particulars and vouchers. 51 Vic. No. 19, Sch. II, cl. 4.

5. The affidavit shall state whether the creditor is or is not a secured creditor. Security. *Ibid.* cl. 5.

6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders. Cost. *Ibid.* cl. 6. 60 Vic. No. 29, s. 4 (a).

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. Inspection of proof 51 Vic. No. 19, Sch. II, cl. 7.

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

Proof by secured creditors.

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

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

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

12. (*a*) Where a security is so valued the official assignee or trustee may at any time redeem it on payment to the creditor of the assessed value. Redemption. *Ibid.* cl. 12.

(*b*) If the official assignee or trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official assignee or trustee, or as, in default of such agreement, the Court may direct. If the sale be by public auction the creditors or the official assignee 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 official assignee or trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the official assignee or 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 official assignee or trustee shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee, or the trustee, or the Registrar, 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 Registrar shall order. Revaluation. *Ibid.* cl. 13.

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

15.

Realisation after valuation. 51 Vic. No. 19, Sch. II, cl. 15.

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

Exclusion from dividend. *Ibid.* cl. 16.

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

Maximum dividend. *Ibid.* cl. 17.

17. Subject to the provisions of Rule twelve, 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.

Distinct contracts. *Ibid.* cl. 18.

18. If a debtor was at the date of the order of sequestration liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as a 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.

Periodical payments. *Ibid.* cl. 19.

19. When any rent or other payment falls due at stated periods, and the order of sequestration 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.

Interest. *Ibid.* cl. 20.

20. (1) 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 order of sequestration and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding six 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 was 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.

60 Vic. No. 29, s. 22.

(2) Where a debt has been proved upon a bankrupt's estate under this Act, and such debt includes interest or any pecuniary consideration in lieu of interest, such interest or consideration shall for the purposes of dividend be calculated at a rate not exceeding eight 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.

Debt payable at a future time.

Future debts. 51 Vic. No. 19, Sch. II, cl. 21.

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

Admission or rejection of proofs.

Admission of proofs. *Ibid.* cl. 22.

22. The Registrar 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.

Expunging. 60 Vic. No. 29, s. 4 (b).

23. The official assignee or a trustee may upon further evidence, and upon notice to the creditor who has made the proof, apply to the Court to expunge such proof or reduce its amount.

24. If a creditor or official assignee or trustee is dissatisfied with the decision of the Registrar in respect of a proof, the Court may, upon the application of the creditor or official assignee or trustee, reverse or vary the decision. Appeal. 51 Vic. No. 19, Sch. II, cl. 24. 60 Vic. No. 29, s. 4 (c).

25. The Court may also expunge or reduce a proof upon the application of a creditor if the official assignee or trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the bankrupt. Who may apply. 51 Vic. No. 19, Sch. II, cl. 25.

FOURTH SCHEDULE.

Court and other Fees to be taken.

Registrar in Bankruptcy.	s.	d.
Every declaration by a debtor of inability to pay debts	2	6
Upon filing every petition surrendering an estate as bankrupt including the order of the Court thereon where the assets shall appear not to exceed £200	2	6
When above that amount	15	0
For drawing and inserting each advertisement besides the expenses paid for advertising when required to be done	2	6
Upon receiving and filing every petition against a person having committed an act of bankruptcy	15	0
For filing every affidavit	1	0
For every order of the Court	5	0
For every bankruptcy notice	5	0
For filing same or any other proceeding	1	0
For every person examined or document exhibited	1	0
For taxing costs in any case—same as in the Supreme Court Office.		
For making every necessary application and report to the Court and minute of the order thereon...	2	6
For every warrant of attachment of movable property	2	6
For every summons for the attendance of a person to give evidence or be examined	5	0
For every certified extract from or copy of proceedings relating to bankrupt estates of less than seventy-two words	2	6
And above that number per folio	0	4
For every inspection of proceeding in each estate for each half hour	1	0
For every certificate of discharge	10	0
For every other process before the Court—same as in the Supreme Court either at Law or in Equity as the case may be.		
For each meeting of creditors or examination in estates under £200 assets	10	0
For any other meeting of creditors or examination per diem ...	20	0
For every proof of debt to be paid by the person offering it ...	1	0
For swearing every affidavit by the party sworn	1	0
For every person examined by the party producing him	1	0
For every warrant for apprehension of bankrupt	5	0
For every warrant of commitment of any person	7	6
Sheriff's Fee.		
For registering every order for sequestration or bankruptcy notice	1	0
The Registrar-General's Fee.		
For registering every order of sequestration	1	0

FIFTH

FIFTH SCHEDULE.

In the Supreme Court of New South Wales— In Bankruptcy.

BANKRUPTCY NOTICE.

(*Title.*)

To A.B. [*or* A.B. & Co. of .]

TAKE notice that within [seven] days after service of this notice on you, excluding the day of such service, you must pay to C.D., of , the sum of £ claimed by him as being the amount due on a final judgment obtained by him against you in the Court, dated ; whereon execution has not been stayed, or you must secure or compound for the said sum to [his] satisfaction or the satisfaction of the Judge; or you must satisfy the Judge that you have a counter-claim, set-off, or cross-demand against C.D., which equals or exceeds the sum claimed by him, and which you could not set up in the action in which the judgment was obtained.

Dated

By the Court,
Registrar.

INDORSEMENT ON NOTICE.

You are specially to note,—

THAT the consequences of not complying with the requisitions of this notice are that you will have committed an act of bankruptcy, on which bankruptcy proceedings may be taken against you.

If, however, you have a counter-claim, set-off, or cross-demand, which equals or exceeds the amount claimed by C.D. in respect of the judgment, and which you could not set up in the action in which the said judgment was obtained, you must within days apply to the Judge to set aside this notice, by filing with the Registrar an affidavit to the above effect, setting out the particulars thereof and the reasons why you could not set up the same in the said action.

[*Name and address of Solicitor suing out the notice*] *or*

This notice is sued out by [C.D.] in person.

By Authority: Reprinted by WILLIAM APPLEGATE GULLICK, Government Printer, Sydney, 1920.

[2*s.* 4*d.*

New South Wales.

ANNO SEXAGESIMO SECUNDO

VICTORIÆ REGINÆ.

Act No. 25, 1898.

An Act to consolidate the Law relating to Bankruptcy.
[Assented to, 27th July, 1898.]

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

1. This Act may be cited as the "Bankruptcy Act, 1898," and is divided into parts and divisions as follows:— Short title of Act. 51 Vic. No. 19, s. 1.

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

DIVISION 1.—*Section* 4—*Acts of bankruptcy.*

DIVISION 2.—*Sections* 5–12—*Sequestration order.*

DIVISION 3.—*Sections* 13–18—*Proceedings consequent on order.*

DIVISION 4.—*Sections* 19–20—*Composition or scheme of arrangement.*

DIVISION 5.—*Sections* 21–26—*Creditors' trustees and committee of inspection.*

DIVISION 6.—*Sections* 27–33—*Control over person and property of bankrupt.*

DIVISION 7.—*Sections* 34–38—*Release of estate, and annulment of sequestration order.*

DIVISION 8.—*Sections* 39–44—*Bankrupt's certificate.*

PART II.—ADMINISTRATION OF PROPERTY.

DIVISION 1.—*Sections* 45–47—*Proof of debts.*

DIVISION 2.—*Sections* 48–50—*Preferential debts.*

DIVISION 3.—*Sections* 51–52—*Property available for payment of debts.*

DIVISION 4.—*Sections* 53–58—*Effect of bankruptcy on antecedent transactions.*

DIVISION 5.—*Sections* 59–68—*Realisation of property.*

DIVISION 6.—*Sections* 69–81—*Distribution of estate.*

PART III.—CREDITORS' TRUSTEES AND OFFICIAL ASSIGNEES.

DIVISION 1.—*Sections* 82–86—*Remuneration of trustees or assignees.*

DIVISION 2.—*Section* 87—*Official name.*

DIVISION 3.—*Sections* 88–94—*Appointment and removal.*

DIVISION 4.—*Sections* 95–106—*Control over assignees and trustees.*

PART IV.—PROCEDURE.

Sections 107–113.

PART V.—APPLICATION OF ACT.

Sections 114–125.

PART VI.—INDICTABLE OFFENCES.

Sections 126–132.

PART VII.—JURISDICTION.

DIVISION 1.—*Sections* 133–138—*Bankruptcy Division of Supreme Court.*

DIVISION 2.—*Sections* 139–145—*Officers of the Court.*

PART VIII.—MISCELLANEOUS PROVISIONS

Sections 146–156.

Repeal. First Schedule.

2. (1) The several enactments mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed.

(2) All persons appointed by virtue of any Act hereby repealed and holding office at the passing of this Act, shall be deemed to have been appointed hereunder.

(3) All rules of Court made under the authority of any Act hereby repealed and being in force at the passing of this Act, shall be deemed to have been made under the authority of this Act.

Interpretation of terms. 51 Vic. No. 19, s. 3.

3. (1) In this Act, unless the context otherwise requires :—

"The Judge" means the Judge having jurisdiction in bankruptcy under this Act or any Judge acting as such :

"Available Act of bankruptcy" means any Act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the sequestration order is made :

"Debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy :

"Goods" include all chattels personal :

"The Court" means the Supreme Court in its bankruptcy jurisdiction :

"Local Bank" means any bank in or in the neighbourhood of the district in which the proceedings are taken :

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

"Property" includes money, goods, things in action, land, and every description of property, whether real or personal, and whether situate in New South Wales 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 :

"Secured creditor" means a person holding a mortgage, charge, or lien on the property of the debtor, or any part thereof :

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

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

The term "trustee" shall in all cases where not inconsistent with the context include the official assignee when he fills the office of trustee.

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

PART

PART I.

PROCEEDINGS FROM ACT OF BANKRUPTCY TO BANKRUPT'S EXAMINATION.

DIVISION 1.—*Acts of Bankruptcy.*

Acts of bankruptcy.
51 Vic. No. 19, s. 4.

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

(*a*) If in New South Wales or elsewhere he makes a conveyance or assignment of his property to a trustee for the benefit of his creditors generally :

(*b*) If in New South Wales or elsewhere he makes a conveyance, gift, delivery, assignment, or transfer of his property, or of any part thereof, with intent to defeat or delay his creditors, or any of them :

(*c*) If in New South Wales or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon which would under this or any other Act be void as a fraudulent preference if a sequestration order were made against him:

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

52 Vic. No. 11, s. 2.

(*e*) If execution issued against him has been levied by seizure and sale of his goods under process in an action in any Court, or in any civil proceeding in the Supreme Court, and if he has not within five days of such sale, satisfied the debt by payment :

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

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

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

(*i*) If he has been adjudged bankrupt or insolvent by a British Court of competent jurisdiction in or out of New South Wales, and has not received a certificate of discharge or other corresponding release—of any of which facts a copy of the order or orders or certificate or release made or given by such Court certified under its seal shall be sufficient evidence:

(*j*) If he has not presented a bankruptcy petition against himself or filed in the Court a declaration of his inability to pay his debt within forty-eight hours after having at a convened meeting of his creditors admitted that he is unable to pay his debts, and been thereupon required by a majority in number of his creditors present to present such petition or file such declaration.

(2) A bankruptcy notice under this Act shall be in the form prescribed in the Fifth Schedule hereto, and shall state the consequences of non-compliance therewith, and shall be served in the manner prescribed by the rules of Court; it shall be under the hand of the Registrar, and may be granted upon the application of the creditor claiming to be entitled thereto.

(3) Upon the debtor satisfying the Court that such notice ought not to have issued, the Court may order the payment to him by the creditor applying for such notice of all the costs occasioned by the issue thereof, and if satisfied that the notice was issued maliciously and without reasonable and probable cause may at the request of the debtor assess the damages occasioned thereby.

(4) Upon security being given by the debtor for payment of the debt and the cost of establishing it, the Court may stay all proceedings on the notice, and may stay execution on the judgment in respect of which such notice was issued, for such a time, in either case, as it thinks fit.

(5) Upon the affidavit of any creditor who would be entitled to present a bankruptcy petition that a debtor, being a trader, has committed an act of bankruptcy and is diminishing his assets to the prejudice of his creditors, whether voluntarily or for consideration, by conveyance, gift, delivery, assignment, pledge, mortgage, transfer, or execution upon a collusive judgment, the Court may grant an injunction restraining such debtor and all other persons from disposing of or dealing with such assets or any part thereof until the hearing of the bankruptcy petition against such debtor:

Provided that before such injunction be granted the creditor applying shall give security to the satisfaction of the Registrar to present a bankruptcy petition forthwith, and to be responsible for all damages which may be occasioned by issuing such injunction.

60 Vic. No. 29, s. 6 (1).

(6) Any person who is for the time being entitled to enforce a final judgment shall be deemed a creditor who has obtained a final judgment within the meaning of this section.

Married women. *Ibid.* s. 6 (2).

(7) Any final judgment obtained against a married woman shall be deemed to be a final judgment within the meaning of subsection (1) (*g*) of this section, and a bankruptcy notice in the form prescribed by the Fifth Schedule hereto may issue and be served upon her in respect thereof as if judgment had been obtained against her as a feme sole, and the fact that no execution can issue at law on such judgment shall not prevent the non-compliance with such notice being deemed an act of bankruptcy under the said subsection.

Ibid. s. 6 (2).

(8) Nothing herein contained shall be construed to render a married woman liable to be made bankrupt except in respect of her separate estate and upon evidence that she is possessed of separate estate, or to alter or repeal anything contained in the Married Woman's Property Act, 1893, or any Act consolidating or amending the same.

Ibid. s. 6 (3).

(9) Any decree or order which is in its terms or effect final shall be deemed to be a final judgment within the meaning of this section.

Unregistered deeds of assignment. *Ibid.* s. 23.

(10) Every deed of conveyance or assignment for the benefit of creditors may be registered by filing in the office of the Registrar-General an examined copy signed by one or more of the parties to the original deed of assignment and certified by the oath of some credible person taken before a Judge or before the Registrar-General or his deputy, or before any commissioner for affidavits; and if so registered within one month from the execution of the same by the assignor shall be within the protection of this Act.

Ibid. s. 23.

(11) The Registrar-General shall upon the said copy being so filed as aforesaid register the same accordingly.

Division 2.—*Sequestration order.*

Jurisdiction to make sequestration order. 51 Vic. No. 19, s. 5.

5. (1) Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a sequestration order.

(2) When a sequestration order has been made, the debtor thereby becomes a bankrupt, and continues a bankrupt until a certificate of discharge has been issued to him, or the order for sequestration be discharged or annulled in manner hereinafter provided.

Conditions on which creditor may or may not petition. *Ibid.* s. 6. 60 Vic. No. 29, s. 23.

6. A creditor shall not be entitled to present a bankruptcy petition against a debtor unless—

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

(*b*)

(*b*) The debt is a liquidated sum, payable either immediately or at some certain future time, whether due at law or in equity; and

(*c*) The act of bankruptcy on which the petition is grounded has occurred within six months before the presentation of the petition:

Provided that, if the alleged act of bankruptcy is one of those mentioned in subsection (*i*) of section four, the petition may be presented within three months after the alleged act came to the knowledge of the petitioning creditor; and unless

(*d*) The debtor is domiciled in New South Wales, 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 New South Wales:

Provided that when the alleged act of bankruptcy is that set forth in subsection (*a*) of section four, and the deed of conveyance or assignment has been registered within one month from the execution thereof by the assignor in accordance with the provisions of subsection ten of the said fourth section, no sequestration order shall be made upon the petition of a creditor or creditors, if such creditor or creditors do not represent at least one-fifth in value of all the creditors.

Secured creditor.
51 Vic. No. 19, s. 7.

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

Proceedings and order on creditor's petition.
Ibid. s. 8.
60 Vic. No. 29, s. 2 (1); s. 23.

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

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

Trustees shall receive notice of hearing.

(3) If the debtor has made a conveyance or assignment of his property to a trustee for the benefit of his creditors generally, and the same has been registered within one month from the execution thereof by the assignor in accordance with the provisions of subsection ten of section four of this Act, the trustee under such assignment shall also receive the prescribed notice of the hearing, and may appear and show cause for the dismissal of the petition, and if it appears to the Court

Court that it will be for the advantage of the creditors that the estate should be administered under the said deed such petition may be dismissed.

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

(5) If it appears to the Court upon the hearing of the petition that the petition was unfounded and vexatious or malicious, he may allow the respondent then, or at some other fixed time, to prove any damage sustained thereby, and may award such sum in respect thereof not exceeding two hundred pounds as the Court deems fit:

Provided that nothing herein shall affect the right of the respondent to sue the petitioner for damages beyond the amount awarded by the Court.

Staying proceedings on petition upon security being given.

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

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

(8) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a 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 stayed as aforesaid.

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

Proviso for revival on proceeding being stayed.

(10) Where a petition is withdrawn or discharged, or where proceedings upon a petition are stayed in consequence of the petitioning creditor's default, or his collusion with the debtor, the Court, within six months after such withdrawal or discharge or stay of proceedings, may, on the petition of any other creditor or creditors, whose debt or debts existed at the date of the service of the said petition, direct that a sequestration order shall be made.

(11)

(11) If any person against whom a sequestration order has been made pays any money to any petitioning creditor or to any one on his behalf, or gives to such creditor any security for his debt or part thereof, such payment, gift, or security shall be a new act of bankruptcy, and the person receiving such money, gift, or security shall deliver up such security and repay or deliver the money or gift or its full value to the assignee for the benefit of the creditors, and shall pay all the costs incurred by any other creditor in obtaining a sequestration order upon such act of bankruptcy. Preference to petitioning creditor to be a new act of bankruptcy.

9. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and upon the presentation thereof the Court shall make a sequestration order. Debtor's petition and order thereon. 51 Vic. No. 19, s. 9.

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

10. (1) Upon the making of a sequestration order the property of the bankrupt shall vest in one of the official assignees to be named in such order, and be divisible among the creditors of the bankrupt in accordance with the provisions of this Act. Effect of sequestration order. *Ibid.* s. 10. 60 Vic. No. 29, ss. 2 (2); 7.

(2) Upon the making of an order for the sequestration of the estate of an undischarged bankrupt or insolvent, the property of such bankrupt or insolvent possessed by him at the date of the second order of sequestration shall, if the official assignee or trustee appointed under the prior order has not intervened, vest in the official assignee named in the subsequent order, and be divisible in the first instance among the creditors of the bankrupt in the subsequent bankruptcy. Sequestration of estate of undischarged bankrupt.

(3) After a sequestration order has been made, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence or take any fresh step in any action or other legal proceedings unless with the leave of the Court and on such terms as the Court may impose.

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

(5) The Court may at any time after the presentation of a bankruptcy petition, upon such conditions as it thinks fit, stay any action, execution, or other legal process against the property or person of the debtor, and may discharge him out of custody, and any Court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think fit. Power to stay legal proceedings.

(6) 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 such proceeding.

(7) All actions or proceedings at law or in equity commenced by any person, against whom a sequestration order is afterwards made, shall, upon such order being made, be stayed until the official assignee or trustee make election to prosecute or discontinue the same, and such official assignee 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 such action or proceedings, or otherwise shall be deemed to have abandoned the same:

Provided that any bankrupt shall be permitted to 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 of his family.

Registration of sequestration order and bankruptcy notice.
51 Vic. No. 19, s. 11.
52 Vic. No. 11, s. 2.

11. The Registrar shall forthwith publish in the Gazette a notice of every sequestration order, and also send a like notice to the Registrar-General, who shall make a note of the same in every index and registered instrument kept in his office for public inspection. The Registrar shall also send notice of every such order and notice of the issue of any bankruptcy notice to the sheriff, who shall forthwith register the same respectively in his office.

Agent of creditor may act for him.
51 Vic. No. 19, s. 12.

12. Where a creditor entitled to present a bankruptcy petition is absent from New South Wales, his agent, if authorised to recover his debts or effects, may present the petition and make the proof required in lieu of such creditor:

Provided that the person whom it is sought to make bankrupt shall have, in addition, the same rights and remedies in every such case against such agent as he has against the person in whose name such proceeding is taken, and all notices, summonses, orders, and documents may be served upon such agent, and shall have the same effect as if served upon the creditor.

Division 3.—*Proceedings consequent on order.*

Power to appoint special manager.
Ibid. s. 13.

13. (1) At any time after the making of a sequestration order, the official assignee 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 the appointment of a special manager or receiver of the estate or business, or any part thereof, other than the official assignee, appoint a manager or receiver thereof accordingly to act until a trustee is appointed, or so long as the creditors may by resolution require.

(2)

(2) Every such special manager or receiver shall, for all the purposes of obtaining and retaining possession of the property or business of the bankrupt, be in the same position in all respects as a receiver and manager appointed by the Supreme Court in its equitable jurisdiction, and the Court may enforce such acquisition or retention accordingly.

(3) Every person aggrieved by any act of a receiver or manager may apply to the Court, who may confirm or disallow the act complained of, and make such order in the premises as is just.

(4) Such special manager or receiver shall receive such remuneration as the creditors may by resolution determine, or in default of any such resolution as may be prescribed.

Bankrupt's statement of affairs.
51 Vic. No. 19, s. 14.

14. (1) Where a sequestration order is made the bankrupt shall make out and lodge in the office of the Registrar and furnish to the official assignee a copy of a statement of and in relation to his affairs in the form prescribed by rules of Court verified by affidavit, and showing :—

(*a*) the particulars of the bankrupt's assets, debts, and liabilities ;

(*b*) the names, residences, and occupations of the debtors to his estate and of his creditors ;

(*c*) the amounts due by and to each, and the securities given or held by them respectively ;

(*d*) the dates when such debts and securities arose and were granted ; and

(*e*) such further or other information as may be prescribed or as the official assignee may require.

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

(*a*) If the order is made on the petition of the debtor, upon the making of the sequestration order.

(*b*) If the order is made on the petition of a creditor, within seven days from the date of the service of the order.

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

(3) The bankrupt shall also deliver to the official assignee all books of account, vouchers, and other documents and writings in the possession or power of such bankrupt relating to his estate and dealings, and shall at all times as far as lies in his power assist the official assignee, trustee, and manager in the collection and realisation of the assets.

(4) If the bankrupt fails without reasonable excuse to comply with the requirements of this section the Court may, on the application of the official assignee or of any creditor, adjudge him guilty of contempt of Court and punish him accordingly.

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

First creditors meeting.
51 Vic. No. 19, s. 15.

15. (1) As soon as may be after the lodgment of the bankrupt's statement of affairs as aforesaid a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held at an advertised time and place.

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

(3) In the interpretation of the said rules the words first meeting shall include single meeting, except that such single meeting shall be presided over by the Judge or Registrar, anything in the said rules to the contrary notwithstanding.

Proceedings at first meeting.
Ibid. s. 16.

16. At such first meeting the following business may be transacted:—

(1) The creditors may consider whether any and what proposal for a composition or scheme of arrangement shall be entertained.

60 Vic. No. 29, s. 9.

(2) The official assignee may, with the consent of the creditors given by resolution at the first or any other meeting of creditors and with the approval of the Court, allow the bankrupt to retain any of his personal property; and such approval shall have the effect of vesting the said property in the bankrupt as from the date of such resolution. Notice of the intention to allow a bankrupt to retain any of his personal property shall be given to all proved creditors seven days at least before a vote is taken on the resolution.

(3) A trustee or committee of inspection may be appointed as hereinafter provided.

(4) Other business may also be transacted at such meeting, and the business specified in this section may be transacted at any other meeting as well as at the first meeting.

Single meetings for small bankruptcies.
51 Vic. No. 19, s. 17.
60 Vic. No. 29, s. 2 (3).

17. (1) If the estate of the bankrupt does not appear to the official assignee to be of the value of two hundred pounds or upwards, there shall ordinarily be only a single meeting of creditors, which shall specially be so termed and be advertised accordingly.

(2) At such single meeting the bankrupt shall attend, and all such matters may be done and directions given as are authorised to be done or given at any meeting of creditors where the value of the estate exceeds two hundred pounds.

(3)

(3) If the assets appear at a single meeting to exceed two hundred pounds other meetings may be summoned, and all proceedings and directions shall be given or taken as provided in the case of a bankruptcy where the estate exceeds two hundred pounds.

Public examination of bankrupt. 51 Vic. No. 19, s. 18. 60 Vic. No. 29, s. 2 (4).

18. (1) Where the Court makes a sequestration order it shall hold a public 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, dealings, and property.

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

(3) The Court may adjourn the examination from time to time, and may direct such further examinations to be had from time to time as it may think fit at a date and place to be appointed by it.

(4) Any creditor who has proved, or his representative authorised in writing, may question the bankrupt concerning his affairs and the causes of his failure; and any creditor who has tendered a proof or his representative authorised in writing, may question the bankrupt upon any matters which may serve to establish his alleged claim to be counted as a creditor.

(5) The official assignee may take part in the examination of the bankrupt.

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

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

(8) The bankrupt shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. The evidence shall be taken down in writing or in shorthand, and when transcribed, shall be read over to and signed by the bankrupt before the Judge or Registrar either at the same or at a future time, and it shall be open to the inspection of any creditor at all reasonable times.

(9) When the Court is of opinion that the affairs of the bankrupt have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors, and the Court may at any time direct a further examination on being satisfied of its propriety.

Division 4.—*Composition or scheme of arrangement.*

Power for creditors to accept and Court to approve composition or arrangement.

19. (1) The creditors may at the first or any other meeting, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the bankrupt, or a proposal for a scheme of arrangement of the bankrupt's affairs.

(2)

51 Vic. No. 19, s. 19. 52 Vic. No. 11, s. 2. 60 Vic. No. 29, s. 2 (5).

(2) The composition or scheme shall not be binding on the creditors unless it is confirmed by a resolution passed by a majority in number representing three-fourths in value of all the creditors who have proved at a subsequent meeting of the creditors, and is approved by the Court.

Any creditor who has proved his debt may assent to, or dissent from such composition or scheme, by a letter addressed to the official assignee, in the form prescribed by rules of Court, and attested by a witness, so as to be received by such official assignee not later than two days preceding such subsequent meeting, and such creditor shall be taken as being present and voting at such meeting.

(3) The subsequent meeting shall be summoned by the official assignee by not less than seven days' notice, and shall not be held until after the public examination of the bankrupt is concluded. The notice shall state generally the terms of the proposal, and it shall be accompanied by a report of the official assignee thereon.

(4) The bankrupt or the official assignee may, after the composition or scheme 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.

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

(6) If the Court is of opinion that the terms of the composition or scheme are not calculated to benefit the general body of creditors, the Court may, in its discretion, refuse to approve the composition or scheme.

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

(8) A composition or scheme accepted or 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.

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

(10) 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 may be deemed a contempt of Court.

(11) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on

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 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. And any debt provable in other respects, which has been contracted before the date of the sequestration order, shall be provable in the bankruptcy.

(12) If under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property or manage his business, the provisions of Parts III and VII of this Act, so far as the nature of the case and the terms of the composition or scheme admit, shall apply to the trustee as if he were a creditor's trustee in a bankruptcy, and as if the terms "bankruptcy," and "bankrupt," included respectively a composition or scheme of arrangement, and a compounding or arranging debtor.

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

(14) No composition or scheme shall be approved of by the Court which does not provide for payment to the creditors of seven shillings and sixpence in the pound, unless in the opinion of the Judge the bankruptcy was caused by misfortune without any misconduct on the part of the debtor: Provided that if at any time after such approval the Court shall be satisfied that such opinion was erroneous it may declare the creditors released from the terms of the composition, but no payment made in the meantime thereunder shall be disturbed.

(15) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by a certificate of discharge.

Effect of composition or scheme. 51 Vic. No. 19, s. 20.

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

DIVISION 5.—*Creditors' trustees and committee of inspection.*

Appointment of trustee. *Ibid.* s. 21. 60 Vic. No. 29, s. 2 (6).

21. (1) Whether the creditors resolve to entertain a proposal for a composition or not they may at the first or any meeting elect such persons as they think fit not exceeding two to be trustees of the estate in addition to the official assignee.

(2)

(2) Every such trustee may be a creditor or may be one of the official assignees.

(3) Instead of electing trustees as aforesaid the creditors may by resolution leave their appointment to the committee of inspection hereinafter named.

(4) When more persons than one are elected or appointed to the office of trustee, the creditors or the committee of inspection (as the case may be) may at any time declare whether any act or all acts required or authorised to be done by the trustees is or are to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee" (except where the context otherwise requires).

(5) The creditors or the committee (as the case may be) may at the time of the original election or appointment or at any subsequent time elect or appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or not being approved of by the Court.

(6) Trustees shall be joint tenants of the property of the bankrupt.

Security.
51 Vic. No. 19, s. 22.
60 Vic. No. 29, s. 2 (7).

22. (1) Creditors may direct what security (if any) shall be given by every elected trustee and to whom for the due performance of the duties of his office.

(2) No trustee shall be appointed after the termination of the first or single meeting except by leave of the Court.

Confirmation of election.
51 Vic. No. 19, s. 23.

23. (1) Upon the written acceptance by a trustee of his office and proof of his having given the security required of him the Court may make an order confirming his election.

(2) No official assignee shall be required to give security upon being elected trustee.

(3) Any creditor may object to the confirmation of the election of a trustee upon the ground—

(*a*) that it was not made in good faith by a majority in number and value of the creditors voting, or

(*b*) that the majority in number and value of the creditors dissent from his appointment, or

(*c*) that the person appointed is not fit to act as trustee, or

(*d*) that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interest of the creditors generally.

(4) If any such objection appears to the Court to be frivolous the creditor making such objection may be ordered to pay the costs occasioned thereby.

(5) Notice of every confirmation or removal under this section shall forthwith be published by the Registrar in the Gazette, and the production of such Gazette shall be evidence that the trustee named has been duly elected and confirmed or removed as the case may be.

Vesting of estate in trustee. 51 Vic. No. 19, s. 24.

24. (1) Every order confirming the election of a trustee shall divest the estate, and every right, title, and remedy from the person (if any) ceasing to hold the office of trustee, and shall vest the same jointly in the official assignee and the persons who on the confirmation of the said election are the trustees.

(2) The property of the bankrupt shall pass from trustee to trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

(3) A sequestration order and the order of appointment of a trustee shall for all purposes of any law requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly.

Acts done in good faith to be valid. *Ibid.* s. 25.

25. No defect or irregularity in the election of a trustee, or of a member of the committee of inspection, shall vitiate any act done in good faith, and no act of any trustee or of the committee shall be invalid by reason of any failure to elect a co-trustee or any of its members.

Committee of inspection. *Ibid.* s. 26.

26. (1) The creditors qualified to vote may at their first or any subsequent meeting by resolution appoint from among the creditors qualified to vote, or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property. The committee of inspection shall consist of not more than five or less than three persons.

(2) 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 official assignee or a trustee, or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) 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 at the meeting.

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

(5) 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.

(6) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the office of a member of the committee the official assignee or 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 other person eligible as above to fill the vacancy.

(8) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it does not exceed five.

DIVISION 6.—*Control over person and property of bankrupt.*

Duties of bankrupts as to discovery and realisation of property.
51 Vic. No. 19, s. 27.

27. (1) Every bankrupt shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall also, if required by the official assignee or a trustee or creditor, attend any and every other meeting or adjournment thereof, and shall submit to such examination and give such information as the meeting may require.

(2) He shall whenever required to do so bring with him, and give such information as may be required about any books of account, vouchers, and other documents in writing in his possession, relating to his estate and dealings, and about his assets, and about any particular in his statement of affairs.

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

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

(5) If a bankrupt wilfully fails to perform any of 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

to the official assignee, or to the trustee, or to any person authorised by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

Arrest of debtor or bankrupt under certain circumstances. 51 Vic. No. 19, s. 28.

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

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

(*b*) If, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official assignee or manager or trustee, or that there is probable ground for believing that he has concealed 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 on him of the notice of a bankruptcy petition, prescribed by rules of Court, he removes any goods in his possession above the value of five pounds, without the leave of the official assignee or trustee, if any.

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

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

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

Redirection of bankrupt's letters. *Ibid.* s. 29.

29. Where a sequestration order is made against a debtor the Court, on the application of the official assignee or trustee, may from time to time order that for such time, not exceeding three months, as the Court thinks fit, post letters addressed to the bankrupt at any place, mentioned

mentioned in the order, shall be redirected, sent, or delivered by the Postmaster-General, or the officers acting under him, to the official assignee, or the trustee, or otherwise as the Court directs, and the same shall be done accordingly.

Discovery of bankrupt's property.
51 Vic. No. 19, s. 30.
60 Vic. No. 29, s. 2 (8).

30. (1) The Court may, on the application of the official assignee or trustee, at any time after a sequestration order has been made against a debtor, summon before it the bankrupt or his wife, or 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 any person whom the Court may deem capable of giving information respecting the bankrupt, his dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the bankrupt, his dealings or property.

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

(3) The Court may examine on oath, or allow to be examined by the official assignee and trustee and any creditor, or by any solicitor or counsel on behalf of such assignee, trustee, or creditor, in such cases where a solicitor or counsel may be employed as provided by this Act, either by word of mouth or by written interrogatories, any person concerning the bankrupt, his dealings or property.

(4) If any person on examination before the Court or in answer to interrogatories admits, or if by other evidence it is proved to the satisfaction of the Court that he is indebted to the bankrupt, the Court may, on the application of the official assignee or trustee, forthwith order him to pay to such assignee or trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination and order.

(5) If any person on examination before the Court or in answer to interrogatories admits, or if by other evidence it is proved to the satisfaction of the Court, that he has in his possession any property belonging to the bankrupt, the Court may, on the application of the official assignee or trustee, forthwith order him to deliver to the official assignee or trustee such property, or any part thereof, at such time, and in such manner, and on such terms as to the Court may seem just, with or without costs of the examination and order.

31. If the bankrupt or any other person (including the wife of such bankrupt) at any examination under the preceding section, or any adjournment thereof, being thereto required (and not having any lawful excuse in that behalf), shall refuse to surrender any book, document, or writing relating to the estate, or shall refuse to be sworn, or to answer any lawful question touching any of the matters aforesaid, or to subscribe his examination, the Court may commit him to prison, there to remain, until he shall have done the thing so required of him, or shall be discharged by the Court. And if any such person while under examination is guilty of prevarication, or evasion, or indecent conduct, the Court may commit him to prison for any term not exceeding fourteen days.

Committal for refusing to obey or for prevarication. 51 Vic. No. 19, s. 31.

32. Any person committed under the last preceding section may be discharged from such committal on appeal therefrom to the Full Court if committed by the Judge, and to the Judge if committed by the Registrar, and in such last-mentioned cases a further appeal shall lie to the Full Court. If the committal was for refusing to answer a question, such question shall be set out in the warrant, and if it appears that the person committed has fully answered all lawful questions put to him, or, if committed for refusing to be sworn or to produce a document or for not signing his examination, that he had a sufficient reason for such refusal, the Court shall order the person committed to be discharged.

As to discharge from commitment. *Ibid.* s. 32.

33. No question put to the bankrupt in any examination shall be deemed unlawful by reason only that the answer thereto may expose him to punishment:

Answers to questions when admissible. *Ibid.* s. 33.

Provided that no answer to any such question shall be admitted in evidence against him on the trial of any indictment other than on a prosecution against him for perjury.

DIVISION 7.—*Release of estate, and annulment of sequestration order.*

34. After the acceptance and approval of a composition or scheme of arrangement in manner hereinbefore provided, the bankrupt may apply for an order releasing his estate from sequestration, and, on his satisfying the Court that the approved terms of such composition or scheme have been complied with, so far as is at the time practicable, the Court may make such order on such terms as it thinks just:

Release on composition or arrangement. *Ibid.* s. 34.

Provided that the terms of the composition or scheme may at any time be enforced notwithstanding the release in the same manner as is by this Act provided.

35. 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 a like order for the release of his estate; and on being satisfied that the creditors have been so paid or have

Release on payment, &c. *Ibid.* s. 35.

have released their debts and that no proceedings of a criminal nature are pending or contemplated against the bankrupt, the Court may make a like order upon such terms as it thinks just.

Effect of order.
51 Vic. No. 19, s. 36.

36. Any order, whereby the estate is released from sequestration, shall have the effect of revesting in the bankrupt or such person as the Court may appoint, subject to such conditions as he may prescribe, all the property of the bankrupt undisposed of, as if the estate had never been sequestrated:

Provided that all sales and dispositions of the property and payments made and acts theretofore done by the official assignee or trustee shall be valid; and

Provided that the release of the estate shall not operate as a discharge of the bankrupt unless the Court shall so order.

Power for Court to annul sequestration in certain cases.
Ibid. s. 43.

37. (1) Where in the opinion of the Court a sequestration order ought not to have been made, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may on the application of any person interested by order discharge such order.

(2) Where a sequestration order is discharged under this section all sales and dispositions of property duly made, and all acts theretofore done by the official assignee, trustee, or other person acting under their authority, or by the Judge, Registrar, or District Registrar, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the Court may declare by order.

(3) Notice of the order discharging a sequestration order shall be forthwith published in the Gazette.

Meaning of payment of debts in full.
Ibid. s. 44.

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

Division 8.—*Bankrupt's certificate.*

Certificate how and when applied for.
Ibid. s. 37.
60 Vic. No. 29, ss. 2 (9); 11; 12.

39. Whether a composition or scheme of arrangement has been approved as hereinbefore provided or not, and whether his estate has been released or not, the bankrupt may, after the expiration of three months from the date of sequestration, cause an advertisement to be inserted in the Gazette and a newspaper published in the place where the bankrupt resided at the date of the sequestration order, stating his intention

intention to apply on a day fixed by the Judge or Registrar, and named therein, not less than fourteen nor more than thirty days from the day of first publication for a certificate of discharge under this Act: Provided that where the Court has granted a release of the bankrupt's estate under section thirty-five, the bankrupt may forthwith apply for a certificate of discharge, anything in this section to the contrary notwithstanding.

(1) He shall give fourteen days' notice in writing to the official assignee of such intention.

(2) The application shall be heard on the appointed day and on any day or days of adjournment, and the official assignee and any creditor may be heard in opposition to such application upon giving notice of the grounds thereof.

(3) On the hearing of the application the Court shall take into consideration a report of the official assignee or trustee as to the bankrupt's conduct or affairs, and may either—

(*a*) grant or refuse an absolute order of discharge, or

(*b*) suspend the operation of the order for a specified time, or

(*c*) grant an order of discharge or suspend the operation of such order subject to any conditions with respect to any earnings or income which may then be or afterwards become due to the bankrupt or with respect to his after acquired property.

(4) The Court shall refuse the discharge in all cases where he is satisfied that the bankrupt has done or omitted anything which in the opinion of the Court amounts to a misdemeanour under this Act or any amendment thereof, and shall, on proof of any of the facts hereinafter mentioned, either refuse the order or suspend the operation of the order for a specified time, or suspend the operation of, or grant, an order of discharge subject to such conditions as aforesaid.

(5) The Court may, as one of the conditions of granting an order of discharge under this section, require the bankrupt to consent to judgment being entered against him by the official assignee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, but in no case shall execution be issued without leave of the Court on a judgment consented to by the bankrupt under the provisions of this subsection.

Grounds for refusing or suspending certificate.

51 Vic. No. 19, s. 38
60 Vic. No. 29, ss. 13, 14.

40. The facts referred to in the last preceding section are—

(*a*) That the bankrupt has omitted to keep such books of account as are usual and proper in the business or occupation carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy.

(*b*)

(*b*) That the bankrupt has wilfully delayed surrendering his estate or avoided its sequestration in order to benefit or assist one creditor or more to the disadvantage of the rest.

(*c*) That the bankrupt has continued to trade or obtained credit in one or more sums to the amount of fifty pounds or upwards after knowing himself to be insolvent.

(*d*) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall be on him) of being able to pay it.

(*e*) That the bankrupt has brought on his bankruptcy by rash and hazardous speculations or unjustifiable extravagance in living.

(*f*) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action or other proceeding properly brought against him.

(*g*) That the bankrupt has within three months preceding the date of the sequestration order, when unable to pay his debts as they become due, given an undue preference to any of his creditors.

(*h*) That the bankrupt has on any previous occasion been adjudged bankrupt or insolvent, or made a statutory composition or arrangement with his creditors, or assignment for the benefit of creditors at common law, unless his estate then produced ten shillings in the pound, or a majority in number and value of the creditors in that estate certify that in their opinion the bankruptcy or insolvency was the result of misfortune only.

(*i*) That the bankrupt has not upon surrendering his estate or after his sequestration made a full and fair disclosure of his property in possession, reversion, or expectancy.

(*j*) That the bankrupt has wilfully violated or omitted to comply with any of the provisions of this Act.

(*k*) That the bankrupt being at the time insolvent has made away with or disposed of any of his property otherwise than in good faith and for valuable consideration.

(*l*) That the bankrupt has unlawfully expended for his own benefit or appropriated to his own use any property of which he at the time had the charge or disposition as a trustee, factor, broker, or agent only, or that he has been guilty of any fraudulent breach of trust.

(*m*) That there is an unsatisfied judgment against the bankrupt in an action for assault, breach of promise, seduction, or any malicious injury, or for damages or costs under any laws relating to divorce.

(*n*) That the bankrupt has carried on business by means of a fictitious capital.

(*o*)

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

(*p*) That the bankrupt has entered into any agreement not to register or to delay the registration of a bill of sale which is in existence at the date of the sequestration order, and has not been duly registered in accordance with the law in force for the time being dealing with the registration of bills of sale.

(*q*) That the bankrupt has given a bill of sale at any time within three months preceding the date of the sequestration order, he being at the time insolvent within the meaning of section fifty-six of this Act.

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

Fraudulent settlements.
51 Vic. No. 19, s. 39.

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

(1) In the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(2) In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

If the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend the certificate of discharge, or suspend or grant one 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 come within the provisions of the last preceding section.

Discharge of bankrupt.
Ibid. s. 40.
60 Vic. No. 29, ss. 2 (10) : 15.

42. (1) For the purposes of the last two preceding sections the report of the official assignee or trustee shall be prima facie evidence of the statements therein contained.

(2) Notice of the appointment by the Judge or Registrar of the day for hearing the application for a certificate of discharge shall be published in the manner prescribed by rules of Court, and the Court may hear the official assignee and the trustee, and may also hear any creditor, either personally or by counsel. At the hearing the Court may put such questions to the bankrupt and receive such evidence as it thinks fit.

(3)

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

(4) No certificate of discharge shall be issued until the bankrupt has paid all fees due by him in respect of any proceedings under this Act including such fees as may be payable upon the granting of and in respect of the said certificate, and no bankrupt shall be deemed to be discharged within the meaning of this Act until such certificate has issued.

(5) A certificate of discharge shall be issued by the Registrar after an order has been made in that behalf by the Court, and such certificate shall bear the seal of the Court, and be in the form prescribed by rules of Court.

(6) If in consequence of the estate not being sufficiently administered, or for want of sufficient evidence, or for any other reason, the Court is unable to decide whether a certificate should or should not be granted, suspended, or refused, he may adjourn the application for such certificate from time to time:

Provided that the Court shall give its decision as soon as may be after the final dividend has been declared as hereinafter provided, and the bankrupt shall then be entitled to demand that such decision be given without delay.

Application after twelve months.
51 Vic. No. 19, s. 41.

43. (1) No application by the bankrupt for a certificate shall be allowed after twelve months from the date of sequestration unless notice of his intention to apply has been duly advertised before the expiration of that period, except by leave of the Court on such terms as it thinks proper.

Proceedings where bankrupt does not apply.

(2) If the bankrupt has not within nine months after sequestration applied for his certificate, the Court may, on application of the official assignee or trustee, require him by summons, and in case of his refusal or neglect may compel him by warrant, to appear before the Court and show cause, if he has any, why a certificate of discharge should not in his case be refused or suspended, and on such appearance the Court may deal with the case, and grant, refuse, or suspend such certificate, and otherwise deal with such bankrupt as if the certificate had been applied for by him.

Effect of certificate of discharge.
Ibid. s. 42.
60 Vic. No. 29, s. 16.

44. (1) A certificate of discharge shall not release the bankrupt from any debt on a recognisance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue

revenue, or at the suit of the sheriff or other public officer, on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Colonial Treasurer certify in writing his consent to his being discharged therefrom.

(2) A certificate of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(3) A certificate of discharge shall not release the bankrupt from any order made under section sixty-one of this Act, or any amendment thereof, or from any liability under a judgment against him as defendant in an action for seduction, libel, or slander, or from liability as a respondent or co-respondent in a suit in the divorce jurisdiction or under an affiliation order, except to such extent and subject to such conditions as the Court may think just.

(4) A certificate of discharge shall release the bankrupt from all other debts provable in bankruptcy.

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

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

(7) Any assignee or trustee becoming bankrupt and being indebted to the estate of which he was such assignee or trustee in respect of money improperly retained or employed by him shall not be discharged from such debt as to any future assets although he may have obtained his certificate.

PART II.

ADMINISTRATION OF PROPERTY.

DIVISION 1.—*Proof of debts.*

Description of debts provable in bankruptcy.

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

(2) 51 Vic. No. 10, s. 45

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

(3) Save, as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the 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.

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

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

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

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

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

Mutual credit and set-off.
51 Vic. No. 19, s. 46.

46. Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a sequestration order is made under this Act and any other person proving or claiming to prove a debt under such sequestration order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set

set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed as paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him.

Rules as to proof of debt. 51 Vic. No. 19, s. 47.

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

Division 2.—*Preferential debts.*

Priority of debts. *Ibid.* s. 48.

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

(*a*) All wages or salary of any clerk or servant in respect of the services rendered to the bankrupt during six months before the date of the sequestration order, not exceeding fifty pounds; and

(*b*) All wages of any labourer or workmen, not exceeding fifty pounds, whether payable for time or piece-work in respect of the services rendered to the bankrupt during six months before the date of the sequestration order.

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

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

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

(5) Nothing in this section shall alter the effect of the Act fifty-fifth Victoria number twelve, or shall prejudice the provisions of the Friendly Societies Act thirty-seventh Victoria number four, or of the twenty-sixth Victoria number thirteen, or any Acts amending or consolidating the same or any of them.

Preferential claim in case of apprenticeship. *Ibid.* s. 49.

49. (1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the

the sequestration order shall, if either the bankrupt or apprentice or clerk gives notice in writing to the official assignee or 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 official assignee or trustee may, on the application of the apprentice or clerk or of some person on his behalf, pay such sum as the official assignee or trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture of articles before the commencement of the bankruptcy, and to the other circumstances of the case.

(2) Where it appears expedient to an official assignee or trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

Rent.
51 Vic. No. 19, s. 50.
60 Vic. No. 29, s. 2 (11).

50. No distress for rent which has accrued due before the date of the sequestration order shall be levied or proceeded with as against the estate of the bankrupt after the sequestration order, but the landlord shall receive out of the estate so much rent as was then due or accruing due or as by this Act is made provable, but for a period not exceeding three months, and may prove and share ratably with other creditors for the balance.

Division 3.—*Property available for payment of debts.*

Relation back of official assignee's or trustees title.
51 Vic. No. 19, s. 51.
60 Vic. No. 29, s. 2 (12).

51. (1) The bankruptcy of a debtor, whether the same 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 an order is made for the sequestration of his estate, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within six months next preceding the date of the presentation of the bankruptcy petition; but 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.

Court may make order antedating commencement of bankruptcy.
Ibid. s. 8.

(2) The Court may at any time on the motion of the official assignee and on being satisfied that an act of bankruptcy has been committed by the bankrupt within six months next preceding the date of the presentation of the petition upon which the sequestration order

order was made, order and declare the bankruptcy shall be deemed to have relation back to and commence on the date of such act of bankruptcy, and such order or declaration shall be prima facie evidence of the fact of the alleged act of bankruptcy and of the commencement of the bankruptcy on such date as aforesaid.

Description of bankrupt's property divisible amongst creditors.

52. The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars:— 51 Vic. No. 19, s. 52. 60 Vic. No. 29, s. 2 (13).

(*a*) Property held by the bankrupt on trust for any other person:

(*b*) The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole:

But it shall comprise the following particulars:

(*c*) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and

(*d*) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and

(*e*) All goods being, at the commencement of the bankruptcy or at any time between that time and the date of the order of sequestration in the possession, order, or disposition of the bankrupt, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

DIVISION 4.—*Effect of bankruptcy on antecedent transactions.*

Restriction of rights of creditor under execution or attachment.

53. (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 official assignee or trustee of the bankrupt unless he has completed the execution or attachment before the date of the sequestration order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor. 51 Vic. No. 19, s. 53.

(2) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by

by receipt of the debt; and an execution against land is completed by seizure and sale, or, in the case of an equitable interest, by the appointment of a receiver.

Duties of sheriff as to goods taken in execution.

51 Vic. No. 19, s. 54.

54. (1) Where property of a debtor is taken in execution, and before the sale thereof notice is served on the sheriff that a sequestration order has been made against the debtor, the sheriff shall, on request, deliver the property to the official assignee or trustee under the order, but the costs of the execution shall be a charge on the property so delivered, and the official assignee or trustee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

(2) Where the property of a debtor is sold under an execution in respect of a judgment for a sum exceeding twenty pounds, the sheriff shall deduct the costs of the execution from the proceeds of sale, and retain the balance for seven days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and the debtor is adjudged bankrupt thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official assignee or trustee, who shall be entitled to retain the same as against the execution creditor, but otherwise he shall deal with it as if no notice of the presentation of a bankruptcy petition had been served on him.

Avoidance of voluntary settlements.

Ibid. s. 55.

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

(2) Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the official assignee or trustee in the bankruptcy.

(3)

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

(4) Nothing in this section shall be deemed to affect or invalidate the rights of any person deriving title to any property in good faith and for valuable consideration through or under any person taking or claiming as a donee of any settlement. 60 Vic. No. 29, s. 35.

56. (1) Every alienation, transfer, gift, surrender, delivery, mortgage, or pledge of any estate or property, real or personal, every warrant of attorney or judicial proceeding made, taken, or suffered by a person being at the time insolvent or in contemplation of surrendering his estate under this Act, or knowing that proceedings for placing the same under sequestration have been commenced, or within sixty days before the sequestration thereof, and, whether fraudulent or not, having the effect in any such case of preferring any then existing creditor to another shall be absolutely void. Preferences. *Ibid.* s. 17.

(2) For the purpose of this section the word insolvent means the inability of a person to pay his debts as they become due from his own moneys.

(3) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

57. Subject to the 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 subject to the provisions of this Act with respect to the avoidance of certain preferences except as hereinafter provided, nothing in this Act shall invalidate in the case of a bankruptcy :— Protection of bonâ fide transactions, payments, advances, &c., without notice. *Ibid.* s. 18.

(*a*) Any payment by the bankrupt to any of his creditors for or on account of any just debt due at the time of payment.

(*b*) Any payment or delivery to the bankrupt.

(*c*) Any conveyance or assignment by the bankrupt for valuable consideration.

(*d*) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration.

(*e*) Any transaction to the extent of any present advance bonâ fide made by any existing creditor.

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

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

(2) The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into has not

at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

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

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

Assignment when void.
51 Vic. No. 19, s. 58.
60 Vic. No. 29, ss. 2 (14), 23.

58. Every distribution of property which is under this Act an available act of bankruptcy shall be void as against the official assignee or trustee, save only that in the case of a conveyance or assignment by the bankrupt of property in trust for his creditors registered within one month from the execution thereof by the assignor in accordance with the provisions of subsection ten of section four of this Act, all dealings with such property, and all acts done in good faith by any trustee under such instrument, shall be valid unless at the time of the dealing or act he knew or had notice that proceedings to sequestrate the assignor's estate had been or were about to be taken.

Division 5.—*Realisation of Property.*

Possession of property by official assignee.
51 Vic. No. 19, s. 59.

59. (1) The official assignee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.

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

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

(4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to be assignable and to have been duly assigned to the official assignee; and the official assignee, or the trustee in the event of the estate of the official assignee vesting in a trustee, may sue in any Court in the name of the bankrupt, or continue any action or suit begun by the bankrupt at the date of the sequestration order.

(5)

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

Books, &c., may be destroyed with leave of the Court. 60 Vic. No. 29, s. 25.

(6) After the expiration of five years from the date of the sequestration order, or two years from the date of the certificate of discharge, whichever shall first happen, the official assignee may with the leave of the Court cause all or any of the books and other documents and papers lodged with him by a bankrupt or insolvent to be destroyed.

Seizure of property of bankrupt. 51 Vic. No. 19, s. 60.

60. (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, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and when 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.

(2) Any person acting under such warrant shall make an inventory thereof, and leave with the person in whose possession any such property is attached a copy of the warrant and inventory having subjoined thereto a notice that the property has been attached as belonging to the bankrupt estate, and that any person who knowing the same to have been so attached removes, retains, conceals, or receives any part thereof with intent to defeat the said attachment is guilty of a misdemeanour.

Power to direct payment by Civil Servant, &c., out of salary. 60 Vic. No. 29, s. 19 (1).

61. (1) Where the bankrupt is an officer of the Army or Navy, or of the Colonial Forces, or an officer or clerk, or otherwise employed or engaged in the Civil Service of the Crown, the Court may, on the application of the official assignee or trustee, make an order for the payment to such assignee or trustee for distribution among the creditors of the bankrupt of so much of the bankrupt's pay and salary then due or thereafter to become due as he thinks fit.

(2) Before making any order under the preceding subsection, the Court shall communicate with the chief officer of the department under which the pay or salary is enjoyed as to the amount, times, and manner of such payment, and shall hear and give consideration to any report which such chief officer may make as to the circumstances of the case.

(3)

51 Vic No. 19, s. 61 (2).
60 Vic. No. 29, s. 19 (2).

(3) When the bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay or pension, or any compensation charged on the Consolidated Revenue, the Court, on the application of the official assignee or trustee, may make such order as he thinks just for the payment of the salary, income, half-pay, pension, compensation, or of any part thereof to the official assignee or trustee, to be applied by him in such manner as the Court may direct.

51 Vic. No. 19, s. 61 (3).

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

Disclaimer of onerous property.
Ibid. s. 62.

62. (1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the official assignee or trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may by writing signed by him, at any time within three months after the date of the sequestration order, disclaim the property.

(2) Where any such property has not come to the knowledge of the official assignee or trustee within one month after the date of the sequestration order he may, upon obtaining permission from the Court, disclaim such property at any time within two months after he first became aware thereof.

(3) 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 official assignee or 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 official assignee or trustee from liability) affect the rights or liabilities of any person.

(4) An official assignee or trustee shall not be entitled to disclaim a lease without leave of the Court, except in any cases which may be prescribed by rules of 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, compensation for use or occupation of the premises since the date of sequestration, and other matters arising out of the tenancy as the Court thinks just.

(5)

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

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

(7) The Court may, on application by any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as he thinks fit make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance 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 underlessee or as mortgagee by demise, except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or underlessee declining to accept a vesting order upon such terms shall be excluded from all interest in, and security upon the property, and if there be no person claiming under the bankrupt who is willing to accept an order upon such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

(9)

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

Powers of official assignee or trustee independently of committee of inspection.

51 Vic. No. 19, s. 63.

63. Subject to the provisions of this Act the official assignee or trustee may do all or any of the following things :—

(1) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt) by public auction, with power to transfer the whole thereof to any person or company or to sell the same in parcels.

(2) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof.

(3) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt.

(4) Exercise any powers, the capacity to exercise which is vested in the official assignee or trustee under this Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Act.

(5) Deal with any property to which the bankrupt is beneficially entitled as tenant-in-tail in the same manner as the bankrupt might have dealt with it.

Powers exercisable by official assignee or trustee, with permission of committee of inspection.

Ibid. s. 64.

64. The official assignee or trustee may, with the permission of the committee of inspection, do all or any of the following things :—

(1) Carry on the business of the bankrupt so far as may be necessary for the beneficial winding-up of the same.

(2) Bring, institute, or defend any action or other legal proceeding relative to the property of the bankrupt.

(3) Employ a solicitor, counsel, or other agent to take part in any examination of the bankrupt or other person under this Act or to take any proceedings or to do any business which may be sanctioned by the committee of inspection.

(4) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the committee think fit.

(5) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts.

(6) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums payable at such times, and generally on such terms as may be agreed on.

(7)

(7) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy.

(8) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the official assignee or trustee by any person, or by the official assignee or trustee on any person.

(9) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(10) Appoint the bankrupt himself to superintend the management of the property of the bankrupt or any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee or trustee may direct.

(11) Make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding-up his estate, but any such allowance may be reduced by the Court.

(12) 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 private sale.

Permission to be specific.
60 Vic. No. 29, s. 20.
51 Vic. No. 19, s. 65 (2).

65. (1) The permission given for the purposes of the preceding section shall not be a general permission to do all or any of the things therein mentioned, but only a permission to do the particular thing for which permission is sought in the specified case.

(2) It shall not be necessary for persons dealt with by the assignee or trustee to ascertain whether he had the necessary sanction, but its existence shall be conclusively presumed for the purposes of the transaction, if the person dealt with shall in good faith have acted in reliance on the fact that there was such sanction.

Court may give permission.
Ibid. s. 66.

66. If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Court.

Title conveyed by official assignees or trustees.
7 Vic. No. 19, s. 15.
52 Vic. No. 11, s. 5.
60 Vic. No. 29, s. 5.

67. The same title or property whether real or personal belonging to or forming part of any bankrupt or insolvent estate may be conveyed or transferred in fee or otherwise, as the case may be, to any purchaser, mortgagee, or other person by the assignee or trustee of such estate for the time being as the bankrupt or insolvent himself had or was by law entitled or able to convey or transfer immediately before

before the sequestration of his estate, and it shall not be essential to the validity of any such conveyance or transfer (so far as it respects the right of any person to execute the same as assignee) to prove more than the fact of his appointment, or, in the case of a trustee or elected assignee, his confirmation in that character, that at the time of the execution of the instrument he had not been removed from office, and that there was then no assignee or trustee in or of the estate in question other than the assignee or trustee executing the same, of which several facts the certificate of the Chief Commisssoner, Judge, or Registrar indorsed on such instrument of transfer shall be conclusive evidence.

Deeds executed by official assignee or trustee to be deemed effectual to convey.
10 Vic. No. 14, s. 3.
52 Vic. No. 11, s. 5.

68. (1) All deeds duly executed by the assignee or trustee for the time being of any bankrupt or insolvent estate purporting to convey, assign, release, or assure any part of the property of a bankrupt or insolvent to any purchaser, mortgagee, or other person for any estate or interest therein shall be valid both at law and in equity for conveying, assigning, releasing, and assuring such property for the estate and interest in such deed mentioned.

Purchasers relieved from the effect of omissions.

(2) Such purchaser, mortgagee, or other person, and every person claiming under him shall be relieved from inquiring whether the advertisements have been inserted, and meetings of creditors called, or direction of creditors obtained as by law required, notwithstanding the same have not been inserted, called, or obtained.

(3) Any person who deals or contracts with or takes any conveyance or other assurance from any assignee or trustee for the time being as aforesaid of any bankrupt or insolvent estate shall not be bound to inquire into the power or authority of such assignee or trustee with respect to such dealing, contracting, conveyance, or assurance as aforesaid, but such assignee or trustee shall for the purposes aforesaid, and as between him and such person as aforesaid, be deemed and considered as beneficial owner of the real and personal property of the bankrupt or insolvent.

But assignees not exonerated.

(4) Nothing in this Act contained shall be construed to exonerate any such assignee or trustee from any liability for the non-observance or non-performance of his duty as such assignee or trustee as aforesaid.

(5) In this section and the last preceding section the expression "assignee" shall include an official assignee of any bankrupt or insolvent estate and an elected assignee whose election has been confirmed by the Court.

Division 6.—*Distribution of estate.*

Account and plan of distribution.
51 Vic. No. 19, s. 67.

69. As soon as possible, and not later than four months after sequestration (or three months in respect of estates requiring only a single meeting), the official assignee or trustee shall frame and lay before

before the Court an exact account of the balance of the estate, specifying the proceeds of sales and debts collected and all debts outstanding, together with an inventory of all property still unsold, and showing the debts due by the estate, and shall present a plan for distribution of the assets, specifying first such creditors as are entitled to preference in their order of legal preference, and secondly the unsecured creditors and the balance remaining for division amongst them. A similar account and plan shall be submitted from time to time as the Court may direct.

Audit and notice thereof. 51 Vic. No. 19, s. 68.

70. As soon as the Registrar has audited such account and made his report thereon, and the plan for distribution has been approved of by the Court, it shall lie in the office of the Registrar for inspection by the creditors and bankrupt for such reasonable time as may be directed, but not less than fourteen days from the advertisement thereof, and the official assignee or trustee shall cause notice thereof to be given to the creditors and inserted in the Gazette.

As to objections thereto. *Ibid.* s. 69.

71. (1) The bankrupt, and any party interested in the estate, and any creditor, may, within the time aforesaid, enter his objection in writing with the Registrar stating the grounds thereof.

(2) The Court may permit such objection to be entered at any time before final confirmation of the plan on such terms as the Court thinks fit.

Proceedings thereon. *Ibid.* s. 70.

(3) The person objecting to the account or plan shall apply to the Judge or Registrar for an order calling on the official assignee or trustee and also on the party whose interest may be affected thereby to show cause why the plan should not be amended, and thereupon the Court upon hearing the parties may make such order as it thinks fit.

(4) Whenever any amendment is ordered in the plan, whereby the interest of any party who has not been heard is affected, the plan shall again be open for inspection and notice thereof be given as aforesaid.

Confirmation and effect thereof. *Ibid.* s. 71.

72. (1) After expiration of the time appointed for inspection of the account and plan of distribution without any objection being entered thereto, or, if an objection has been entered, then, after disposal thereof, the official assignee or trustee may apply to the Court that the plan may be confirmed, and thereupon the Court may confirm the same; and such confirmation shall have the effect of a final judgment as between the bankrupt and his creditors, except as to the amount of any debt afterwards expunged or reduced, and except against such creditors as are afterwards admitted to prove their debts against the estate at any time before its final distribution.

Bankrupt liable to arrest if he removes out of the jurisdiction before the account and plan is confirmed. 60 Vic. No. 29, s. 27.

(2) If a bankrupt removes out of the jurisdiction before the confirmation of the account and plan of distribution in his estate, except with the consent of three-fourths in number and value of the proved creditors in his estate or by leave of the Court, the Court may, on

on the information of the official assignee or trustee or of any creditor, by warrant addressed to the sheriff or any constable or officer of the Court prescribed by rules of Court, cause such bankrupt to be arrested and to be safely kept as prescribed by rules of Court until such time as the Court may order.

Joint and separate dividends.
51 Vic. No. 19, s. 72.

73. (1) Where a sequestration order is made against one partner of a firm, 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 that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the official assignee or trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Right of creditor who has not proved debt before declaration of a dividend.
Ibid. s. 73.

74. (1) 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 official assignee or trustee any dividend he may have 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.

Plan of distribution not to be disturbed in certain cases.
60 Vic. No. 29, s. 26.

(2) After a plan of distribution has been approved of by the Court no creditor shall be entitled by proof of his debt to disturb the plan of distribution unless he satisfy the Court that he could not, by the exercise of due diligence, have proved his debt prior to such approval.

Ibid. s. 26.

(3) In any order allowing a disturbance of the plan of distribution the Court may impose such terms as to costs or otherwise as he may think fit.

Ibid. s. 26.

(4) If an amendment is ordered in the plan under section seventy-one of this Act any creditor who has proved his debt before the order is made directing such amendment shall be entitled to rank for dividend on the amended plan.

No action for dividend.
51 Vic. No. 19, s. 74.

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

Official assignee or trustee to give notice of dividend.
Ibid. s. 57.

76. The official assignee or trustee shall cause notice to be given as prescribed by rules of Court when and where dividends are payable to creditors and others interested in the estate.

77.

77. In cases 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 reference to the distribution of such assets with a view to giving the indemnifying creditors an advantage over others in consideration of the risk run by them in giving such indemnity. Distribution of assets where creditors give indemnity for costs. 60 Vic. No. 29, s. 10.

78. (1) The official assignee or trustee shall, at periods prescribed by rules of Court, file with the Colonial Treasurer and the Registrar statements showing how each bankrupt estate has been applied and disposed of under the following heads, that is to say:— Official assignee to file periodical statements. 51 Vic. No. 19, s. 76.

(*a*) Gross amount of assets realised.
(*b*) Costs, charges, allowances, and expenses.
(*c*) Remuneration or commission.
(*d*) Preferential payments.
(*e*) Dividends to general creditors.
(*f*) Balance undisposed of.

(2) If any part of the estate has not then been collected or disposed of such statement shall specify the nature of such unrealised estate.

(3) The official assignee or trustee shall make out and file such further or fuller statements in any case as the Court may think proper.

79. The Court may, on the complaint of any creditor or person interested, or upon any report or audit by the Colonial Treasurer or Registrar, allow or disallow all or any part of the costs, charges, allowances, and expenses claimed by any official assignee or trustee or of any payment made by such assignee or trustee, and make such order thereon as the Court thinks fit. Court may disallow costs, charges, &c. *Ibid.* s. 77.

80. (1) When the official assignee or trustee has realised all the property of the bankrupt, or so much thereof as can, in the opinion of such official assignee or trustee, or in the joint opinion of himself and of the committee of inspection where such committee has been appointed, be realised without needlessly protracting the winding-up of the estate, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed by rules of Court to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims. Final dividend. *Ibid.* s. 78. 60 Vic. No. 29, s. 2 (15).

(2) After the expiration of the time so limited, or, if the Court on application by any such claimant grant him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other person.

Right of bankrupt to surplus.
51 Vic. No. 19, s. 79.

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

PART III.

Creditors' Trustees and Official Assignees.

Division 1.—*Remuneration of trustees and assignees.*

Remuneration of trustees.
Ibid. s. 80.

82. (1) Where the creditors appoint any person to be trustee of a bankrupt's estate, his remuneration (if any) shall 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 or percentage, of which one part shall be payable on the amount realized, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

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

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

(4) Where no remuneration has been voted to a trustee he shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him in or about the proceedings of the bankruptcy as the Registrar may allow.

(5) The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as a 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.

Remuneration of official assignee.
Ibid. s. 81.
60 Vic. No. 29, s. 2 (16).

83. (1) Where no trustee is appointed an official assignee shall receive in the absence of any resolution of the creditors allowing a larger amount, a remuneration in the nature of a commission or percentage at the rate of five per centum, of which one half shall be payable on the gross amount coming into the hands of the official assignee in each estate, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other half shall be payable upon each dividend as and when it is declared.

(2)

(2) An official assignee, who is elected to act as trustee, shall receive remuneration as such trustee, provided that it is not less than the remuneration by this section allowed to an official assignee.

(3) Where trustees are duly appointed under this Act (of whom the official assignee is not one), the official assignee shall receive from such trustees such sum for his services as the Registrar may from time to time declare to be reasonable, but such sums in the aggregate shall not exceed (except upon special order of the Court on that behalf and made under the next following section) the amount allowed by this section when no creditors' trustee has been appointed.

Power to increase remuneration for special services. 51 Vic. No. 19, s. 82.

84. The Court may from time to time order that the remuneration of a trustee or official assignee be increased, and may take into account in allowing such increase :—

(*a*) Any special services rendered by such trustee or assignee.

(*b*) Any special circumstance, which, in the opinion of the Judge, increased the difficulty of realizing the estate.

(*c*) The smallness of the amount realizable in the estate.

An official assignee or trustee to be recouped expenses. *Ibid.* s. 83. 60 Vic. No. 29, s. 2 (17), (18).

85. (1) An official assignee or trustee is entitled to receive out of the estate in priority to the payment of a dividend payment for moneys disbursed, and for liabilities and costs incurred by him on behalf of the estate and in accordance with the provisions of this Act.

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

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

Allowance and taxation of costs.

(4) All bills and charges of solicitors, managers, accountants, auctioneers, brokers, official assignees, or trustees, and other persons shall be taxed by the Registrar or other taxing officer appointed by the Judge, and no payments in respect thereof shall be allowed in the official assignee's or trustee's accounts without proof of such taxation having been made, and the Registrar or other taxing officer appointed by the Judge shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned.

(5) Every such person shall, on request by the official assignee or trustee (which request the official assignee or trustee shall make a sufficient time before declaring a dividend) deliver his bill of costs or charges to the Registrar or other taxing officer appointed by the Judge for taxation, and if he fails to do so within seven days after receipt of the request, or such further time as the Judge or Registrar, or other taxing officer appointed by the Judge, on application, may grant,

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

(6) The Registrar or other taxing officer appointed by the Judge may refer for taxation any common law charges in any bill of costs or charges to the Prothonotary, and any equity or conveyancing charges to the Master or Deputy Registrar in equity; and in respect of such charges the decision of the Prothonotary or Master or Deputy Registrar shall be deemed to be the decision of the Registrar or other taxing officer appointed by the Judge, and be subject to appeal to the Court under this Act.

(7) An appeal shall lie to the Court from the decision of the Registrar or other taxing officer appointed by the Judge in allowing or disallowing any item on the motion of the official assignee or trustee, or any creditor of the estate or any other person interested.

Prohibition of secret understandings.
51 Vic. No 19, s. 84.

86. (1) No official assignee, trustee, receiver, manager, or member of a committee of inspection shall, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditor or allowed by this Act and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee to the bankrupt, or any solicitor or other person that may be employed about a bankruptcy.

(2) Any person offending against this section shall be guilty of a misdemeanour.

Division 2.—*Official name.*

Official name of trustee.
Ibid. s. 85.

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

Division 3.—*Appointment and removal.*

Official assignees to be appointed by Governor.
Ibid. s. 86.
60 Vic. No 29, s. 2 (19).

88. The Governor may, with the approval of the Judge, appoint such number of persons official assignees in bankruptcy as may be, in the opinion of the Judge, from time to time required, and both such official and elected assignees shall be under the direction and control of the Judge.

(2)

(2) Every official assignee shall, upon his appointment, give such security as may be prescribed by rules of Court.

(3) For the purpose of affidavits, verifying proofs, petitions, or other proceedings under this Act an official assignee may administer oaths.

Office of trustee vacated by bankruptcy. 51 Vic. No. 19, s. 87.

89. If an order of sequestration is made against an official assignee or a trustee he shall thereby vacate his office.

Removal of trustee. *Ibid.* s. 88.

90. (1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee elected by them, or appointed by the committee of inspection, and may at the same or any subsequent meeting appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.

(2) The Judge may remove any official assignee or trustee for misconduct or neglect or omission in the performance of his duties under this Act, or for absence from New South Wales, or for any other reasonable cause; but if the creditors, by ordinary resolution, disapprove of the removal of a trustee, he or they may appeal against it to the Full Court.

Proceedings in case of a vacancy in the office of trustee. *Ibid.* s. 89.

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

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

(3) If the creditors do not, within three weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the official assignee shall report the matter to the Court, and the Court may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee as in the case of a first appointment.

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

Resignation *Ibid.* s. 90.

92. (1) Any official assignee or trustee or manager or receiver may apply to the Court for leave to resign his office, and if no valid objection be stated, and if the Court be satisfied that he has complied with the provisions of this Act, and with the rules of Court, his application may be granted; but if any objection be stated thereto the Court shall proceed to determine the same, and shall make such order thereon as it deems fit, and if the application of any such official assignee, or trustee, or manager, or receiver for leave to resign be granted, the Court may make such orders as may be necessary for the preservation and administration of the estate until a new official assignee, or trustee, or manager, or receiver be appointed or elected and confirmed, and for the discharge

discharge and acquittance of such assignee, or trustee, or manager, or receiver, and for the security and payment of any unclaimed dividends to the parties entitled to the same.

(2) No order of the Court allowing such assignee, trustee, manager, or receiver to resign shall prevent the official assignee, trustee, manager, or receiver thereafter appointed or elected and confirmed in his stead from calling upon him to account for anything done or left undone prior to his resignation.

Court may make vesting order.
52 Vic. No. 11, s. 4.

93. For the purpose of transferring any estate vested in an official assignee or trustee (whether such estate were vested before or after the passing of this Act) to, and vesting the same in some other official assignee or trustee, the Court may make such vesting order as in its opinion will effectually carry out such transfer to, and the vesting of such estate in, the person named in such order, and such order when made shall have the effect of vesting in the person therein named the whole right, title, and interest of the official assignee or trustee from whom such right, title, and interest is intended to be divested or transferred.

Provision against abatement in certain cases.
Ibid. s. 6.

94. (1) No action or proceeding of any kind to which an official assignee or trustee has been a party shall be deemed to have abated by the death or resignation, or vacation of, or removal from, office of any such official assignee or trustee; but in every such case such action or proceeding may be continued in the name of the official assignee or trustee appointed in the place of the official assignee or trustee who has died, resigned, or vacated, or been removed from his office: Provided that a suggestion in the usual way is made of such death, resignation, removal, or vacation.

Division 4.—*Control over assignees and trustees.*

Discretionary powers of official assignee and trustee and control thereof.
51 Vic. No. 19, s. 91.

95. (1) Subject to the provisions of this Act the assignee and trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by any resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

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

(3)

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

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

Appeal to Court against official assignees or trustees. 51 Vic. No. 19, s. 92.

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

Control of Judge over official assignees and trustees. *Ibid.* s. 93.

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

(2) The Judge may at any time require an assignee or trustee to answer any inquiry made by him in relation to any bankruptcy in which such assignee or trustee is engaged, and may, if he thinks fit, examine on oath such assignee or trustee or any other person concerning the bankruptcy.

(3) The Judge may also direct an investigation to be made of the books and vouchers of the assignee or trustee by the Colonial Treasurer or Registrar.

Audit of official assignees' or trustees' account. 60 Vic. No. 29, s. 21.

98. (1) Every official assignee and trustee shall, at such times as may be prescribed by rules of Court, but not less than twice in each year during his tenure of office, send to the Registrar and to the Colonial Treasurer, an account of his receipts and payments as such assignee or trustee.

(2) The account shall be in the form prescribed by rules of Court and shall be made in duplicate, and shall be verified by affidavit in the form prescribed by rules of Court.

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

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

The official assignee or trustee to furnish list of creditors.
51 Vic. No. 19, s. 95.

99. The official assignee or trustee shall, whenever required by any creditor so to do, and on payment by such creditor of the fee prescribed by rules of Court, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors.

Books to be kept by official assignee or trustee.
Ibid. s. 96.

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

Annual statement of proceedings.
Ibid. s. 97.
60 Vic. No. 29, s. 2 (20).

101. (1) Every official assignee or trustee in a bankruptcy shall from time to time, as may be prescribed by rules of Court, and not less than once in every year, so long as he has any assets unadministered in his hands, transmit to the Court a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the particulars, and made out in the form prescribed by rules of Court.

(2) The Court shall cause the statement as transmitted to be examined, and call the official assignee or trustee to account for any misfeasance, neglect, or omission which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

Payment of money into Bankruptcy Estates Account.
51 Vic. No. 19, s. 98.

102. (1) An account called the "Bankruptcy Estates Account" shall be kept by the Registrar with such bank as the Colonial Treasurer may from time to time direct, and all moneys received by the Registrar, in respect of proceedings under this Act shall be paid to that account.

(2) Every official assignee and every trustee shall, in such manner and at such times as may be prescribed by rules of Court, pay the money received by him to the Registrar, who shall furnish a receipt of the money so paid.

(3) If it appear to the official assignee or, if a committee of inspection has been appointed, to such committee, that for the purpose of carrying on the debtor's business, or of obtaining advances, or because of the probable amount of the cash balance, or, if the Registrar certify that for any other reason it is for the advantage of the creditors that the official assignee or trustee should have an account with a bank, the Registrar shall authorise the official assignee or trustee to make his payments into and out of such bank as the Registrar may select.

(4) Such account shall be opened and kept by such assignee or trustee in the name of the bankrupt's estate; and any interest receivable in respect of the account shall be part of the assets of the estate.

(5)

(5) If an official assignee or trustee at any time retain for more than ten days a sum exceeding fifty pounds, or such other amount as in any particular case the Registrar authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall have no claim for remuneration, and may be removed from his office, and shall be liable to pay any expenses occasioned by reason of his default.

(6) All payments out of moneys standing to the credit of the Registrar in the "Bankruptcy Estates Account" shall be made by the Registrar or other officer prescribed by rules of Court in the manner thereby prescribed.

(7) The Judge or the Colonial Treasurer may at any time require the production of and inspect any books or accounts kept by the Registrar, and the Colonial Treasurer shall cause the accounts of the Registrar to be audited once at least every quarter, and for the purpose of such audit the Registrar shall furnish the Colonial Treasurer with such vouchers and information as he shall require.

103. No official assignee or trustee shall pay any sums received by him as such assignee or trustee into his private banker's account, or otherwise than as hereinbefore directed.

No payments allowed into private accounts. 51 Vic. No. 19, s. 99.

104. (1) Whenever the cash balance standing to the credit of the "Bankruptcy Estates Account" is in excess of the amount which in the opinion of the Registrar is required for the time being to answer demands in respect of bankrupt estates, the Registrar shall notify the same to the Colonial Treasurer, and shall pay over the same or any part thereof as the Colonial Treasurer may require to the Colonial Treasurer to such account as the Colonial Treasurer may direct, and the Colonial Treasurer may invest the said sums or any part thereof in Government securities to be placed to the credit of the said account.

Investment of surplus funds. *Ibid.* s. 100.

(2) Whenever any part of the money so invested is, in the opinion of the Registrar, required to answer any demands in respect of bankrupts' estates the Registrar shall notify to the Colonial Treasurer the amount so required, and the Colonial Treasurer shall thereupon repay to the Registrar such sums as may be required to the credit of the "Bankruptcy Estates Account," and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on the investments under this section shall be paid to such account as the Colonial Treasurer may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of bankruptcy proceedings.

105. (1) All dividends and balances in estates administered under the provisions of this Act which are unclaimed by the parties entitled thereto for the space of six months next after the same are payable shall, unless the Judge otherwise orders, be paid into the Colonial

Unclaimed dividends and balances to be paid into Unclaimed Dividend Fund. *Ibid.* s. 101. 60 Vic. No. 29, s. 2 (21).

Colonial Treasury to the credit of a fund to be called the "Bankruptcy Unclaimed Dividend Fund."

Bankruptcy Suitors' Fund.

(2) The Governor may direct that all sums paid to the credit of the said fund shall be invested in Government debentures, and the interest arising from such investment shall be paid to the credit of a fund to be called the "Bankruptcy Suitors' Fund."

Unclaimed dividends and balances may under circumstances be paid to persons entitled.

(3) Any person entitled to receive any dividend or balance hereby directed to be paid into the said "Unclaimed Dividend Fund" may apply to the Court for the payment of such dividend or balance to him, and the Court may order such dividend or balance to be paid to him, and upon every such order the Governor shall issue his warrant for the payment of the amount specified in such order, and the Treasurer shall pay the same out of the said fund.

Insolvent estates.

Jurisdiction, &c., in respect of estates vested in official assignees before passing of the Act 51 Vic. No. 19.

52 Vic. No. 11, s. 2.

106. (1) In any case where the estate of any person has under the Acts relating to insolvency been vested in any official assignee, the Judge shall, in respect of such official assignee and every estate so vested in him, have, and may exercise, all the powers and all such other jurisdiction as might have been exercised in respect of such official assignee or such estate by the Chief Justice or by the Chief Commissioner of insolvent estates.

(2) The Judge shall also have full power and authority to inquire into, and investigate, the dealings of such official assignees with each estate vested in him or with any part thereof, whether such dealings took place before or since the passing of the Act fifty-first Victoria number nineteen, or before his removal as hereafter provided for.

(3) The Judge shall also have full power and authority to remove such official assignee from being the official assignee of any particular estate, and may appoint any other of the official assignees to be the official assignee of such estate, and in case of such removal, the right, title, and interest of the official assignee so removed shall, by the order appointing the official assignee in his place vest in the official assignee so appointed as aforesaid.

(4) The Judge shall also have full power and authority to order any official assignee to bring into Court any sums of money which he may find to be in the hands of such official assignee, and also may call upon any official assignee to account fully for all moneys which have come to his hands at any time and to show how the same were disposed of, and generally may exercise all necessary powers and authorities to compel any official assignee fully to disclose all his dealings with all or any of the estates so vested in him.

(5)

(5) The Judge may also upon the application of the Colonial Treasurer or of any person interested, direct an investigation by the Colonial Treasurer or by any person instructed by the Colonial Treasurer, or by the Registrar, of the books, accounts, vouchers, papers, and documents of any such official assignee, and may order such books, accounts, vouchers, papers or documents to be handed over to the Colonial Treasurer or to any person instructed by him, or to the Registrar; and may direct an inquiry as to the conduct, omissions, and dealings of any such assignee, and may remove him from his office for misconduct or neglect.

(6) Every official assignee appointed an official assignee of any estate under the provisions of this section shall be subject to all the provisions of this section, in respect of the estate to which he is so appointed.

PART IV.

PROCEDURE.

Discretionary powers of the Court.

51 Vic. No. 19, s. 102.

107. (1) Subject to the provisions of this Act and to rules of Court, the costs of and incidental to any proceeding under this Act shall be in the discretion of the Court.

(2) Where any issue is tried by a jury the costs shall follow the event, unless the Court otherwise orders.

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

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

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

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

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

Consolidation of petitions.

Ibid. s. 103.

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

109.

Power to change carriage of proceedings.
51 Vic. No. 19, s. 104.

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

Continuance of proceedings on death of debtor.
Ibid. s. 105.
60 Vic. No. 29, s. 2 (22).

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

Power to stay proceedings.
51 Vic. No. 19, s. 106.

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

Power to present petition against one partner.
Ibid. s. 107.

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

Power to dismiss petition against one partner.
Ibid. s. 108.

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

PART V.

Application of Act.

Exclusion of limited companies.
Ibid. s. 109.

114. A sequestration order shall not be made against any corporation, or against any partnership or association or company registered under the Act thirty-seventh Victoria number nineteen or any Act consolidating or amending the same.

Sequestration of partnership estate.
Ibid. s. 110.

115. (1) Any creditor of a partnership may present a bankruptcy petition against such partnership, if he would be entitled to present such a petition against any one of the members of such partnership.

(2) An order of sequestration may be made against a partnership estate although all the partners be not included therein.

Voluntary sequestration of partnership estate.
Ibid. s. 111.

116. The estate of a partnership trading or having any estate in New South Wales may be sequestrated upon the petition of the greater number of the partners resident in New South Wales.

Consolidation of proceedings in case of partnerships.
Ibid. s. 112.

117. Where an order for sequestration has been made on a bankruptcy petition against or by one member of a partnership, and another bankruptcy petition against or by a member of the same partnership is filed, the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Actions by official assignee or trustee and bankrupt's partners.
Ibid. s. 113.

118. Where a sequestration order is made against a member of a partnership the Court may authorise the official assignee or trustee to commence and prosecute any action in the names of the assignee or trustee

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

Actions in joint contracts. 51 Vic. No. 19, s. 114.

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

Proceedings in partnership's name. *Ibid.* s. 115.

120. Any two or more 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 such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise as the Court may direct.

Petition against estate of a deceased person. *Ibid.* s. 116.

121. Any creditor of the estate of a person deceased may present a bankruptcy petition, if any executor or administrator of such estate has committed an act of bankruptcy whereby the creditors may be defeated or delayed in obtaining payment of their debts, praying that the estate may be sequestrated—and the like proceedings may be taken concerning such estate and its representatives as in the case of other estates and persons.

Voluntary sequestration by executor or administrator. *Ibid.* s. 117.

122. Any person in whom the administration of the estate of a person deceased is vested, or in whom the estate of any person is vested in trust for creditors, may present a bankruptcy petition, and the like proceedings may be taken against and concerning such estate and its representatives as in the case of other estates and persons.

Married women. *Ibid.* s. 118.

123. A bankruptcy petition may be presented by and against a married woman in respect of her separate estate.

General rules. *Ibid.* s. 119.

124. (1) The Judges or any three of them may make general rules for regulating the practice, procedure, and forms in respect of all matters under this Act.

(2) A copy of every such rule shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in session, or otherwise within fourteen days after the commencement of the next ensuing session.

Saving of rights under Life Assurance Act. *Ibid.* s. 120.

125. Nothing in this Act shall affect the operation of or prejudice the provisions of the Life Assurance Encouragement Act of 1862 or any Act amending or consolidating the same.

PART

PART VI.

INDICTABLE OFFENCES.

51 Vic. No. 19, s. 121.

126. Whosoever commits any of the offences mentioned in this section shall be guilty of a misdemeanour and be liable to imprisonment with or without hard labour for any time not exceeding three years, and may be ordered to pay damages to any person whom he has injured by such offence, that is to say:—

Concealing property.

(*a*) Whosoever wilfully conceals any property being part of the estate of a bankrupt with intent to defraud his creditors.

Forging process.

(*b*) Whosoever forges the signature of the Judge or Registrar or District Registrar to any order, certificate, or process of the Court or Judge, or serves or enforces any such forged order or process knowing the same 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 such paper or writing to be false, or who acts or endeavours to act under colour or pretence of such process.

Removing property under attachment.

(*c*) Whoever 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 the same to have been so attached, and with intent to defeat the attachment, or obstructs or endeavours to obstruct the sheriff, messenger, or other person authorised to make the same in the discharge of his duty.

Receiving property from bankrupt.

(*d*) Whosoever, whether before or after the sequestration of an estate, receives any property from the bankrupt or from any person on his behalf with intent to defraud or to assist such bankrupt in defrauding his creditors.

Inserting false advertisements.

(*e*) Whosoever inserts or causes to be inserted in any newspaper any advertisement purporting to be under this Act without authority or knowing the same to be false in any material particular with intent in any such case to defraud or deceive.

False claim, &c.

(*f*) Whosoever in any proceeding in bankruptcy or while an estate is under liquidation by arrangement or composition with creditors makes any false claim or any declaration or statement of account which is untrue in any material particular with intent to defraud.

Offences by bankrupt.

Ibid. s. 122.

127. A bankrupt who with intent either to defraud his creditors, or dishonestly to conceal the state of his affairs, or otherwise to violate or defeat the law—

(*a*) does not to the best of his knowledge and belief fully disclose on examination under this Act or to his assignee or trustee all his property real and personal, and how, and to whom,

whom, and for what consideration, and when he has disposed thereof except such part as has been disposed of in the ordinary way of his business or laid out in the ordinary expense of his family; or

(*b*) does not deliver to the assignee or trustee, or as such assignee or trustee directs, all his property or such as is under his control, and which he is required by law so to deliver; or

(*c*) does not deliver to the assignee or trustee, or as such assignee or trustee directs, all books, documents, papers, and writings under his control relating to his property or affairs; or

(*d*) whether before or after sequestration conceals any part of his property to the value of ten pounds or any debt due to or by him, or after sequestration removes any part of his property of that value; or

(*e*) makes any material omission in any statement relating to his affairs; or

(*f*) knowing that a false debt has been proved under the bankruptcy fails for one month to inform his assignee thereof; or

(*g*) after sequestration prevents the production of any book, document, paper, or writing relating to his property or affairs; or

(*h*) whether before or after sequestration conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document relating to his property or affairs; or

(*i*) whether before or after sequestration makes or is privy to making a false entry in any book or document relating to his property or affairs; or

(*j*) whether before or after sequestration parts with any book or document relating to his property or affairs or alters or makes any omission therein; or

(*k*) after or within four months before sequestration attempts to account for his insolvency by fictitious losses or expenses; or

(*l*) within four months before sequestration has, by any false representation or under the pretence of carrying on business in the ordinary way of trade, obtained any property for which he has not paid; or

(*m*) within four months before sequestration pledges or disposes of otherwise than in the ordinary way of trade any property which he has obtained on credit and for which he has not paid; or

(*n*) makes any false representation 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

(*o*) within four months before sequestration departs or makes preparation for departing from New South Wales with any of his property to the amount of twenty pounds which ought by law to be divided among his creditors;

shall be guilty of a misdemeanour and be liable to imprisonment with or without hard labour for any time not exceeding three years.

Fraudulently obtaining credit. 51 Vic. No. 19, s. 123.

128. A bankrupt shall, in each of the cases mentioned in this section, be guilty of a misdemeanour and be liable to imprisonment for any time not exceeding two years with or without hard labour, that is to say:—

(*a*) If in incurring any debt or liability he has obtained credit by false representations or by means of any other fraud.

(*b*) If he has made, or caused to be made, any gift, delivery, or transfer of his property, or any part thereof, or created any charge thereon, with intent to defraud his creditors or any of them.

(*c*) If he has concealed or removed any part of his property after or within two months before the date of any unsatisfied judgment against him with intent to defraud his creditors.

General provision as to punishment. *Ibid.* s. 123.

129. Where a person is liable to punishment under any other Act or at Common Law for an offence punishable by this Act, he may be proceeded against under such other Act or at Common Law or under this Act, but so always that he be not punished twice for the same offence.

Power of Court to commit for trial. *Ibid.* s. 124.

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

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

(3) Any offence under this part of this Act shall be deemed to be included in the term "fraudulent insolvency" within the meaning of any treaty or convention between Great Britain and any foreign power for the extradition of criminals.

Criminal liability after discharge or composition. *Ibid.* s. 125.

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

Court may order certain expenses to be paid out of "Bankruptcy Suitors' Fund." *Ibid.* s. 126.

132. If it appears to the Court upon the application of the assignee or trustee that inquiries or proceedings relating to a bankrupt estate ought to be instituted or carried on, or any prosecution ought to be carried on against any person for any offence under this Act, and that there are no funds in the particular estate available for such inquiries,

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 upon every such order the Governor shall issue his warrant for the payment of the amount of such taxed costs, and the Treasurer shall pay the same out of the said fund.

PART VII.

JURISDICTION.

DIVISION 1.—*Bankruptcy Division in Supreme Court.*

Composition and jurisdiction of Court.

133. (1) The jurisdiction in insolvency as exercised prior to the coming into operation of the Act fifty-first Victoria number nineteen, by the Supreme Court, or by a Judge thereof, or by the Chief Commissioner of Insolvent Estates respectively, shall be vested in and exercised by the Court, and shall, together with the jurisdiction of the Court under this Act, be the bankruptcy jurisdiction of the Supreme Court.

51 Vic. No. 19, ss. 127 (1), 131.

(2) The bankruptcy jurisdiction of the Supreme Court shall, except as is herein otherwise provided, be exercised by such Judge of the Supreme Court as may from time to time be duly appointed in that behalf by the Governor under the title of the Judge in Bankruptcy, and the Court shall be holden before such Judge for the determination of all matters in its bankruptcy jurisdiction subject to appeal as is hereinafter provided.

(3) Whenever the terms "Insolvency" or "Insolvent" are used in any Statute now in force, such terms shall include the terms "Bankruptcy" and "Bankrupt" respectively, and wherever the "Chief Commissioner of Insolvent Estates" is mentioned or signified in any such Statute, the term shall be interpreted to mean the Judge.

Ibid. s. 127 (2).

Jurisdiction.

134. (1) The Court shall, for the purposes of such jurisdiction in bankruptcy, have full powers to decide all questions of priorities, and all questions whatsoever, whether at law or in equity or of fact, in any case of bankruptcy coming within the cognizance of the Court, or which it may deem expedient or necessary to decide for the purpose of doing complete justice or making complete distribution of property in any such case.

Ibid. s. 130.

(2) If in any proceeding in bankruptcy there arise any question of fact which either of the parties desires to be tried by a jury, or which the Court thinks ought to be tried by a jury, then a trial may be directed to be had before the Judge, or before any other Judge

Judge of the Supreme Court, and a jury, or before any Judge of a District Court and a jury, and the trial may be had accordingly in the Supreme Court in the same manner as if it were a trial of an issue of fact in an action, and in the District Court in the manner in which jury trials in ordinary cases are by law held in that Court. In every such case the Court may grant a new trial if it thinks fit.

(3) No such issue of fact shall be tried as above in a District Court unless all parties to the proceeding consent thereto, or the money, money's worth, or right in dispute does not in the opinion of the Court exceed in value two hundred pounds.

(4) Whenever the official assignee or trustee claims any property as part of the bankrupt's estate, or claims any right against any person, whether such person is or is not a party to the bankruptcy, the Court may upon motion by the assignee or trustee or any person interested in such property hear and determine, either upon affidavit or upon oral evidence, or both upon affidavits and oral evidence, the question raised by such claim, and make such order thereupon as he may deem expedient or necessary, for the purpose of doing complete justice between all the parties interested.

(5) The notice of such motion shall contain the grounds of such claim and shall be served in the manner prescribed by rules of Court, and the Court may require service of such notice to be made upon any person who in its opinion is a proper party to such motion:

Provided that the grounds of such claim may be amended at the hearing of the motion upon such terms as the Court may think fit.

(6) Every order of the Court made under this Act in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment of the Supreme Court to the same effect.

(7) The Court shall have the same power of giving relief to any party interested in any matter or proceeding before him under this Act as the Supreme Court would have if such matter or proceeding were pending before it in either its common law or equitable jurisdiction.

(8) The Court shall not be subject to be restrained in the execution of its power under this Act by the order of any other Court, nor shall any appeal lie from its decision except in the manner directed by this Act.

Jurisdiction of Judge.
51 Vic. No. 19, s. 131.

135. Subject to any general rule of the Supreme Court, the Judge may assign to the appropriate ministerial officer as he may direct any of the matters in respect of which jurisdiction is given to the Court by this Act.

Exercise of jurisdiction in chambers.
Ibid. s. 132.

136. Subject to the provisions of this Act and to rules of Court the Judge may exercise in chambers the whole or any part of his jurisdiction.

137. The Judge may delegate to the Registrar such of the powers vested in the Court as it may be deemed expedient for the Judge to delegate to him, subject nevertheless to review on summary application to the Judge.

Power to delegate authority to Registrar.
51 Vic. No. 19, s. 133.
52 Vic. No. 11, s. 2.

138. (1) An appeal to the Full Court shall lie against any order, decision, or ruling of the Judge, and such appeal shall be by way of rehearing and shall be subject to such terms and conditions as may be prescribed by rules of Court, and subject thereto according to the practice for the time being in force with reference to appeals in the equitable jurisdiction of the Supreme Court.

Appeal to be by way of rehearing.
51 Vic. No. 19, s. 135.
60 Vic. No. 29, s. 29 (1).

(2) An appeal shall lie against any order or decision or ruling of the Registrar or of any District Registrar to the Judge within such time and on such terms and in such manner as may be prescribed by rules of Court.

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

All orders to be subject to review.
60 Vic. No. 29, s. 29 (11).

DIVISION 2.—*Officers of Court.*

139. (1) The Governor may from time to time appoint a Registrar and may also appoint persons resident in the country parts of New South Wales as District Registrars, and may also appoint ministerial officers to carry into effect the provisions of this Act, and all persons so appointed shall be officers of the Supreme Court.

Appointment and salaries of ministerial officers.
51 Vic. No. 19, s. 136.

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

Judge may appoint District Registrar for special purposes.
60 Vic. No. 29, s. 24.

(3) The salaries to be paid to the Registrar and to the clerks and officers of the bankruptcy jurisdiction shall be paid out of the Consolidated Revenue, and the Court fees to the amount provided by the Fourth Schedule hereto shall be collected and paid into the Colonial Treasury.

Salaries to be paid out of Consolidated Revenue, and fees collected and paid into Treasury.

140. Every official assignee or trustee shall, out of every estate being administered after the coming into operation of the Act fifty-first Victoria number nineteen, pay into the Colonial Treasury towards the expenses of administering this Act such sum not less than one-eighth of a pound or not exceeding four pounds per centum on the gross amount coming into his hands from time to time in any such estate, after deducting any sums paid to secured creditors out of the proceeds of their securities, and a scale within the limits aforesaid, and the time of payment shall be fixed and varied from time to time by any regulations

Payment of percentage.
51 Vic. No. 19, s. 137.
60 Vic. No. 23, s. 2 (23).

regulations by the Judge with the approval of the Colonial Treasurer, and such regulations, with the approval thereof, shall be submitted to Parliament.

Power to transfer special proceedings, or proceedings generally to country districts.
51 Vic. No. 19, ss. 138, 139.

141. The Court, at any time after sequestration, on the application of the official assignee, trustee, or a creditor, or upon its own motion, may, if it is for the advantage of the creditors, order that an examination, single meeting, enquiry, or account may be held or taken before a District Registrar, or that any future proceedings in the administration of an estate, or any part thereof, be taken at such place or places as it may name in the order.

Points of law.
Ibid. s. 140.

142. If any question of law arises in any bankruptcy proceedings the Judge may, with the consent of all parties interested, state the facts in the form of a special case, for the opinion of the Full Court.

Jurisdiction in bankruptcy of Registrar.
Ibid. s. 141.

143. (1) The Registrar shall have, in addition to the powers which may be delegated to him by the Judge under the provisions of this Act, the powers, duties, and jurisdiction of the Court in this section mentioned, and any order made or act done by such Registrar, in the exercise of the said powers, duties, and jurisdiction shall, except for the purposes of appeal, be deemed the order or act of the Court, that is to say,—

Ibid. s. 9 (2). (*a*) to hear debtors' petitions and to make sequestration orders thereon, or to give leave to withdraw the same;

Ibid. s. 14 (2). (*b*) to extend the time for submitting statements of affairs;

60 Vic. No. 29, s. 9. (*c*) to approve of a resolution of creditors to allow a bankrupt to retain any of his personal property;

51 Vic. No. 19, s. 18, subs. 1, 3, 8, 9.
60 Vic. No. 29, s. 2 (4). (*d*) 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 such examination or further or adjourned examination; to put such questions to the bankrupt as he thinks expedient, and to declare any such examination concluded;

51 Vic. No. 19, s. 141. (*e*) to approve compositions or schemes of arrangement when they are not opposed;

Ibid. ss. 30, 31, 141. (*f*) to summon and examine the bankrupt or his wife, 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 dealings, or property, and otherwise to exercise the powers of the Court contained in section thirty of this Act, and to exercise the power of committal and discharge contained in section thirty-one of this Act;

Ibid. s. 141. (*g*) to do any act or thing or give any direction or permission by this Act, authorised or required to be done or given by the committee of inspection, where there is no such committee;

(*h*)

(*h*) to grant certificates of discharge where the application is not opposed; 51 Vic. No. 19, s. 141.

(*i*) to direct payment out of salary, income, half-pay, pension, or compensation of any bankrupt, and the application of the same; *Ibid.* s. 61. 60 Vic. No. 29, s. 19 (1).

(*k*) to order an official assignee or trustee, or party interested, to show cause why a plan of distribution should not be amended; 51 Vic. No. 19, s. 79.

(*l*) to give directions to the official assignee or trustee in relation to any matter relating to a bankruptcy; *Ibid.* s. 91.

(*m*) to adjourn any proceedings before him, to amend any written process or proceeding under this Act, and to take the whole or any part of the evidence in any matter either viva voce or otherwise; *Ibid.* s. 102 (2), (3), (5).

(*n*) to authorise the official assignee or trustee to commence and prosecute any action in the name of the assignee or trustee and of the bankrupt's partner; *Ibid.* s. 113.

(*o*) to postpone any application or proceeding before him under this Act; *Ibid.* s. 130 (2).

(*p*) to declare any proceeding in bankruptcy invalidated by a formal defect or irregularity; *Ibid.* s. 151 (1).

(*q*) to remit or reduce fees; 60 Vic. No. 29, s. 30.

(*r*) to extend the time for the summoning of the first meeting of creditors; 51 Vic. No. 19, Sch. I, cl. 1.

(*s*) to declare that a secured creditor voting in respect of his whole debt shall not be deemed to have surrendered his security; *Ibid.* Sch. I, cl. 10.

(*t*) to declare invalid any vote given by a claimant who has not proved his debt; 60 Vic. No. 29, s. 3 (*c*).

(*u*) to make orders with respect to the cost of a creditor proving his debt; 51 Vic. No. 19, Sch. II, cl. 6. 60 Vic. No. 29, s. 4 (*a*).

(*v*) to give directions as to sale of property comprised in any security; 51 Vic. No. 19, Sch. II, cl. 12 (1).

(*w*) to expunge a proof or reduce its amount; *Ibid.* Sch. II. cl. 23. 60 Vic. No. 29, s. 4 (*b*).

(*x*) to make interim orders in any case of urgency, and to hear and determine any unopposed or ex parte application; 51 Vic. No. 19, s 141.

(*y*) to make any order or exercise any jurisdiction which is prescribed by any rule of Court as proper to be made or exercised in Chambers; *Ibid.* s. 141.

(*z*) to administer oaths where necessary in all proceedings within his jurisdiction under this Act. *Ibid.* s. 141.

(2) The powers given to the Registrar by virtue of subsection 1 (*e*), (*h*), (*x*), (*y*), (*z*), and the power to hear debtors' petitions may be limited by rules of Court.

Documents, &c., to be filed.

142. (1) All schedules, statements, accounts, examinations, plans of distribution, reports, and all other documents or proceedings whatsoever required by the provisions of this Act to be submitted to, produced, *Ibid.* s. 142.

or

or held before the Court, Judge, Registrar, District Registrar, official assignee, or trustee, shall be filed of record by the Registrar, and the same shall be under the custody of the Registrar, and shall when filed be open to inspection, and extracts may be taken therefrom, as and upon payment of such fee as may be from time to time prescribed by rules of Court.

(2) If the Registrar be satisfied that it is undesirable to file the originals of any of the beforementioned documents or proceedings, he may file certified copies of the same in lieu thereof.

Jurisdiction of district registrar. 51 Vic. No. 19, ss. 102 (2), (5), 143.

145. A District Registrar shall have the same powers and jurisdiction as the Registrar in respect of any examination, issuing of summonses, enquiry, or account held or taken before him, the adjournment of proceedings before him, and the taking of evidence viva voce or otherwise.

PART VIII.

MISCELLANEOUS PROVISIONS.

Gazette to be evidence. *Ibid.* s. 144.

146. (1) A copy of the Gazette containing any notice inserted therein in pursuance of this Act shall be primâ facie evidence of the facts stated in the notice.

(2) The production of a copy of the Gazette containing any notice of an order for sequestration 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. *Ibid.* s. 145.

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

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

Death of witness. *Ibid.* s. 147.

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

Certificate of appointment of trustee. *Ibid.* s. 148.

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

150.

150. Where anything is directed or authorised to be done by the creditors under this Act, and no method is prescribed by which the creditors may signify their wishes, they may do so by ordinary resolution.

Method of procedure by creditors. 51 Vic. No. 19, s. 149.

151. (1) 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. *Ibid.* s. 150.

(2) Such notice shall date from the date at which in due course of post they would be received by the person to whom they are directed.

(3) The Court may postpone any application or proceedings under this Act, if in its opinion sufficient notice of the same has not been given to any party interested.

152. (1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court before whom an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court.

Formal defects not to invalidate. *Ibid.* s. 151.

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

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

Exemption of deeds, &c., from stamp duty. *Ibid.* s. 152.

154. For all or any of the purposes of this Act a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic, or insane or incapable person, or insane patient, may act by his committee or curator bonis, or such other person in whom the management and control of the estate of such person is for the time being vested.

Acting of corporations, partners, &c. *Ibid.* s. 153.

155. Whenever any person shall at any time at or after the coming into operation of this Act have been imprisoned—

Sequestration of estates of persons under imprisonment for debt. 60 Vic. No. 29, s. 28.

(*a*) in execution of a judgment for defamation or libel obtained under the Act eleventh Victoria number thirteen, or any Act consolidating or amending the same for a period of twelve months; or

(*b*) in virtue of any order made under the Matrimonial Causes Act or any Act consolidating or amending the same for a period of twelve months for nonpayment of a sum due in respect of alimony or maintenance, or for a period of six months for nonpayment of costs; or

(*c*) in any other case for debt for a period of three months,

and has not presented a bankruptcy petition against himself, the Minister for Justice may present a petition against such person, and a sequestration order may thereupon be made, and shall have effect in all respects as if made upon the petition of such person himself.

Remission of fees in certain cases. 60 Vic. No. 29, s. 30.

156. The Court may, upon good cause shown, remit or reduce any of the fees payable under the Fourth Schedule to this Act.

SCHEDULES.

Section 15.

FIRST SCHEDULE.

Date of Act.	Title of Act.	Extent of repeal.
7 Vic. No. 19 ...	An Act to amend an Act intituled "*An Act for giving relief to insolvent persons and providing for the administration of Insolvent Estates and to abolish imprisonment for debt.*"	Section 15 (the unrepealed section).
10 Vic. No. 14...	An Act to remove difficulties in the disposal, administration, and distribution of Insolvent Estates.	Section 3 (the unrepealed section).
38 Vic. No. 1 ...	An Act to expedite and lessen the expense of proceedings in Insolvency.	Sections 6, 7, and 8 (the unrepealed sections).
51 Vic. No. 19...	Bankruptcy Act, 1887	The whole, except sections 128, 129, 135, and 146.
52 Vic. No. 11...	Bankruptcy Act Amendment Act, 1888... ...	The whole.
60 Vic. No. 29...	Bankruptcy Acts Amendment Act, 1896 ...	Sections 1–30 and section 35.

THE SECOND SCHEDULE.

MEETINGS OF CREDITORS.

Time of first meeting. 51 Vic. No. 19, Sch. I, cl. 1. 60 Vic. No. 29, s. 3 (*a*)

1. The first meeting of creditors shall be summoned for a day not later than twenty-one days after the date of the sequestration order, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.

Advertisement thereof. 51 Vic. No. 19, Sch. I, cl. 2. 60 Vic. No. 29, s. 3(*b*).

2. The Registrar shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the Gazette and in a local paper. The official assignee shall also whenever practicable give notice of the time and place thereof to each creditor named in the statement of affairs then resident in New South Wales or his authorised agent.

Provisional report. 51 Vic. No. 19, Sch. I, cl. 3.

3. The official assignee shall at such first meeting bring up a provisional report based upon the bankrupt's statement of affairs.

4. The meeting shall be held at such place as is in the opinion of the official assignee most convenient for the majority of the creditors. Place. 51 Vic. No. 19, Sch. I, cl. 4.

5. The official assignee or 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-fourth in value of the creditors. Subsequent meetings. 51 Vic. No. 19, Sch. I, cl. 5.

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 bankrupt's statement of affairs, or at such other address as may be known to the person summoning the meeting. Mode of summoning. 51 Vic. No. 19, Sch. I, cl. 6.

7. The official assignee, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint. Chairman. 51 Vic. No. 19, Sch. I, cl. 7.

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 bankrupt, and the proof has been duly lodged before the time appointed for the meeting. Right to vote. 51 Vic. No. 19, Sch. I, cl. 8.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained. Unascertained debts. 51 Vic. No. 19, Sch. I, cl. 9.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence. Vote by secured creditor. 51 Vic. No. 19, Sch. I, cl. 10.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the bankrupt, and against whom a sequestration order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof. Note on bill or note. *Ibid.* cl. 11.

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

13. 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. Vote by joint creditor. *Ibid.* cl. 13.

14. When, for any cause appearing to the Registrar, the Registrar shall be of opinion that a claimant who has not proved his debt may eventually be able to establish the same, the Registrar may allow such claim to be entered for the purpose of voting, and may give such time as he may think fit for establishing the same, and the official assignee shall make provision for the same in any account and plan of distribution filed prior to the expiration of such time: Provided that any vote given by the claimant may be declared invalid in the event of the claim not being established within the time allowed, but subject to such terms as the Court may think fit. Admission of votes. 60 Vic. No. 29, s. 3 (c).

15. A creditor may vote either in person or by proxy. Mode of voting. 51 Vic. No. 19, Sch. I, cl. 15.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official assignee, and every insertion therein shall be in the handwriting of the person giving the proxy. Proxy form. *Ibid.* cl. 16.

17.

General proxy. 51 Vic. No. 19, Sch. 1, cl. 17.

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

Special proxy. *Ibid.* cl. 18.

18. A creditor may give a special proxy to any person to vote at any specified meeting, or adjournment thereof, for or against any specific resolution, or for or against any specified person as trustee, or member of a committee of inspection.

Deposit of proxy. *Ibid.* cl. 19. 60 Vic. No. 29, s. 3 (d).

19. A proxy shall not be used unless it is deposited with the official assignee before the meeting at which it is to be used except with the leave of the Judge or Registrar.

Canvassing for votes. *Ibid.* cl. 20.

20. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of an official assignee, trustee, or manager, or receiver in obtaining proxies, or in procuring the trusteeship, managership, or receivership, except by the direction of a meeting of creditors, the Court may 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.

Official receiver as proxy. 51 Vic. No. 19, Sch. I, cl. 21.

21. A creditor may appoint the official assignee of the bankrupt's estate to act in manner prescribed as his general or special proxy.

Adjournment. *Ibid.* cl. 22.

22. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place.

Quorum. *Ibid.* s. 23.

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

Quorum not present. *Ibid.* cl. 24.

24. 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 the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

Minutes. *Ibid.* cl. 25.

25. 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.

Interested vote. *Ibid.* cl. 26.

26. 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 ratably with the other creditors of the debtor: Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly.

Single meetings. 60 Vic. No. 29, s. 3 (e).

27. Nothing in clauses twenty-three and twenty-four of this Schedule shall apply to the case of a single meeting.

THE THIRD SCHEDULE.

Proof of Debts.

Proof in ordinary cases.

Time for proof. 51 Vic. No. 19, Sch. II, cl. 1.

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

Mode of proof. *Ibid.* cl. 2.

2. A debt may be proved by delivering or sending through the post in a pre-paid letter to the Registrar an affidavit verifying the debt.

Who may prove. *Ibid.* cl. 3.

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

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The Registrar and official assignee or trustee may at any time call for the production of the vouchers. Particulars and vouchers. 51 Vic. No. 19, Sch. II, cl. 4.

5. The affidavit shall state whether the creditor is or is not a secured creditor. Security. *Ibid.* cl. 5.

6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders. Cost. *Ibid.* cl. 6. 60 Vic. No. 29, s. 4 (*a*).

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. Inspection of proof 51 Vic. No. 19, Sch. II, cl. 7.

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

Proof by secured creditors.

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

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

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

12. (*a*) Where a security is so valued the official assignee or trustee may at any time redeem it on payment to the creditor of the assessed value. Redemption. *Ibid.* cl. 12.

(*b*) If the official assignee or trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official assignee or trustee, or as, in default of such agreement, the Court may direct. If the sale be by public auction the creditors or the official assignee 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 official assignee or trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the official assignee or 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 official assignee or trustee shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee, or the trustee, or the Registrar, 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 Registrar shall order. Revaluation. *Ibid.* cl. 13.

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

15.

Bankruptcy.

Realisation after valuation.
51 Vic. No. 19, Sch. II, cl. 15.

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

Exclusion from dividend.
Ibid. cl. 16.

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

Maximum dividend.
Ibid. cl. 17.

17. Subject to the provisions of Rule twelve, 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.

Distinct contracts.
Ibid. cl. 18.

18. If a debtor was at the date of the order of sequestration liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as a 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.

Periodical payments.
Ibid. cl. 19.

19. When any rent or other payment falls due at stated periods, and the order of sequestration 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.

Interest.
Ibid. cl. 20.

20. (1) 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 order of sequestration and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding six 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 was 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.

60 Vic. No. 29, s. 22.

(2) Where a debt has been proved upon a bankrupt's estate under this Act, and such debt includes interest or any pecuniary consideration in lieu of interest, such interest or consideration shall for the purposes of dividend be calculated at a rate not exceeding eight 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.

Debt payable at a future time.

Future debts.
51 Vic. No. 19, Sch. II, cl. 21.

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

Admission or rejection of proofs.

Admission of proofs.
Ibid. cl. 22.

22. The Registrar 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.

Expunging.
60 Vic. No. 29, s. 4 (b).

23. The official assignee or a trustee may upon further evidence, and upon notice to the creditor who has made the proof, apply to the Court to expunge such proof or reduce its amount.

24.

24. If a creditor or official assignee or trustee is dissatisfied with the decision of the Registrar in respect of a proof, the Court may, upon the application of the creditor or official assignee or trustee, reverse or vary the decision. Appeal. 51 Vic. No. 19, Sch. II. cl. 24. 60 Vic. No. 29, s. 4 (c).

25. The Court may also expunge or reduce a proof upon the application of a creditor if the official assignee or trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the bankrupt. Who may apply. 51 Vic. No. 19, Sch. II, cl. 25.

FOURTH SCHEDULE.

Court and other Fees to be taken.

Registrar in Bankruptcy.	s.	d.
Every declaration by a debtor of inability to pay debts	2	6
Upon filing every petition surrendering an estate as bankrupt including the order of the Court thereon where the assets shall appear not to exceed £200	2	6
When above that amount	15	0
For drawing and inserting each advertisement besides the expenses paid for advertising when required to be done	2	6
Upon receiving and filing every petition against a person having committed an act of bankruptcy	15	0
For filing every affidavit	1	0
For every order of the Court	5	0
For every bankruptcy notice	5	0
For filing same or any other proceeding	1	0
For every person examined or document exhibited	1	0
For taxing costs in any case—same as in the Supreme Court Office.		
For making every necessary application and report to the Court and minute of the order thereon...	2	6
For every warrant of attachment of movable property	2	6
For every summons for the attendance of a person to give evidence or be examined	5	0
For every certified extract from or copy of proceedings relating to bankrupt estates of less than seventy-two words	2	6
And above that number per folio	0	4
For every inspection of proceeding in each estate for each half hour	1	0
For every certificate of discharge	10	0
For every other process before the Court—same as in the Supreme Court either at Law or in Equity as the case may be.		
For each meeting of creditors or examination in estates under £200 assets	10	0
For any other meeting of creditors or examination per diem ...	20	0
For every proof of debt to be paid by the person offering it ...	1	0
For swearing every affidavit by the party sworn	1	0
For every person examined by the party producing him	1	0
For every warrant for apprehension of bankrupt	5	0
For every warrant of commitment of any person	7	6
Sheriff's Fee.		
For registering every order for sequestration or bankruptcy notice	1	0
The Registrar-General's Fee.		
For registering every order of sequestration	1	0

FIFTH SCHEDULE.

In the Supreme Court of New South Wales— In Bankruptcy.

BANKRUPTCY NOTICE.

(*Title.*)

To A.B. [*or* A.B. & Co. of .]

TAKE notice that within [seven] days after service of this notice on you, excluding the day of such service, you must pay to C.D., of , the sum of £ claimed by him as being the amount due on a final judgment obtained by him against you in the Court, dated ; whereon execution has not been stayed, or you must secure or compound for the said sum to [his] satisfaction or the satisfaction of the Judge; or you must satisfy the Judge that you have a counter-claim, set-off, or cross-demand against C.D., which equals or exceeds the sum claimed by him, and which you could not set up in the action in which the judgment was obtained.

Dated

By the Court,
Registrar.

INDORSEMENT ON NOTICE.

You are specially to note,—

THAT the consequences of not complying with the requisitions of this notice are that you will have committed an act of bankruptcy, on which bankruptcy proceedings may be taken against you.

If, however, you have a counter-claim, set-off, or cross-demand, which equals or exceeds the amount claimed by C.D. in respect of the judgment, and which you could not set up in the action in which the said judgment was obtained, you must within days apply to the Judge to set aside this notice, by filing with the Registrar an affidavit to the above effect, setting out the particulars thereof and the reasons why you could not set up the same in the said action.

[*Name and address of Solicitor suing out the notice*] **or**

This notice is sued out by [C.D.] in person.

By Authority : Reprinted by WILLIAM APPLEGATE GULLICK, Government Printer, Sydney, 1917.

[2*s.* 4*d.*]

Memo. and Certificate to accompany the Bankruptcy Bill.

THIS Bill consolidates the whole or parts of the following Acts :—

7 Vic. No. 19 ;
10 Vic. No. 14 ;
38 Vic. No. 1 ;
51 Vic. No. 19 (Bankruptcy Act, 1887) ;
52 Vic. No. 11 (Bankruptcy Act Amendment Act, 1888) ;
60 Vic. No. 29 (Bankruptcy Acts Amendment Act, 1896).

In section 127 of 51 Vic. No. 19 (Bankruptcy Act, 1887) the whole of the then existing jurisdiction in insolvency was declared to be the bankruptcy jurisdiction of the Supreme Court, and was vested in the Judge in Bankruptcy. The same Act gave additional powers, which were to be exercised, not by the "Court," but by the "Judge," and it uses throughout the expressions "the Judge"—"the Court or Judge." This is somewhat confused, and raises some doubts and obscurities. It might be argued, for example, that in an appeal on any of the newly-created matters of jurisdiction the Supreme Court had no jurisdiction at all. Then, by 60 Vic. No. 29, section 29 (1), all appeals from the Judge in Bankruptcy are by way of rehearing, as in Equity appeals. It has seemed, therefore, better throughout this consolidation to speak of the jurisdiction as being that of the Court, exercised by the Judge or Registrar, as the case might be. The Judge in Bankruptcy, Mr. Justice A. H. Simpson, on being consulted, entirely concurs in this view. In certain cases (for instance, in clauses 15 (3) and 18 (8)), the words "Judge" or "Registrar" have not been altered into the word "Court," because the Acts there spoken of have been ministerial or individual in their nature.

In various places throughout the Bill verbal errors in the original Acts have been corrected. Thus in clause 6 (*c*) "on" has been put for "in"; in various clauses "debtor," which had been inadvertently copied from sections in English Acts, where it was correctly used, has been changed into "bankrupt," the proper word here ; "or" has been inserted between "use" and "occupation" in clause 62 (4) ; "their Act" has been made "this Act" in clause 66 ; "limited time" in clause 80 (1) has been made "time limited" ; and so on. These were all palpable slips.

Clause 3 (1).—Words have been added to the definition of "Property," and the definition now stands the same as in the English Act. There does not seem to be any reason for omitting the words from our Act.

Clause 10 (6) has been framed as though the words "a Judge" in the corresponding section of 51 Vic. No. 19, s. 10 (5) were "the Judge. This seems to be correct, as the power to stay actions, is by the Act vested in "the Judge."

Clause 21.—Some words have been omitted as unnecessary, in view of the definition of "trustee."

Clause 30.—From a comparison of sections 30, 31, and 141 (2) (*h*), it would appear probable, though not clear, that the Registrar is to exercise the powers mentioned in section 30. In practice he does exercise them all, and the matter has been now made clear in the new clause 143.

Clause 39.—The words "or suspend" inserted before "or grant" are consequential on the increased powers given in the Amending Act.

Clause 54.—Subsection (3) of the original section is omitted as unnecessary, having been apparently copied from the English Act without full advertence to the difference of the law in this country. In England (*see* 46 and 47 Vic., c. 52, ss. 4 (1. *e*), 46) the Sheriff's sale is of itself an act of bankruptcy ; in New South Wales (sec. 4 subs. 1 (*e*)), it is not so. *See* clause 56 (3).

Clause 55 (2).—The word "trustees," which was a slip, has been changed to "official assignee or trustee in bankruptcy," an expression which has been used throughout the Bill, because of clause 19 (12), under which it appears possible that a trustee may still be sometimes acting alone under a composition or scheme.

Clause 55 (4).—A proviso has been here omitted as unnecessary, in view of section 8 of the Interpretation Act.

Clause 62.—As section 62 of 51 Vic. No. 19 now stands, if property comes to the knowledge of an official assignee one day before the expiration of the three months, he does not come within the proviso and has only one day in which to disclaim ; s. 55 of the English Act gave at least two months for this purpose, and that time has been extended by the Amending Act of 1890. The section has been amended in this clause to remedy this defect.

Clause 88 (1).—The earlier words of the original section are omitted as unnecessary.

Clause 105 (1).—The earlier part of the original section 101 are exhausted and omitted.

Clause 114.—The proviso to the original section, 109, is omitted, both as unnecessary and because of the remarks of Mr. Justice Owen in the case of *re* Hidden Star Gold-mining Co., at page 40 of 10 N.S.W.R., Equity.

Clause 124.—The power of the Judges to make rules has been brought into conformity with other Acts.

Clause 138.—Only a portion of the original section 135 has been here consolidated, the whole section, with sections 128 and 129, has been left unrepealed, to be dealt with in the consolidation dealing with the Supreme Court.

Clause 139.—The final provisions of the original section 136 (3) have been apparently repealed by 60 Vic. No. 17, and are omitted.

Clause 143 (*i*).—It has here been made clear that the Registrar has power to direct the application of certain moneys as well as to order their payment.

The powers of the Registrar scattered through the old Acts are for convenience gathered together in this section.

Clause 154.—Some words have been added here more appropriate to New South Wales than the original words, copied from English Acts.

The last part of Schedule 3 of the Bankruptcy Act has been omitted. It depends upon section 133 of the Companies Act, which is really obsolete, and which will be omitted in the Companies Acts Consolidation. Other verbal changes, besides those specially mentioned, have been made for various reasons, but do not alter the sense.

I certify that save, as hereinbefore mentioned, this Bill solely consolidates, and in no way alters, adds to, or amends the Acts thereby consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

Bankruptcy Bill.

TABLE showing how the sections of Acts intended to be consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
	7 VICTORIA No. 19.	
15	67	
	10 VICTORIA No. 14.	
3	68	
	51 VICTORIA No. 19.	
1–66	1–66	Omitting sections 10 (1); 16 (2), and (3); 40 (7); 56, 57; 61 (1); 65 (1) repealed; 15 (2) redundant, as the same provision is
67	69	in s. 27 (1); 17 (3) obsolete; 17 (4)
68	70	redundant, as the same provision is in s. 67;
69	71	and 54 (3) inapplicable in New South
70	71 (3), (4), 143	Wales, and omitting the powers of the
71	72 (1)	Registrar which are collected in section
72	73	143; ss. 43 and 44 are altered as to
73	74 (1)	position and placed in division 7 with the
74	75	provisions with regard to releases.
75	76	
76	78	
77	79	
78	80	
79	81	
80	82	
81	83	
82	84	
83	85	
84	86	
85	87	
86	88	
87	89	
88	90	
89	91	
90	92	
91	95, 143	
92	96	
93	97	
94	.....	Repealed.
95	99	
96	100	
97	101	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
	51 Victoria No. 19.	
98	102	
99	103	
100	104	
101	105	Omitting words of section to the words "such deduction." Exhausted.
102	107, 143, 145	
103	108	
104	109	
105	110	
106	111	
107	112	
108	113	
109	114	
110	115	
111	116	
112	117	
113	118, 143	
114	119	
115	120	
116	121	
117	122	
118	123	
119	124	Remodelled.
120	125	
121	126	
122	127	
123	128	
124	130	
125	131	
126	132	
127	133	
128	.....	Not repealed; to be dealt with in general provision as to Judges.
129	.....	Not repealed; to be dealt with in general provision as to Judges.
130	134	
131	133, 135	Omitting subsec. (*a*) and (*b*). Exhausted.
132	136	
133	137	
134	.....	Omitted. *Vide* 55 Vic. No. 31.
135	138	Not repealed; provisions as to Judge to be dealt with as in the case of ss. 128, 129.
136	139 (1), (3)	Subsec. (2) is provided for in section 2 (2), and is omitted from this section.
137	140	
138	141	
139	141...	Subsec. (2) is provided for in section 2 (2), and is omitted from this section.
140	142	
141	143	
142	144	
143	145	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
	51 Victoria No. 19.	
144	146	
145	147	
146	....	Omitted. *Vide* Evidence Act. Not repealed.
147	148	
148	149	
149	150	
150	143, 151	
151	143, 152	
152	153	
153	154	
Schedule I	Schedule II }	Omitting powers of the Registrar which are collected in section 143.
Schedule II	Schedule III }	
Schedule III	Schedule IV	
Schedule IV	.....	Omitted. Exhausted.
Schedule V	Schedule V	
	52 Victoria No. 11.	
1	.....	
2	4, subsec. (1) (*e*); 11; 19; 137; Schedule IV.	
3	106	
4	93	
5	67, 68	
6	94	
	60 Victoria No. 29.	
1	.....	
2	8 (3) and (10); 10 (2); 17 (2); 18 (1), (3), (8), and (9); 19 (15); 21 (1); 22 (2); 30 (3), (4), and (5); 39; 42 (5); 50; 51; 52 (*e*); 58; 80; 83; 85 (4), (5), (6), and (7); 88; 101; 105; 110; 140; 143	
3	Schedule II, clauses 1, 2, 14, 19, 23, 24; 143	
4	Schedule III, clauses 6, 23, 24; 143	
5	67	
6 (1)	4 (6)	
6 (2)	4 (7), (8)	
6 (3)	4 (9)	
7	10 (1) and (2)	
8	51 (2)	
9	16 (2), 143	
10	77	
11	39 (4), (5)	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
	60 Victoria No. 29.	
12	39 (3), (4), (5)	
13	40 (*o*), (*p*), (*q*), (*r*)	
14	40 (*h*)	
15	.....	Repealing section.
16	44 (3)	
17	56	
18	57	
19	61, 143	
20	65 (1)	
21	98	
22	Schedule III, clause 20 (2)	
23	4 (10), (11); 6; 8 (3); 58.	
24	139 (2)	
25	59 (6)	
26	74 (2), (3), (4)	
27	72 (2)	
28	156	
29	138 (1), (5)	
30	143, 156	
31–34 (inclusive)	.....	Bills of Sale Act.
35	55 (4)	

This PUBLIC BILL *originated in the* LEGISLATIVE COUNCIL, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE ASSEMBLY *for its concurrence.*

Legislative Council Chamber,
Sydney, 5th July, 1898.

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.

ANNO SEXAGESIMO SECUNDO

VICTORIÆ REGINÆ.

* *

Act No. , 1898.

An Act to consolidate the Law relating to Bankruptcy.

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

1. This Act may be cited as the "Bankruptcy Act, 1898," and is divided into parts and divisions as follows:— Short title of Act. 51 Vic. No. 19, s. 1.

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

DIVISION 1.—*Section* 4—*Acts of bankruptcy.*

DIVISION 2.—*Sections* 5–12—*Sequestration order.*

DIVISION 3.—*Sections* 13–18—*Proceedings consequent on order.*

DIVISION 4.—*Sections* 19–20—*Composition or scheme of arrangement.*

DIVISION

DIVISION 5.—*Sections* 21–26—*Creditors' trustees and committee of inspection.*

DIVISION 6.—*Sections* 27–33—*Control over person and property of bankrupt.*

DIVISION 7.—*Sections* 34–38—*Release of estate, and annulment of sequestration order.*

DIVISION 8.—*Sections* 39–44—*Bankrupt's certificate.*

PART II.—ADMINISTRATION OF PROPERTY.

DIVISION 1.—*Sections* 45–47—*Proof of debts.*

DIVISION 2.—*Sections* 48–50—*Preferential debts.*

DIVISION 3.—*Sections* 51–52—*Property available for payment of debts.*

DIVISION 4.—*Sections* 53–58—*Effect of bankruptcy on antecedent transactions.*

DIVISION 5.—*Sections* 59–68—*Realisation of property.*

DIVISION 6.—*Sections* 69–81—*Distribution of estate.*

PART III.—CREDITORS' TRUSTEES AND OFFICIAL ASSIGNEES.

DIVISION 1.—*Sections* 82–86—*Remuneration of trustees or assignees.*

DIVISION 2.—*Section* 87—*Official name.*

DIVISION 3.—*Sections* 88–94—*Appointment and removal.*

DIVISION 4.—*Sections* 95–106—*Control over assignees and trustees.*

PART IV.—PROCEDURE.

Sections 107–113.

PART V.—APPLICATION OF ACT.

Sections 114–125.

PART VI.—INDICTABLE OFFENCES.

Sections 126–132.

PART VII.—JURISDICTION.

DIVISION 1.—*Sections* 133–138—*Bankruptcy Division of Supreme Court.*

DIVISION 2.—*Sections* 139–145—*Officers of the Court.*

PART VIII.—MISCELLANEOUS PROVISIONS.

Sections 146–156.

2. (1) The several enactments mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed. Repeal. First Schedule.

(2) All persons appointed by virtue of any Act hereby repealed and holding office at the passing of this Act, shall be deemed to have been appointed hereunder.

(3) All rules of Court made under the authority of any Act hereby repealed and being in force at the passing of this Act, shall be deemed to have been made under the authority of this Act.

3. (1) In this Act, unless the context otherwise requires :— Interpretation of terms. 51 Vic. No. 19, s. 3.

"The Judge" means the Judge having jurisdiction in bankruptcy under this Act or any Judge acting as such :

"Available Act of bankruptcy" means any Act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the sequestration order is made :

"Debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy :

"Goods" include all chattels personal :

"The Court" means the Supreme Court in its bankruptcy jurisdiction :

"Local Bank" means any bank in or in the neighbourhood of the district in which the proceedings are taken :

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

"Property" includes money, goods, things in action, land, and every description of property, whether real or personal, and whether situate in New South Wales 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 :

"Secured creditor" means a person holding a mortgage, charge, or lien on the property of the debtor, or any part thereof :

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

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

The term "trustee" shall in all cases where not inconsistent with the context include the official assignee when he fills the office of trustee.

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

PART

PART I.

PROCEEDINGS FROM ACT OF BANKRUPTCY TO BANKRUPT'S EXAMINATION.

DIVISION 1.—*Acts of Bankruptcy.*

Acts of bankruptcy. 51 Vic. No. 19, s. 4.

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

(*a*) If in New South Wales or elsewhere he makes a conveyance or assignment of his property to a trustee for the benefit of his creditors generally :

(*b*) If in New South Wales or elsewhere he makes a conveyance, gift, delivery, assignment, or transfer of his property, or of any part thereof, with intent to defeat or delay his creditors, or any of them :

(*c*) If in New South Wales or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon which would under this or any other Act be void as a fraudulent preference if a sequestration order were made against him :

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

(*e*) If execution issued against him has been levied by seizure and sale of his goods under process in an action in any Court, or in any civil proceeding in the Supreme Court, and if he has not within five days of such sale, satisfied the debt by payment : 52 Vic. No. 11 s. 2.

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

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

(*h*)

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

(*i*) If he has been adjudged bankrupt or insolvent by a British Court of competent jurisdiction in or out of New South Wales, and has not received a certificate of discharge or other corresponding release—of any of which facts a copy of the order or orders or certificate or release made or given by such Court certified under its seal shall be sufficient evidence:

(*j*) If he has not presented a bankruptcy petition against himself or filed in the Court a declaration of his inability to pay his debt within forty-eight hours after having at a convened meeting of his creditors admitted that he is unable to pay his debts, and been thereupon required by a majority in number of his creditors present to present such petition or file such declaration.

(2) A bankruptcy notice under this Act shall be in the form prescribed in the Fifth Schedule hereto, and shall state the consequences of non-compliance therewith, and shall be served in the manner prescribed by the rules of Court; it shall be under the hand of the Registrar, and may be granted upon the application of the creditor claiming to be entitled thereto.

(3) Upon the debtor satisfying the Court that such notice ought not to have issued, the Court may order the payment to him by the creditor applying for such notice of all the costs occasioned by the issue thereof, and if satisfied that the notice was issued maliciously and without reasonable and probable cause may at the request of the debtor assess the damages occasioned thereby.

(4) Upon security being given by the debtor for payment of the debt and the cost of establishing it, the Court may stay all proceedings on the notice, and may stay execution on the judgment in respect of which such notice was issued, for such a time, in either case, as he thinks fit.

(5) Upon the affidavit of any creditor who would be entitled to present a bankruptcy petition that a debtor, being a trader, has committed an act of bankruptcy and is diminishing his assets to the prejudice of his creditors, whether voluntarily or for consideration, by conveyance, gift, delivery, assignment, pledge, mortgage, transfer, or execution upon a collusive judgment, the Court may grant an injunction restraining such debtor and all other persons from disposing of or dealing with such assets or any part thereof until the hearing of the bankruptcy petition against such debtor:

Provided that before such injunction be granted the creditor applying shall give security to the satisfaction of the Registrar to present a bankruptcy petition forthwith, and to be responsible for all damages which may be occasioned by issuing such injunction.

(6) Any person who is for the time being entitled to enforce a final judgment shall be deemed a creditor who has obtained a final judgment within the meaning of this section. 60 Vic. No. 29, s. 6 (1).

(7) Any final judgment obtained against a married woman shall be deemed to be a final judgment within the meaning of subsection (1) (*g*) of this section, and a bankruptcy notice in the form prescribed by the Fifth Schedule hereto may issue and be served upon her in respect thereof as if judgment had been obtained against her as a feme sole, and the fact that no execution can issue at law on such judgment shall not prevent the non-compliance with such notice being deemed an act of bankruptcy under the said subsection. Married women. *Ibid.* s. 6 (2).

(8) Nothing herein contained shall be construed to render a married woman liable to be made bankrupt except in respect of her separate estate and upon evidence that she is possessed of separate estate, or to alter or repeal anything contained in the Married Woman's Property Act, 1893, or any Act consolidating or amending the same. *Ibid.* s. 6 (2).

(9) Any decree or order which is in its terms or effect final shall be deemed to be a final judgment within the meaning of this section. *Ibid.* s. 6 (3).

(10) Every deed of conveyance or assignment for the benefit of creditors may be registered by filing in the office of the Registrar-General an examined copy signed by one or more of the parties to the original deed of assignment and certified by the oath of some credible person taken before a Judge or before the Registrar-General or his deputy, or before any commissioner for affidavits; and if so registered within one month from the execution of the same by the assignor shall be within the protection of this Act. Unregisterd deeds of assignment. *Ibid.* s. 23.

(11) The Registrar-General shall upon the said copy being so filed as aforesaid register the same accordingly. *Ibid.* s. 23.

Division 2.—*Sequestration order.*

5. (1) Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a sequestration order. Jurisdiction to make sequestration order. 51 Vic. No. 19, s. 5.

(2) When a sequestration order has been made, the debtor thereby becomes a bankrupt, and continues a bankrupt until a certificate of discharge has been issued to him, or the order for sequestration be discharged or annulled in manner hereinafter provided.

6. A creditor shall not be entitled to present a bankruptcy petition against a debtor unless— Conditions on which creditor may or may not petition. 51 Vic. No. 19, s. 6. 60 Vic. No. 29, s. 23.

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

(*b*)

(*b*) The debt is a liquidated sum, payable either immediately or at some certain future time, whether due at law or in equity; and

(*c*) The act of bankruptcy on which the petition is grounded has occurred within six months before the presentation of the petition:

Provided that, if the alleged act of bankruptcy is one of those mentioned in subsection (*i*) of section four, the petition may be presented within three months after the alleged act came to the knowledge of the petitioning creditor; and unless

(*d*) The debtor is domiciled in New South Wales, 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 New South Wales:

Provided that when the alleged act of bankruptcy is that set forth in subsection (*a*) of section four, and the deed of conveyance or assignment has been registered within one month from the execution thereof by the assignor in accordance with the provisions of subsection ten of the said fourth section, no sequestration order shall be made upon the petition of a creditor or creditors, if such creditor or creditors do not represent at least one-fifth in value of all the creditors.

Secured creditor. *Ibid.* s. 7.

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

Proceedings and order on creditor's petition. *Ibid.* s. 8.

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

60 Vic. No. 29, s. 2 (1); s. 23.

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

Trustees shall receive notice of hearing.

(3) If the debtor has made a conveyance or assignment of his property to a trustee for the benefit of his creditors generally, and the same has been registered within one month from the execution thereof by the assignor in accordance with the provisions of subsection ten of section four of this Act, the trustee under such assignment shall also receive the prescribed notice of the hearing, and may appear and show cause for the dismissal of the petition, and if it appears to the

Court

Court that it will be for the advantage of the creditors that the estate should be administered under the said deed such petition may be dismissed.

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

(5) If it appears to the Court upon the hearing of the petition that the petition was unfounded and vexatious or malicious, he may allow the respondent then, or at some other fixed time, to prove any damage sustained thereby, and may award such sum in respect thereof not exceeding two hundred pounds as the Court deems fit :

Provided that nothing herein shall affect the right of the respondent to sue the petitioner for damages beyond the amount awarded by the Court.

Staying proceedings on petition upon security being given.

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

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

(8) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a 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 stayed as aforesaid.

(9) A creditors petition shall not, after presentment, be withdrawn without the leave of the Court.

Proviso for revival on proceeding being stayed.

(10) Where a petition is withdrawn or discharged, or where proceedings upon a petition are stayed in consequence of the petitioning creditor's default, or his collusion with the debtor, the Court, within six months after such withdrawal or discharge or stay of proceedings, may, on the petition of any other creditor or creditors, whose debt or debts existed at the date of the service of the said petition, direct that a sequestration order shall be made.

(11)

(11) If any person against whom a sequestration order has been made pays any money to any petitioning creditor or to any one on his behalf, or gives to such creditor any security for his debt or part thereof, such payment, gift, or security shall be a new act of bankruptcy, and the person receiving such money, gift, or security shall deliver up such security and repay or deliver the money or gift or its full value to the assignee for the benefit of the creditors, and shall pay all the costs incurred by any other creditor in obtaining a sequestration order upon such act of bankruptcy. Preference to petitioning creditor to be a new act of bankruptcy.

9. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and upon the presentation thereof the Court shall make a sequestration order. Debtor's petition and order thereon. 51 Vic. No. 19, s. 9.

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

10. (1) Upon the making of a sequestration order the property of the bankrupt shall vest in one of the official assignees to be named in such order, and be divisible among the creditors of the bankrupt in accordance with the provisions of this Act. Effect of sequestration order. *Ibid.* s. 10. 60 Vic. No. 29, ss. 2 (2); 7.

(2) Upon the making of an order for the sequestration of the estate of an undischarged bankrupt or insolvent, the property of such bankrupt or insolvent possessed by him at the date of the second order of sequestration shall, if the official assignee or trustee appointed under the prior order has not intervened, vest in the official assignee named in the subsequent order, and be divisible in the first instance among the creditors of the bankrupt in the subsequent bankruptcy. Sequestration of estate of undischarged bankrupt.

(3) After a sequestration order has been made, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence or take any fresh step in any action or other legal proceedings unless with the leave of the Court and on such terms as the Court may impose.

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

(5) The Court may at any time after the presentation of a bankruptcy petition, upon such conditions as it thinks fit, stay any action, execution, or other legal process against the property or person of the debtor, and may discharge him out of custody, and any Court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think fit. Power to stay legal proceedings.

(6) 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 such proceeding.

(7) All actions or proceedings at law or in equity commenced by any person, against whom a sequestration order is afterwards made, shall, upon such order being made, be stayed until the official assignee or trustee make election to prosecute or discontinue the same, and such official assignee 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 such action or proceedings, or otherwise shall be deemed to have abandoned the same:

Provided that any bankrupt shall be permitted to 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 of his family.

Registration of sequestration order and bankruptcy notice.
51 Vic. No. 19, s. 11.
52 Vic. No. 11, s. 2.

11. The Registrar shall forthwith publish in the Gazette a notice of every sequestration order, and also send a like notice to the Registrar-General, who shall make a note of the same in every index and registered instrument kept in his office for public inspection. The Registrar shall also send notice of every such order and notice of the issue of any bankruptcy notice to the sheriff, who shall forthwith register the same respectively in his office.

Agent of creditor may act for him.
51 Vic. No. 19, s. 12.

12. Where a creditor entitled to present a bankruptcy petition is absent from New South Wales, his agent, if authorised to recover his debts or effects, may present the petition and make the proof required in lieu of such creditor:

Provided that the person whom it is sought to make bankrupt shall have, in addition, the same rights and remedies in every such case against such agent as he has against the person in whose name such proceeding is taken, and all notices, summonses, orders, and documents may be served upon such agent, and shall have the same effect as if served upon the creditor.

Division 3.—*Proceedings consequent on order.*

Power to appoint special manager.
51 Vic. No. 19, s. 13

13. (1) At any time after the making of a sequestration order, the official assignee 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 the appointment of a special manager or receiver of the estate or business, or any part thereof, other than the official assignee, appoint a manager or receiver thereof accordingly to act until a trustee is appointed, or so long as the creditors may by resolution require.

(2) Every such special manager or receiver shall, for all the purposes of obtaining and retaining possession of the property or business of the bankrupt, be in the same position in all respects as a receiver and manager appointed by the Supreme Court in its equitable jurisdiction, and the Court may enforce such acquisition or retention accordingly.

(3) Every person aggrieved by any act of a receiver or manager may apply to the Court, who may confirm or disallow the act complained of, and make such order in the premises as is just.

(4) Such special manager or receiver shall receive such remuneration as the creditors may by resolution determine, or in default of any such resolution as may be prescribed.

Bankrupt's statement of affairs. *Ibid.* s. 14.

14. (1) Where a sequestration order is made the bankrupt shall make out and lodge in the office of the Registrar and furnish to the official assignee a copy of a statement of and in relation to his affairs in the form prescribed by rules of Court verified by affidavit, and showing :—

(*a*) the particulars of the bankrupt's assets, debts, and liabilities ;

(*b*) the names, residences, and occupations of the debtors to his estate and of his creditors ;

(*c*) the amounts due by and to each, and the securities given or held by them respectively ;

(*d*) the dates when such debts and securities arose and were granted ; and

(*e*) such further or other information as may be prescribed or as the official assignee may require.

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

(*a*) If the order is made on the petition of the debtor, upon the making of the sequestration order.

(*b*) If the order is made on the petition of a creditor, within seven days from the date of the service of the order.

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

(3) The bankrupt shall also deliver to the official assignee all books of account, vouchers, and other documents and writings in the possession or power of such bankrupt relating to his estate and dealings, and shall at all times as far as lies in his power assist the official assignee, trustee, and manager in the collection and realisation of the assets.

(4) If the bankrupt fails without reasonable excuse to comply with the requirements of this section the Court may, on the application of the official assignee or of any creditor, adjudge him guilty of contempt of Court and punish him accordingly.

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

First creditors meeting.
51 Vic. No. 19, s. 15.

15. (1) As soon as may be after the lodgment of the bankrupt's statement of affairs as aforesaid a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held at an advertised time and place.

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

(3) In the interpretation of the said rules the words first meeting shall include single meeting, except that such single meeting shall be presided over by the Judge or Registrar, anything in the said rules to the contrary notwithstanding.

Proceedings at first meeting.
Ibid. s. 16.

16. At such first meeting the following business may be transacted :—

(1) The creditors may consider whether any and what proposal for a composition or scheme of arrangement shall be entertained.

60 Vic. No. 29 s. 9.

(2) The official assignee may, with the consent of the creditors given by resolution at the first or any other meeting of creditors and with the approval of the Court, allow the bankrupt to retain any of his personal property; and such approval shall have the effect of vesting the said property in the bankrupt as from the date of such resolution. Notice of the intention to allow a bankrupt to retain any of his personal property shall be given to all proved creditors seven days at least before a vote is taken on the resolution.

(3) A trustee or committee of inspection may be appointed as hereinafter provided.

(4) Other business may also be transacted at such meeting, and the business specified in this section may be transacted at any other meeting as well as at the first meeting.

Single meetings for small bankruptcies.
51 Vic. No. 19, s. 17.
60 Vic. No. 29, s. 2 (3).

17. (1) If the estate of the bankrupt does not appear to the official assignee to be of the value of two hundred pounds or upwards, there shall ordinarily be only a single meeting of creditors, which shall specially be so termed and be advertised accordingly.

(2) At such single meeting the bankrupt shall attend, and all such matters may be done and directions given as are authorised to be done or given at any meeting of creditors where the value of the estate exceeds two hundred pounds.

(3)

(3) If the assets appear at a single meeting to exceed two hundred pounds other meetings may be summoned, and all proceedings and directions shall be given or taken as provided in the case of a bankruptcy where the estate exceeds two hundred pounds.

Public examination of bankrupt. *Ibid.* s. 18. *Ibid.* s. 2 (4).

18. (1) Where the Court makes a sequestration order it shall hold a public 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, dealings, and property.

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

(3) The Court may adjourn the examination from time to time, and may direct such further examinations to be had from time to time as it may think fit at a date and place to be appointed by it.

(4) Any creditor who has proved, or his representative authorised in writing, may question the bankrupt concerning his affairs and the causes of his failure; and any creditor who has tendered a proof or his representative authorised in writing, may question the bankrupt upon any matters which may serve to establish his alleged claim to be counted as a creditor.

(5) The official assignee may take part in the examination of the bankrupt.

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

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

(8) The bankrupt shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. The evidence shall be taken down in writing or in shorthand, and when transcribed, shall be read over to and signed by the bankrupt before the Judge or Registrar either at the same or at a future time, and it shall be open to the inspection of any creditor at all reasonable times.

(9) When the Court is of opinion that the affairs of the bankrupt have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors, and the Court may at any time direct a further examination on being satisfied of its propriety.

Division 4.—*Composition or scheme of arrangement.*

Power for creditors to accept and Court to approve composition or arrangement.

19. (1) The creditors may at the first or any other meeting, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the bankrupt, or a proposal for a scheme of arrangement of the bankrupt's affairs.

(2)

(2) The composition or scheme shall not be binding on the creditors unless it is confirmed by a resolution passed by a majority in number representing three-fourths in value of all the creditors who have proved at a subsequent meeting of the creditors, and is approved by the Court. 51 Vic. No. 19, s. 19. 52 Vic. No. 11, s. 2. 60 Vic. No. 29, s. 2 (5).

Any creditor who has proved his debt may assent to, or dissent from such composition or scheme, by a letter addressed to the official assignee, in the form prescribed by rules of Court, and attested by a witness, so as to be received by such official assignee not later than two days preceding such subsequent meeting, and such creditor shall be taken as being present and voting at such meeting.

(3) The subsequent meeting shall be summoned by the official assignee by not less than seven days' notice, and shall not be held until after the public examination of the bankrupt is concluded. The notice shall state generally the terms of the proposal, and it shall be accompanied by a report of the official assignee thereon.

(4) The bankrupt or the official assignee may, after the composition or scheme 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.

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

(6) If the Court is of opinion that the terms of the composition or scheme are not calculated to benefit the general body of creditors, the Court may, in its discretion, refuse to approve the composition or scheme.

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

(8) A composition or scheme accepted or 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.

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

(10) 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 may be deemed a contempt of Court.

(11) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on

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 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. And any debt provable in other respects, which has been contracted before the date of the sequestration order, shall be provable in the bankruptcy.

(12) If under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property or manage his business, the provisions of Parts III and VII of this Act, so far as the nature of the case and the terms of the composition or scheme admit, shall apply to the trustee as if he were a creditor's trustee in a bankruptcy, and as if the terms "bankruptcy," and "bankrupt," included respectively a composition or scheme of arrangement, and a compounding or arranging debtor.

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

(14) No composition or scheme shall be approved of by the Court which does not provide for payment to the creditors of seven shillings and sixpence in the pound, unless in the opinion of the Judge the bankruptcy was caused by misfortune without any misconduct on the part of the debtor: Provided that if at any time after such approval the Court shall be satisfied that such opinion was erroneous it may declare the creditors released from the terms of the composition, but no payment made in the meantime thereunder shall be disturbed.

(15) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by a certificate of discharge.

Effect of composition or scheme.
51 Vic. No. 19, s. 20.

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

DIVISION 5.—*Creditors' trustees and committee of inspection.*

Appointment of trustee.
Ibid. s. 21.
60 Vic. No. 29, s. 2 (6).

21. (1) Whether the creditors resolve to entertain a proposal for a composition or not they may at the first or any meeting elect such persons as they think fit not exceeding two to be trustees of the estate in addition to the official assignee.

(2) Every such trustee may be a creditor or may be one of the official assignees.

(3) Instead of electing trustees as aforesaid the creditors may by resolution leave their appointment to the committee of inspection hereinafter named.

(4) When more persons than one are elected or appointed to the office of trustee, the creditors or the committee of inspection (as the case may be) may at any time declare whether any act or all acts required or authorised to be done by the trustees is or are to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee" (except where the context otherwise requires).

(5) The creditors or the committee (as the case may be) may at the time of the original election or appointment or at any subsequent time elect or appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or not being approved of by the Court.

(6) Trustees shall be joint tenants of the property of the bankrupt.

Security.
51 Vic. No. 19, s. 22.
60 Vic. No. 29, s. 2 (7).

22. (1) Creditors may direct what security (if any) shall be given by every elected trustee and to whom for the due performance of the duties of his office.

(2) No trustee shall be appointed after the termination of the first or single meeting except by leave of the Court.

Confirmation of election.
51 Vic. No. 19, s. 23.

23. (1) Upon the written acceptance by a trustee of his office and proof of his having given the security required of him the Court may make an order confirming his election.

(2) No official assignee shall be required to give security upon being elected trustee.

(3) Any creditor may object to the confirmation of the election of a trustee upon the ground—

(*a*) that it was not made in good faith by a majority in number and value of the creditors voting, or

(*b*) that the majority in number and value of the creditors dissent from his appointment, or

(*c*) that the person appointed is not fit to act as trustee, or

(*d*) that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interest of the creditors generally.

(4) If any such objection appears to the Court to be frivolous the creditor making such objection may be ordered to pay the costs occasioned thereby.

(5) Notice of every confirmation or removal under this section shall forthwith be published by the Registrar in the Gazette, and the production of such Gazette shall be evidence that the trustee named has been duly elected and confirmed or removed as the case may be.

Vesting of estate in trustee. *Ibid.* s. 24.

24. (1) Every order confirming the election of a trustee shall divest the estate, and every right, title, and remedy from the person (if any) ceasing to hold the office of trustee, and shall vest the same jointly in the official assignee and the persons who on the confirmation of the said election are the trustees.

(2) The property of the bankrupt shall pass from trustee to trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

(3) A sequestration order and the order of appointment of a trustee shall for all purposes of any law requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly.

Acts done in good faith to be valid. 51 Vic. No. 19, s. 25.

25. No defect or irregularity in the election of a trustee, or of a member of the committee of inspection, shall vitiate any act done in good faith, and no act of any trustee or of the committee shall be invalid by reason of any failure to elect a co-trustee or any of its members.

Committee of inspection. *Ibid.* s. 26.

26. (1) The creditors qualified to vote may at their first or any subsequent meeting by resolution appoint from among the creditors qualified to vote, or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property. The committee of inspection shall consist of not more than five or less than three persons.

(2) 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 official assignee or a trustee, or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) 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 at the meeting.

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

(5) 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.

(6) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the office of a member of the committee the official assignee or 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 other person eligible as above to fill the vacancy.

(8) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it does not exceed five.

DIVISION 6.—*Control over person and property of bankrupt.*

Duties of bankrupts as to discovery and realisation of property.

51 Vic. No. 19, s. 27.

27. (1) Every bankrupt shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall also, if required by the official assignee or a trustee or creditor, attend any and every other meeting or adjournment thereof, and shall submit to such examination and give such information as the meeting may require.

(2) He shall whenever required to do so bring with him, and give such information as may be required about any books of account, vouchers, and other documents in writing in his possession, relating to his estate and dealings, and about his assets, and about any particular in his statement of affairs.

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

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

(5) If a bankrupt wilfully fails to perform any of 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 assignee, or to the trustee, or to any person authorised by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

Arrest of debtor or bankrupt under certain circumstances. *Ibid.* s. 28.

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

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

(*b*) If, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official assignee or manager or trustee, or that there is probable ground for believing that he has concealed 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 on him of the notice of a bankruptcy petition, prescribed by rules of Court, he removes any goods in his possession above the value of five pounds, without the leave of the official assignee or trustee, if any.

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

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

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

Redirection of bankrupt's letters. 51 Vic. No. 19, s. 29.

29. Where a sequestration order is made against a debtor the Court, on the application of the official assignee or trustee, may from time to time order that for such time, not exceeding three months, as the Court thinks fit, post letters addressed to the bankrupt at any place, mentioned

mentioned in the order, shall be redirected, sent, or delivered by the Postmaster-General, or the officers acting under him, to the official assignee, or the trustee, or otherwise as the Court directs, and the same shall be done accordingly.

Discovery of bankrupt's property. *Ibid.* s. 30. 60 Vic. No. 29, s. 2 (8).

30. (1) The Court may, on the application of the official assignee or trustee, at any time after a sequestration order has been made against a debtor, summon before it the bankrupt or his wife, or 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 any person whom the Court may deem capable of giving information respecting the bankrupt, his dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the bankrupt, his dealings or property.

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

(3) The Court may examine on oath, or allow to be examined by the official assignee and trustee and any creditor, or by any solicitor or counsel on behalf of such assignee, trustee, or creditor, in such cases where a solicitor or counsel may be employed as provided by this Act, either by word of mouth or by written interrogatories, any person concerning the bankrupt, his dealings or property.

(4) If any person on examination before the Court or in answer to interrogatories admits, or if by other evidence it is proved to the satisfaction of the Court that he is indebted to the bankrupt, the Court may, on the application of the official assignee or trustee, forthwith order him to pay to such assignee or trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination and order.

(5) If any person on examination before the Court or in answer to interrogatories admits, or if by other evidence it is proved to the satisfaction of the Court, that he has in his possession any property belonging to the bankrupt, the Court may, on the application of the official assignee or trustee, forthwith order him to deliver to the official assignee or trustee such property, or any part thereof, at such time, and in such manner, and on such terms as to the Court may seem just, with or without costs of the examination and order.

Committal for refusing to obey or for prevarication. 51 Vic. No. 19, s. 13.

31. If the bankrupt or any other person (including the wife of such bankrupt) at any examination under the preceding section, or any adjournment thereof, being thereto required (and not having any lawful excuse in that behalf), shall refuse to surrender any book, document, or writing relating to the estate, or shall refuse to be sworn, or to answer any lawful question touching any of the matters aforesaid, or to subscribe his examination, the Court may commit him to prison, there to remain, until he shall have done the thing so required of him, or shall be discharged by the Court. And if any such person while under examination is guilty of prevarication, or evasion, or indecent conduct, the Court may commit him to prison for any term not exceeding fourteen days.

As to discharge from commitment. 51 Vic. No. 19, s. 32.

32. Any person committed under the last preceding section may be discharged from such committal on appeal therefrom to the Full Court if committed by the Judge, and to the Judge if committed by the Registrar, and in such last-mentioned cases a further appeal shall lie to the Full Court. If the committal was for refusing to answer a question, such question shall be set out in the warrant, and if it appears that the person committed has fully answered all lawful questions put to him, or, if committed for refusing to be sworn or to produce a document or for not signing his examination, that he had a sufficient reason for such refusal, the Court shall order the person committed to be discharged.

Answers to questions when admissible. *Ibid.* s. 33.

33. No question put to the bankrupt in any examination shall be deemed unlawful by reason only that the answer thereto may expose him to punishment:

Provided that no answer to any such question shall be admitted in evidence against him on the trial of any indictment other than on a prosecution against him for perjury.

Division 7.—*Release of estate, and annulment of sequestration order.*

Release on composition or arrangement. *Ibid.* s. 34.

34. After the acceptance and approval of a composition or scheme of arrangement in manner hereinbefore provided, the bankrupt may apply for an order releasing his estate from sequestration, and, on his satisfying the Court that the approved terms of such composition or scheme have been complied with, so far as is at the time practicable, the Court may make such order on such terms as it thinks just:

Provided that the terms of the composition or scheme may at any time be enforced notwithstanding the release in the same manner as is by this Act provided.

Release on payment, &c. *Ibid.* s. 35.

35. 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 a like order for the release of his estate; and on being satisfied that the creditors have been so paid or have

have released their debts and that no proceedings of a criminal nature are pending or contemplated against the bankrupt, the Court may make a like order upon such terms as it thinks just.

Effect of order. *Ibid.* s. 36.

36. Any order, whereby the estate is released from sequestration, shall have the effect of revesting in the bankrupt or such person as the Court may appoint, subject to such conditions as he may prescribe, all the property of the bankrupt undisposed of, as if the estate had never been sequestrated:

Provided that all sales and dispositions of the property and payments made and acts theretofore done by the official assignee or trustee shall be valid; and

Provided that the release of the estate shall not operate as a discharge of the bankrupt unless the Court shall so order.

Power for Court to annul sequestration in certain cases. 51 Vic. No. 19, s. 43.

37. (1) Where in the opinion of the Court a sequestration order ought not to have been made, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may on the application of any person interested by order discharge such order.

(2) Where a sequestration order is discharged under this section all sales and dispositions of property duly made, and all acts theretofore done by the official assignee, trustee, or other person acting under their authority, or by the Judge, Registrar, or District Registrar, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the Court may declare by order.

(3) Notice of the order discharging a sequestration order shall be forthwith published in the Gazette.

Meaning of payment of debts in full. *Ibid.* s. 44.

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

Division 8.—*Bankrupt's certificate.*

Certificate how and when applied for. 51 Vic. No. 19, s. 37. 60 Vic. No. 29, ss. 2 (9); 11; 12.

39. Whether a composition or scheme of arrangement has been approved as hereinbefore provided or not, and whether his estate has been released or not, the bankrupt may, after the expiration of three months from the date of sequestration, cause an advertisement to be inserted in the Gazette and a newspaper published in the place where the bankrupt resided at the date of the sequestration order, stating his intention

intention to apply on a day fixed by the Judge or Registrar, and named therein, not less than fourteen nor more than thirty days from the day of first publication for a certificate of discharge under this Act: Provided that where the Court has granted a release of the bankrupt's estate under section thirty-five, the bankrupt may forthwith apply for a certificate of discharge, anything in this section to the contrary notwithstanding.

(1) He shall give fourteen days' notice in writing to the official assignee of such intention.

(2) The application shall be heard on the appointed day and on any day or days of adjournment, and the official assignee and any creditor may be heard in opposition to such application upon giving notice of the grounds thereof.

(3) On the hearing of the application the Court shall take into consideration a report of the official assignee or trustee as to the bankrupt's conduct or affairs, and may either—

(*a*) grant or refuse an absolute order of discharge, or

(*b*) suspend the operation of the order for a specified time, or

(*c*) grant an order of discharge or suspend the operation of such order subject to any conditions with respect to any earnings or income which may then be or afterwards become due to the bankrupt or with respect to his after acquired property.

(4) The Court shall refuse the discharge in all cases where he is satisfied that the bankrupt has done or omitted anything which in the opinion of the Court amounts to a misdemeanour under this Act or any amendment thereof, and shall, on proof of any of the facts hereinafter mentioned, either refuse the order or suspend the operation of the order for a specified time, or suspend the operation of, or grant, an order of discharge subject to such conditions as aforesaid.

(5) The Court may, as one of the conditions of granting an order of discharge under this section, require the bankrupt to consent to judgment being entered against him by the official assignee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, but in no case shall execution be issued without leave of the Court on a judgment consented to by the bankrupt under the provisions of this subsection.

Grounds for refusing or suspending certificate.
51 Vic. No. 19, s. 33.
60 Vic. No. 29, ss. 13, 14.

40. The facts referred to in the last preceding section are—

(*a*) That the bankrupt has omitted to keep such books of account as are usual and proper in the business or occupation carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy.

(*b*)

(*b*) That the bankrupt has wilfully delayed surrendering his estate or avoided its sequestration in order to benefit or assist one creditor or more to the disadvantage of the rest.

(*c*) That the bankrupt has continued to trade or obtained credit in one or more sums to the amount of fifty pounds or upwards after knowing himself to be insolvent.

(*d*) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall be on him) of being able to pay it.

(*e*) That the bankrupt has brought on his bankruptcy by rash and hazardous speculations or unjustifiable extravagance in living.

(*f*) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action or other proceeding properly brought against him.

(*g*) That the bankrupt has within three months preceding the date of the sequestration order, when unable to pay his debts as they become due, given an undue preference to any of his creditors.

(*h*) That the bankrupt has on any previous occasion been adjudged bankrupt or insolvent, or made a statutory composition or arrangement with his creditors, or assignment for the benefit of creditors at common law, unless his estate then produced ten shillings in the pound, or a majority in number and value of the creditors in that estate certify that in their opinion the bankruptcy or insolvency was the result of misfortune only.

(*i*) That the bankrupt has not upon surrendering his estate or after his sequestration made a full and fair disclosure of his property in possession, reversion, or expectancy.

(*j*) That the bankrupt has wilfully violated or omitted to comply with any of the provisions of this Act.

(*k*) That the bankrupt being at the time insolvent has made away with or disposed of any of his property otherwise than in good faith and for valuable consideration.

(*l*) That the bankrupt has unlawfully expended for his own benefit or appropriated to his own use any property of which he at the time had the charge or disposition as a trustee, factor, broker, or agent only, or that he has been guilty of any fraudulent breach of trust.

(*m*) That there is an unsatisfied judgment against the bankrupt in an action for assault, breach of promise, seduction, or any malicious injury, or for damages or costs under any laws relating to divorce.

(*n*) That the bankrupt has carried on business by means of a fictitious capital.

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

(*p*) That the bankrupt has entered into any agreement not to register or to delay the registration of a bill of sale which is in existence at the date of the sequestration order, and has not been duly registered in accordance with the law in force for the time being dealing with the registration of bills of sale.

(*q*) That the bankrupt has given a bill of sale at any time within three months preceding the date of the sequestration order, he being at the time insolvent within the meaning of section fifty-six of this Act.

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

Fraudulent settlements.
51 Vic. No. 19, s. 39.

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

(1) In the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(2) In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

If the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend the certificate of discharge, or suspend or grant one 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 come within the provisions of the last preceding section.

Discharge of bankrupt.
51 Vic. No. 19, s. 40.
60 Vic. No. 29, ss. 2 (10); 15.

42. (1) For the purposes of the last two preceding sections the report of the official assignee or trustee shall be prima facie evidence of the statements therein contained.

(2) Notice of the appointment by the Judge or Registrar of the day for hearing the application for a certificate of discharge shall be published in the manner prescribed by rules of Court, and the Court may hear the official assignee and the trustee, and may also hear any creditor, either personally or by counsel. At the hearing the Court may put such questions to the bankrupt and receive such evidence as it thinks fit.

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

(4) No certificate of discharge shall be issued until the bankrupt has paid all fees due by him in respect of any proceedings under this Act including such fees as may be payable upon the granting of and in respect of the said certificate, and no bankrupt shall be deemed to be discharged within the meaning of this Act until such certificate has issued.

(5) A certificate of discharge shall be issued by the Registrar after an order has been made in that behalf by the Court, and such certificate shall bear the seal of the Court, and be in the form prescribed by rules of Court.

(6) If in consequence of the estate not being sufficiently administered, or for want of sufficient evidence, or for any other reason, the Court is unable to decide whether a certificate should or should not be granted, suspended, or refused, he may adjourn the application for such certificate from time to time:

Provided that the Court shall give its decision as soon as may be after the final dividend has been declared as hereinafter provided, and the bankrupt shall then be entitled to demand that such decision be given without delay.

Application after twelve months. 51 Vic. No. 19, s. 41.

43. (1) No application by the bankrupt for a certificate shall be allowed after twelve months from the date of sequestration unless notice of his intention to apply has been duly advertised before the expiration of that period, except by leave of the Court on such terms as it thinks proper.

Proceedings where bankrupt does not apply

(2) If the bankrupt has not within nine months after sequestration applied for his certificate, the Court may, on application of the official assignee or trustee, require him by summons, and in case of his refusal or neglect may compel him by warrant, to appear before the Court and show cause, if he has any, why a certificate of discharge should not in his case be refused or suspended, and on such appearance the Court may deal with the case, and grant, refuse, or suspend such certificate, and otherwise deal with such bankrupt as if the certificate had been applied for by him.

Effect of certificate of discharge. *Ibid.* s. 42. 60 Vic. No. 29, s. 16.

44. (1) A certificate of discharge shall not release the bankrupt from any debt on a recognisance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue

revenue, or at the suit of the sheriff or other public officer, on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Colonial Treasurer certify in writing his consent to his being discharged therefrom.

(2) A certificate of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(3) A certificate of discharge shall not release the bankrupt from any order made under section sixty-one of this Act, or any amendment thereof, or from any liability under a judgment against him as defendant in an action for seduction, libel, or slander, or from liability as a respondent or co-respondent in a suit in the divorce jurisdiction or under an affiliation order, except to such extent and subject to such conditions as the Court may think just.

(4) A certificate of discharge shall release the bankrupt from all other debts provable in bankruptcy.

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

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

(7) Any assignee or trustee becoming bankrupt and being indebted to the estate of which he was such assignee or trustee in respect of money improperly retained or employed by him shall not be discharged from such debt as to any future assets although he may have obtained his certificate.

PART II.

ADMINISTRATION OF PROPERTY.

DIVISION 1.—*Proof of debts.*

45. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of contract, promise, or breach of trust shall not be provable in bankruptcy. Description of debts provable in bankruptcy. *Ibid.* s. 45.

(2)

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

(3) Save, as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the 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.

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

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

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

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

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

Mutual credit and set-off.
51 Vic. No. 19, s. 46.

46. Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a sequestration order is made under this Act and any other person proving or claiming to prove a debt under such sequestration order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be

set

set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed as paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him.

Rules as to proof of debt. 51 Vic. No. 19, s. 47.

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

Division 2.—*Preferential debts.*

Priority of debts. *Ibid.* s. 48.

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

(*a*) All wages or salary of any clerk or servant in respect of the services rendered to the bankrupt during six months before the date of the sequestration order, not exceeding fifty pounds; and

(*b*) All wages of any labourer or workmen, not exceeding fifty pounds, whether payable for time or piece-work in respect of the services rendered to the bankrupt during six months before the date of the sequestration order.

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

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

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

(5) Nothing in this section shall alter the effect of the Act fifty-fifth Victoria number twelve, or shall prejudice the provisions of the Friendly Societies Act thirty-seventh Victoria number four, or of the twenty-sixth Victoria number thirteen, or any Acts amending or consolidating the same or any of them.

Preferential claim in case of apprenticeship. 51 Vic. No. 19, s. 49.

49. (1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the

the sequestration order shall, if either the bankrupt or apprentice or clerk gives notice in writing to the official assignee or 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 official assignee or trustee may, on the application of the apprentice or clerk or of some person on his behalf, pay such sum as the official assignee or trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture of articles before the commencement of the bankruptcy, and to the other circumstances of the case.

(2) Where it appears expedient to an official assignee or trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

Rent.
Ibid. s. 50.
60 Vic. No. 29, s. 2 (11).

50. No distress for rent which has accrued due before the date of the sequestration order shall be levied or proceeded with as against the estate of the bankrupt after the sequestration order, but the landlord shall receive out of the estate so much rent as was then due or accruing due or as by this Act is made provable, but for a period not exceeding three months, and may prove and share ratably with other creditors for the balance.

DIVISION 3.—*Property available for payment of debts.*

Relation back of official assignee's or trustees title.
51 Vic. No. 19, s. 51.
60 Vic. No. 29, s. 2 (12).

51. (1) The bankruptcy of a debtor, whether the same 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 an order is made for the sequestration of his estate, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within six months next preceding the date of the presentation of the bankruptcy petition; but 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.

Court may make order antedating commencement of bankruptcy.
60 Vic. No. 29, s. 8.

(2) The Court may at any time on the motion of the official assignee and on being satisfied that an act of bankruptcy has been committed by the bankrupt within six months next preceding the date of the presentation of the petition upon which the sequestration order

order was made, order and declare that the bankruptcy shall be deemed to have relation back to and commence on the date of such act of bankruptcy, and such order or declaration shall be prima facie evidence of the fact of the alleged act of bankruptcy and of the commencement of the bankruptcy on such date as aforesaid.

Description of bankrupt's property divisible amongst creditors.

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

51 Vic. No. 19, s. 52.
60 Vic. No. 29, s. 2 (13).

(*a*) Property held by the bankrupt on trust for any other person:

(*b*) The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole:

But it shall comprise the following particulars:

(*c*) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and

(*d*) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and

(*e*) All goods being, at the commencement of the bankruptcy or at any time between that time and the date of the order of sequestration in the possession, order, or disposition of the bankrupt, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

DIVISION 4.—*Effect of bankruptcy on antecedent transactions.*

Restriction of rights of creditor under execution or attachment.

51 Vic. No. 19, s. 53.

53. (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 official assignee or trustee of the bankrupt unless he has completed the execution or attachment before the date of the sequestration order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

(2) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by

by receipt of the debt; and an execution against land is completed by seizure and sale, or, in the case of an equitable interest, by the appointment of a receiver.

Duties of sheriff as to goods taken in execution. 51 Vic. No. 19, s. 54.

54. (1) Where property of a debtor is taken in execution, and before the sale thereof notice is served on the sheriff that a sequestration order has been made against the debtor, the sheriff shall, on request, deliver the property to the official assignee or trustee under the order, but the costs of the execution shall be a charge on the property so delivered, and the official assignee or trustee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

(2) Where the property of a debtor is sold under an execution in respect of a judgment for a sum exceeding twenty pounds, the sheriff shall deduct the costs of the execution from the proceeds of sale, and retain the balance for seven days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and the debtor is adjudged bankrupt thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official assignee or trustee, who shall be entitled to retain the same as against the execution creditor, but otherwise he shall deal with it as if no notice of the presentation of a bankruptcy petition had been served on him.

Avoidance of voluntary settlements. *Ibid.* s. 55.

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

(2) Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the official assignee or trustee in the bankruptcy.

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

(4) Nothing in this section shall be deemed to affect or invalidate the rights of any person deriving title to any property in good faith and for valuable consideration through or under any person taking or claiming as a donee of any settlement. 60 Vic. No. 29, s. 35.

56. (1) Every alienation, transfer, gift, surrender, delivery, mortgage, or pledge of any estate or property, real or personal, every warrant of attorney or judicial proceeding made, taken, or suffered by a person being at the time insolvent or in contemplation of surrendering his estate under this Act, or knowing that proceedings for placing the same under sequestration have been commenced, or within sixty days before the sequestration thereof, and, whether fraudulent or not, having the effect in any such case of preferring any then existing creditor to another shall be absolutely void. Preferences. *Ibid.* s. 17.

(2) For the purpose of this section the word insolvent means the inability of a person to pay his debts as they become due from his own moneys.

(3) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

57. Subject to the 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 subject to the provisions of this Act with respect to the avoidance of certain preferences except as hereinafter provided, nothing in this Act shall invalidate in the case of a bankruptcy :— Protection of bona fide transactions, payments, advances, &c., without notice. *Ibid.* s. 18.

(*a*) Any payment by the bankrupt to any of his creditors for or on account of any just debt due at the time of payment.

(*b*) Any payment or delivery to the bankrupt.

(*c*) Any conveyance or assignment by the bankrupt for valuable consideration.

(*d*) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration.

(*e*) Any transaction to the extent of any present advance bonâ fide made by any existing creditor.

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

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

(2) The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into has not

at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

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

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

Assignment when void.
51 Vic. No. 19, s. 58.
60 Vic. No. 29, ss. 2 (14), 23.

58. Every distribution of property which is under this Act an available act of bankruptcy shall be void as against the official assignee or trustee, save only that in the case of a conveyance or assignment by the bankrupt of property in trust for his creditors registered within one month from the execution thereof by the assignor in accordance with the provisions of subsection ten of section four of this Act, all dealings with such property, and all acts done in good faith by any trustee under such instrument, shall be valid unless at the time of the dealing or act he knew or had notice that proceedings to sequestrate the assignor's estate had been or were about to be taken.

Division 5.—*Realisation of Property.*

Possession of property by official assignee.
51 Vic. No. 19, s. 59.

59. (1) The official assignee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.

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

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

(4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to be assignable and to have been duly assigned to the official assignee; and the official assignee, or the trustee in the event of the estate of the official assignee vesting in a trustee, may sue in any Court in the name of the bankrupt, or continue any action or suit begun by the bankrupt at the date of the sequestration order.

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

Books, &c., may be destroyed with leave of the Court. 60 Vic. No. 29, s. 25.

(6) After the expiration of five years from the date of the sequestration order, or two years from the date of the certificate of discharge, whichever shall first happen, the official assignee may with the leave of the Court cause all or any of the books and other documents and papers lodged with him by a bankrupt or insolvent to be destroyed.

Seizure of property of bankrupt. 51 Vic. No. 19, s. 60.

60. (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, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and when 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.

(2) Any person acting under such warrant shall make an inventory thereof, and leave with the person in whose possession any such property is attached a copy of the warrant and inventory having subjoined thereto a notice that the property has been attached as belonging to the bankrupt estate, and that any person who knowing the same to have been so attached removes, retains, conceals, or receives any part thereof with intent to defeat the said attachment is guilty of a misdemeanour.

Power to direct payment by Civil Servant, &c., out of salary. 60 Vic. No. 29, s. 19 (1).

61. (1) Where the bankrupt is an officer of the Army or Navy, or of the Colonial Forces, or an officer or clerk, or otherwise employed or engaged in the Civil Service of the Crown, the Court may, on the application of the official assignee or trustee, make an order for the payment to such assignee or trustee for distribution among the creditors of the bankrupt of so much of the bankrupt's pay and salary then due or thereafter to become due as he thinks fit.

(2) Before making any order under the preceding subsection, the Court shall communicate with the chief officer of the department under which the pay or salary is enjoyed as to the amount, times, and manner of such payment, and shall hear and give consideration to any report which such chief officer may make as to the circumstances of the case.

(3) When the bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay or pension, or any compensation charged on the Consolidated Revenue, the Court, on the application of the official assignee or trustee, may make such order as he thinks just for the payment of the salary, income, half-pay, pension, compensation, or of any part thereof to the official assignee or trustee, to be applied by him in such manner as the Court may direct. 51 Vic. No. 19, s. 61 (2). 60 Vic. No. 29, s. 19 (2).

(4) Nothing in this section shall take away or abridge any power of the chief officer of any public department to dismiss a bankrupt, or to declare the pension, half-pay, or compensation of any bankrupt to be forfeited. 51 Vic. No. 19, s. 61 (3).

62. (1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the official assignee or trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may by writing signed by him, at any time within three months after the date of the sequestration order, disclaim the property. Disclaimer of onerous property. *Ibid.* s. 62.

(2) Where any such property has not come to the knowledge of the official assignee or trustee within one month after the date of the sequestration order he may, upon obtaining permission from the Court, disclaim such property at any time within two months after he first became aware thereof.

(3) 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 official assignee or 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 official assignee or trustee from liability) affect the rights or liabilities of any person.

(4) An official assignee or trustee shall not be entitled to disclaim a lease without leave of the Court, except in any cases which may be prescribed by rules of 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, compensation for use or occupation of the premises since the date of sequestration, and other matters arising out of the tenancy as the Court thinks just.

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

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

(7) The Court may, on application by any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as he thinks fit make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance 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 underlessee or as mortgagee by demise, except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or underlessee declining to accept a vesting order upon such terms shall be excluded from all interest in, and security upon the property, and if there be no person claiming under the bankrupt who is willing to accept an order upon such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

(9)

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

Powers of official assignee or trustee independently of committee of inspection. 51 Vic. No. 19, s. 63.

63. Subject to the provisions of this Act the official assignee or trustee may do all or any of the following things :—

(1) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt) by public auction, with power to transfer the whole thereof to any person or company or to sell the same in parcels.

(2) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof.

(3) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt.

(4) Exercise any powers, the capacity to exercise which is vested in the official assignee or trustee under this Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Act.

(5) Deal with any property to which the bankrupt is beneficially entitled as tenant-in-tail in the same manner as the bankrupt might have dealt with it.

Powers exercisable by official assignee or trustee, with permission of committee of inspection. *Ibid.* s. 64.

64. The official assignee or trustee may, with the permission of the committee of inspection, do all or any of the following things :—

(1) Carry on the business of the bankrupt so far as may be necessary for the beneficial winding-up of the same.

(2) Bring, institute, or defend any action or other legal proceeding relative to the property of the bankrupt.

(3) Employ a solicitor, counsel, or other agent to take part in any examination of the bankrupt or other person under this Act or to take any proceedings or to do any business which may be sanctioned by the committee of inspection.

(4) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the committee think fit.

(5) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts.

(6) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums payable at such times, and generally on such terms as may be agreed on.

(7) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy.

(8) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the official assignee or trustee by any person, or by the official assignee or trustee on any person.

(9) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(10) Appoint the bankrupt himself to superintend the management of the property of the bankrupt or any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee or trustee may direct.

(11) Make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding-up his estate, but any such allowance may be reduced by the Court.

(12) 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 private sale.

Permission to be specific.
60 Vic. No. 29, s. 20.
51 Vic. No. 19, s. 65 (2).

65. (1) The permission given for the purposes of the preceding section shall not be a general permission to do all or any of the things therein mentioned, but only a permission to do the particular thing for which permission is sought in the specified case.

(2) It shall not be necessary for persons dealt with by the assignee or trustee to ascertain whether he had the necessary sanction, but its existence shall be conclusively presumed for the purposes of the transaction, if the person dealt with shall in good faith have acted in reliance on the fact that there was such sanction.

Court may give permission.
Ibid. s. 66.

66. If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Court.

Title conveyed by official assignees or trustees.
7 Vic. No. 19, s. 15.
52 Vic. No. 11, s. 5.
60 Vic. No. 29, s. 5.

67. The same title or property whether real or personal belonging to or forming part of any bankrupt or insolvent estate may be conveyed or transferred in fee or otherwise, as the case may be, to any purchaser, mortgagee, or other person by the assignee or trustee of such estate for the time being as the bankrupt or insolvent himself had or was by law entitled or able to convey or transfer immediately before

before the sequestration of his estate, and it shall not be essential to the validity of any such conveyance or transfer (so far as it respects the right of any person to execute the same as assignee) to prove more than the fact of his appointment, or, in the case of a trustee or elected assignee, his confirmation in that character, that at the time of the execution of the instrument he had not been removed from office, and that there was then no assignee or trustee in or of the estate in question other than the assignee or trustee executing the same, of which several facts the certificate of the Chief Commisssoner, Judge, or Registrar indorsed on such instrument of transfer shall be conclusive evidence.

Deeds executed by official assignee or trustee to be deemed effectual to convey.
10 Vic. No. 14, s. 3.
52 Vic. No. 11, s. 5.

68. (1) All deeds duly executed by the assignee or trustee for the time being of any bankrupt or insolvent estate purporting to convey, assign, release, or assure any part of the property of a bankrupt or insolvent to any purchaser, mortgagee, or other person for any estate or interest therein shall be valid both at law and in equity for conveying, assigning, releasing, and assuring such property for the estate and interest in such deed mentioned.

Purchasers relieved from the effect of omissions.

(2) Such purchaser, mortgagee, or other person, and every person claiming under him shall be relieved from inquiring whether the advertisements have been inserted, and meetings of creditors called, or direction of creditors obtained as by law required, notwithstanding the same have not been inserted, called, or obtained.

(3) Any person who deals or contracts with or takes any conveyance or other assurance from any assignee or trustee for the time being as aforesaid of any bankrupt or insolvent estate shall not be bound to inquire into the power or authority of such assignee or trustee with respect to such dealing, contracting, conveyance, or assurance as aforesaid, but such assignee or trustee shall for the purposes aforesaid, and as between him and such person as aforesaid, be deemed and considered as beneficial owner of the real and personal property of the bankrupt or insolvent.

But assignees not exonerated.

(4) Nothing in this Act contained shall be construed to exonerate any such assignee or trustee from any liability for the non-observance or non-performance of his duty as such assignee or trustee as aforesaid.

(5) In this section and the last preceding section the expression "assignee" shall include an official assignee of any bankrupt or insolvent estate and an elected assignee whose election has been confirmed by the Court.

Division 6.—*Distribution of estate.*

Account and plan of distribution.
51 Vic. No. 19, s. 67

69. As soon as possible, and not later than four months after sequestration (or three months in respect of estates requiring only a single meeting), the official assignee or trustee shall frame and lay before

before the Court an exact account of the balance of the estate, specifying the proceeds of sales and debts collected and all debts outstanding, together with an inventory of all property still unsold, and showing the debts due by the estate, and shall present a plan for distribution of the assets, specifying first such creditors as are entitled to preference in their order of legal preference, and secondly the unsecured creditors and the balance remaining for division amongst them. A similar account and plan shall be submitted from time to time as the Court may direct.

Audit and notice thereof. 51 Vic. No. 19, s. 68.

70. As soon as the Registrar has audited such account and made his report thereon, and the plan for distribution has been approved of by the Court, it shall lie in the office of the Registrar for inspection by the creditors and bankrupt for such reasonable time as may be directed, but not less than fourteen days from the advertisement thereof, and the official assignee or trustee shall cause notice thereof to be given to the creditors and inserted in the Gazette.

As to objections thereto. *Ibid.* s. 69.

71. (1) The bankrupt, and any party interested in the estate, and any creditor, may, within the time aforesaid, enter his objection in writing with the Registrar stating the grounds thereof.

(2) The Court may permit such objection to be entered at any time before final confirmation of the plan on such terms as the Court thinks fit.

Proceedings thereon. *Ibid.* s. 70.

(3) The person objecting to the account or plan shall apply to the Judge or Registrar for an order calling on the official assignee or trustee and also on the party whose interest may be affected thereby to show cause why the plan should not be amended, and thereupon the Court upon hearing the parties may make such order as it thinks fit.

(4) Whenever any amendment is ordered in the plan, whereby the interest of any party who has not been heard is affected, the plan shall again be open for inspection and notice thereof be given as aforesaid.

Confirmation and effect thereof. *Ibid.* s. 71.

72. (1) After expiration of the time appointed for inspection of the account and plan of distribution without any objection being entered thereto, or, if an objection has been entered, then, after disposal thereof, the official assignee or trustee may apply to the Court that the plan may be confirmed, and thereupon the Court may confirm the same; and such confirmation shall have the effect of a final judgment as between the bankrupt and his creditors, except as to the amount of any debt afterwards expunged or reduced, and except against such creditors as are afterwards admitted to prove their debts against the estate at any time before its final distribution.

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

(2) If a bankrupt removes out of the jurisdiction before the confirmation of the account and plan of distribution in his estate, except with the consent of three-fourths in number and value of the proved creditors in his estate or by leave of the Court, the Court may, on

60 Vic. No. 29, s. 27.

on the information of the official assignee or trustee or of any creditor, by warrant addressed to the sheriff or any constable or officer of the Court prescribed by rules of Court, cause such bankrupt to be arrested and to be safely kept as prescribed by rules of Court until such time as the Court may order.

Joint and separate dividends.
51 Vic. No. 19, s. 72.

73. (1) Where a sequestration order is made against one partner of a firm, 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 that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the official assignee or trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Right of creditor who has not proved debt before declaration of a dividend.
Ibid. s. 73.

74. (1) 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 official assignee or trustee any dividend he may have 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.

Plan of distribution not to be disturbed in certain cases.
60 Vic. No. 29, s. 26.

(2) After a plan of distribution has been approved of by the Court no creditor shall be entitled by proof of his debt to disturb the plan of distribution unless he satisfy the Court that he could not, by the exercise of due diligence, have proved his debt prior to such approval.

Ibid. s. 26.

(3) In any order allowing a disturbance of the plan of distribution the Court may impose such terms as to costs or otherwise as he may think fit.

Ibid. s. 26.

(4) If an amendment is ordered in the plan under section seventy-one of this Act any creditor who has proved his debt before the order is made directing such amendment shall be entitled to rank for dividend on the amended plan.

No action for dividend.
51 Vic. No. 19, s. 74.

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

Official assignee or trustee to give notice of dividend.
Ibid. s. 57.

76. The official assignee or trustee shall cause notice to be given as prescribed by rules of Court when and where dividends are payable to creditors and others interested in the estate.

Distribution of assets where creditors give indemnity for costs. 60 Vic. No. 29, s. 10.

77. In cases 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 reference to the distribution of such assets with a view to giving the indemnifying creditors an advantage over others in consideration of the risk run by them in giving such indemnity.

Official assignee to file periodical statements. 51 Vic. No. 19, s. 76.

78. (1) The official assignee or trustee shall, at periods prescribed by rules of Court, file with the Colonial Treasurer and the Registrar statements showing how each bankrupt estate has been applied and disposed of under the following heads, that is to say:—

(*a*) Gross amount of assets realised.
(*b*) Costs, charges, allowances, and expenses.
(*c*) Remuneration or commission.
(*d*) Preferential payments.
(*e*) Dividends to general creditors.
(*f*) Balance undisposed of.

(2) If any part of the estate has not then been collected or disposed of such statement shall specify the nature of such unrealised estate.

(3) The official assignee or trustee shall make out and file such further or fuller statements in any case as the Court may think proper.

Court may disallow costs, charges, &c. *Ibid.* s. 77.

79. The Court may, on the complaint of any creditor or person interested, or upon any report or audit by the Colonial Treasurer or Registrar, allow or disallow all or any part of the costs, charges, allowances, and expenses claimed by any official assignee or trustee or of any payment made by such assignee or trustee, and make such order thereon as the Court thinks fit.

Final dividend. *Ibid.* s. 78. 60 Vic. No. 29, s. 2 (15).

80. (1) When the official assignee or trustee has realised all the property of the bankrupt, or so much thereof as can, in the opinion of such official assignee or trustee, or in the joint opinion of himself and of the committee of inspection where such committee has been appointed, be realised without needlessly protracting the winding-up of the estate, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed by rules of Court to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims.

(2) After the expiration of the time so limited, or, if the Court on application by any such claimant grant him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other person.

81.

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

Right of bankrupt to surplus.
51 Vic. No. 19, s. 79.

PART III.

Creditors' Trustees and Official Assignees.

Division 1.—*Remuneration of trustees and assignees.*

82. (1) Where the creditors appoint any person to be trustee of a bankrupt's estate, his remuneration (if any) shall 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 or percentage, of which one part shall be payable on the amount realized, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

Remuneration of trustees.
Ibid. s. 80.

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

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

(4) Where no remuneration has been voted to a trustee he shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him in or about the proceedings of the bankruptcy as the Registrar may allow.

(5) The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as a 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.

83. (1) Where no trustee is appointed an official assignee shall receive in the absence of any resolution of the creditors allowing a larger amount, a remuneration in the nature of a commission or percentage at the rate of five per centum, of which one half shall be payable on the gross amount coming into the hands of the official assignee in each estate, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other half shall be payable upon each dividend as and when it is declared.

Remuneration of official assignee.
Ibid. s. 81.
60 Vic. No. 29, s. 2 (16).

(2)

(2) An official assignee, who is elected to act as trustee, shall receive remuneration as such trustee, provided that it is not less than the remuneration by this section allowed to an official assignee.

(3) Where trustees are duly appointed under this Act (of whom the official assignee is not one), the official assignee shall receive from such trustees such sum for his services as the Registrar may from time time declare to be reasonable, but such sums in the aggregate shall not exceed (except upon special order of the Court on that behalf and made under the next following section) the amount allowed by this section when no creditors' trustee has been appointed.

Power to increase remuneration for special services. 51 Vic. No. 19, s. 82.

84. The Court may from time time order that the remuneration of a trustee or official assignee be increased, and may take into account in allowing such increase :—

(*a*) Any special services rendered by such trustee or assignee.

(*b*) Any special circumstance, which, in the opinion of the Judge, increased the difficulty of realizing the estate.

(*c*) The smallness of the amount realizable in the estate.

An official assignee or trustee to be recouped expenses. *Ibid.* s. 83. 60 Vic. No. 29, s. 2 (17), (18).

85. (1) An official assignee or trustee is entitled to receive out of the estate in priority to the payment of a dividend payment for moneys disbursed, and for liabilities and costs incurred by him on behalf of the estate and in accordance with the provisions of this Act.

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

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

Allowance and taxation of costs.

(4) All bills and charges of solicitors, managers, accountants, auctioneers, brokers, official assignees, or trustees, and other persons shall be taxed by the Registrar or other taxing officer appointed by the Judge, and no payments in respect thereof shall be allowed in the official assignee's or trustee's accounts without proof of such taxation having been made, and the Registrar or other taxing officer appointed by the Judge shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned.

(5) Every such person shall, on request by the official assignee or trustee (which request the official assignee or trustee shall make a sufficient time before declaring a dividend) deliver his bill of costs or charges to the Registrar or other taxing officer appointed by the Judge for taxation, and if he fails to do so within seven days after receipt of the request, or such further time as the Judge or Registrar, or other taxing officer appointed by the Judge, on application, may grant,

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

(6) The Registrar or other taxing officer appointed by the Judge may refer for taxation any common law charges in any bill of costs or charges to the Prothonotary, and any equity or conveyancing charges to the Master or Deputy Registrar in equity; and in respect of such charges the decision of the Prothonotary or Master or Deputy Registrar shall be deemed to be the decision of the Registrar or other taxing officer appointed by the Judge, and be subject to appeal to the Court under this Act.

(7) An appeal shall lie to the Court from the decision of the Registrar or other taxing officer appointed by the Judge in allowing or disallowing any item on the motion of the official assignee or trustee, or any creditor of the estate or any other person interested.

Prohibition of secret understandings. 51 Vic. No 19, s. 84.

86. (1) No official assignee, trustee, receiver, manager, or member of a committee of inspection shall, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditor or allowed by this Act and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee to the bankrupt, or any solicitor or other person that may be employed about a bankruptcy.

(2) Any person offending against this section shall be guilty of a misdemeanour.

Division 2.—*Official name.*

Official name of trustee. *Ibid.* s. 85.

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

Division 3.—*Appointment and removal.*

Official assignees to be appointed by Governor. *Ibid.* s. 86. 60 Vic. No. 29, s. 2 (19).

88. The Governor may, with the approval of the Judge, appoint such number of persons official assignees in bankruptcy as may be, in the opinion of the Judge, from time to time required, and both such official and elected assignees shall be under the direction and control of the Judge.

(2)

(2) Every official assignee shall, upon his appointment, give such security as may be prescribed by rules of Court.

(3) For the purpose of affidavits, verifying proofs, petitions, or other proceedings under this Act an official assignee may administer oaths.

Office of trustee vacated by bankruptcy. 51 Vic. No. 19, s. 87.

89. If an order of sequestration is made against an official assignee or a trustee he shall thereby vacate his office.

Removal of trustee. *Ibid.* s. 88.

90. (1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee elected by them, or appointed by the committee of inspection, and may at the same or any subsequent meeting appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.

(2) The Judge may remove any official assignee or trustee for misconduct or neglect or omission in the performance of his duties under this Act, or for absence from New South Wales, or for any other reasonable cause; but if the creditors, by ordinary resolution, disapprove of the removal of a trustee, he or they may appeal against it to the Full Court.

Proceedings in case of a vacancy in the office of trustee. *Ibid.* s. 89.

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

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

(3) If the creditors do not, within three weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the official assignee shall report the matter to the Court, and the Court may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee as in the case of a first appointment.

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

Resignation. *Ibid.* s. 90.

92. (1) Any official assignee or trustee or manager or receiver may apply to the Court for leave to resign his office, and if no valid objection be stated, and if the Court be satisfied that he has complied with the provisions of this Act, and with the rules of Court, his application may be granted; but if any objection be stated thereto the Court shall proceed to determine the same, and shall make such order thereon as it deems fit, and if the application of any such official assignee, or trustee, or manager, or receiver for leave to resign be granted, the Court may make such orders as may be necessary for the preservation and administration of the estate until a new official assignee, or trustee, or manager, or receiver be appointed or elected and confirmed, and for the discharge

discharge and acquittance of such assignee, or trustee, or manager, or receiver, and for the security and payment of any unclaimed dividends to the parties entitled to the same.

(2) No order of the Court allowing such assignee, trustee, manager, or receiver to resign shall prevent the official assignee, trustee, manager, or receiver thereafter appointed or elected and confirmed in his stead from calling upon him to account for anything done or left undone prior to his resignation.

Court may make vesting order. 52 Vic. No. 11, s. 4.

93. For the purpose of transferring any estate vested in an official assignee or trustee (whether such estate were vested before or after the passing of this Act) to, and vesting the same in some other official assignee or trustee, the Court may make such vesting order as in its opinion will effectually carry out such transfer to, and the vesting of such estate in, the person named in such order, and such order when made shall have the effect of vesting in the person therein named the whole right, title, and interest of the official assignee or trustee from whom such right, title, and interest is intended to be divested or transferred.

Provision against abatement in certain cases. *Ibid.* s. 6.

94. (1) No action or proceeding of any kind to which an official assignee or trustee has been a party shall be deemed to have abated by the death or resignation, or vacation of, or removal from, office of any such official assignee or trustee; but in every such case such action or proceeding may be continued in the name of the official assignee or trustee appointed in the place of the official assignee or trustee who has died, resigned, or vacated, or been removed from his office: Provided that a suggestion in the usual way is made of such death, resignation, removal, or vacation.

Division 4.—*Control over assignees and trustees.*

Discretionary powers of official assignee and trustee and control thereof. 51 Vic. No. 19, s. 91.

95. (1) Subject to the provisions of this Act the assignee and trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by any resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

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

(3)

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

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

Appeal to Court against official assignees or trustees. 51 Vic. No. 19, s. 92.

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

Control of Judge over official assignees and trustees. *Ibid.* s. 93.

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

(2) The Judge may at any time require an assignee or trustee to answer any inquiry made by him in relation to any bankruptcy in which such assignee or trustee is engaged, and may, if he thinks fit, examine on oath such assignee or trustee or any other person concerning the bankruptcy.

(3) The Judge may also direct an investigation to be made of the books and vouchers of the assignee or trustee by the Colonial Treasurer or Registrar.

Audit of official assignees' or trustees' account. 60 Vic. No. 29, s. 21.

98. (1) Every official assignee and trustee shall, at such times as may be prescribed by rules of Court, but not less than twice in each year during his tenure of office, sent to the Registrar and to the Colonial Treasurer, an account of his receipts and payments as such assignee or trustee.

(2) The account shall be in the form prescribed by rules of Court and shall be made in duplicate, and shall be verified by affidavit in the form prescribed by rules of Court.

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

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

The official assignee or trustee to furnish list of creditors. 51 Vic. No. 19, s. 95.

99. The official assignee or trustee shall, whenever required by any creditor so to do, and on payment by such creditor of the fee prescribed by rules of Court, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors.

Books to be kept by official assignee or trustee. *Ibid.* s. 96.

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

Annual statement of proceedings. *Ibid.* s. 97. 60 Vic. No. 29, s. 2 (20).

101. (1) Every official assignee or trustee in a bankruptcy shall from time to time, as may be prescribed by rules of Court, and not less than once in every year, so long as he has any assets unadministered in his hands, transmit to the Court a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the particulars, and made out in the form prescribed by rules of Court.

(2) The Court shall cause the statement as transmitted to be examined, and call the official assignee or trustee to account for any misfeasance, neglect, or omission which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

Payment of money into Bankruptcy Estates Account. 51 Vic. No. 19, s. 98.

102. (1) An account called the "Bankruptcy Estates Account" shall be kept by the Registrar with such bank as the Colonial Treasurer may from time to time direct, and all moneys received by the Registrar, in respect of proceedings under this Act shall be paid to that account.

(2) Every official assignee and every trustee shall, in such manner and at such times as may be prescribed by rules of Court, pay the money received by him to the Registrar, who shall furnish a receipt of the money so paid.

(3) If it appear to the official assignee or, if a committee of inspection has been appointed, to such committee, that for the purpose of carrying on the debtor's business, or of obtaining advances, or because of the probable amount of the cash balance, or, if the Registrar certify that for any other reason it is for the advantage of the creditors that the official assignee or trustee should have an account with a bank, the Registrar shall authorise the official assignee or trustee to make his payments into and out of such bank as the Registrar may select.

(4) Such account shall be opened and kept by such assignee or trustee in the name of the bankrupt's estate; and any interest receivable in respect of the account shall be part of the assets of the estate.

(5) If an official assignee or trustee at any time retain for more than ten days a sum exceeding fifty pounds, or such other amount as in any particular case the Registrar authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall have no claim for remuneration, and may be removed from his office, and shall be liable to pay any expenses occasioned by reason of his default.

(6) All payments out of moneys standing to the credit of the Registrar in the "Bankruptcy Estates Account" shall be made by the Registrar or other officer prescribed by rules of Court in the manner thereby prescribed.

(7) The Judge or the Colonial Treasurer may at any time require the production of and inspect any books or accounts kept by the Registrar, and the Colonial Treasurer shall cause the accounts of the Registrar to be audited once at least every quarter, and for the purpose of such audit the Registrar shall furnish the Colonial Treasurer with such vouchers and information as he shall require.

No payments allowed into private accounts. 51 Vic. No. 19, s. 99.

103. No official assignee or trustee shall pay any sums received by him as such assignee or trustee into his private banker's account, or otherwise than as hereinbefore directed.

Investment of surplus funds. *Ibid.* s. 100.

104. (1) Whenever the cash balance standing to the credit of the "Bankruptcy Estates Account" is in excess of the amount which in the opinion of the Registrar is required for the time being to answer demands in respect of bankrupt estates, the Registrar shall notify the same to the Colonial Treasurer, and shall pay over the same or any part thereof as the Colonial Treasurer may require to the Colonial Treasurer to such account as the Colonial Treasurer may direct, and the Colonial Treasurer may invest the said sums or any part thereof in Government securities to be placed to the credit of the said account.

(2) Whenever any part of the money so invested is, in the opinion of the Registrar, required to answer any demands in respect of bankrupts' estates the Registrar shall notify to the Colonial Treasurer the amount so required, and the Colonial Treasurer shall thereupon repay to the Registrar such sums as may be required to the credit of the "Bankruptcy Estates Account," and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on the investments under this section shall be paid to such account as the Colonial Treasurer may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of bankruptcy proceedings.

Unclaimed dividends and balances to be paid into Unclaimed Dividend Fund. *Ibid.* s. 101. 60 Vic. No. 29, s. 2 (21).

105. (1) All dividends and balances in estates administered under the provisions of this Act which are unclaimed by the parties entitled thereto for the space of six months next after the same are payable shall, unless the Judge otherwise orders, be paid into the Colonial

Colonial Treasury to the credit of a fund to be called the "Bankruptcy Unclaimed Dividend Fund."

(2) The Governor may direct that all sums paid to the credit of the said fund shall be invested in Government debentures, and the interest arising from such investment shall be paid to the credit of a fund to be called the "Bankruptcy Suitors' Fund." Bankruptcy Suitors Fund.

(3) Any person entitled to receive any dividend or balance hereby directed to be paid into the said "Unclaimed Dividend Fund" may apply to the Court for the payment of such dividend or balance to him, and the Court may order such dividend or balance to be paid to him, and upon every such order the Governor shall issue his warrant for the payment of the amount specified in such order, and the Treasurer shall pay the same out of the said fund. Unclaimed dividends and balances may under circumstances be paid to persons entitled.

Insolvent estates.

106. (1) In any case where the estate of any person has under the Acts relating to insolvency been vested in any official assignee, the Judge shall, in respect of such official assignee and every estate so vested in him, have, and may exercise, all the powers and all such other jurisdiction as might have been exercised in respect of such official assignee or such estate by the Chief Justice or by the Chief Commissioner of insolvent estates. Jurisdiction, &c., in respect of estates vested in official assignees before passing of the Act 51 Vic. No. 19. 52 Vic. No. 11, s. 3.

(2) The Judge shall also have full power and authority to inquire into, and investigate, the dealings of such official assignees with each estate vested in him or with any part thereof, whether such dealings took place before or since the passing of the Act fifty-first Victoria number nineteen, or before his removal as hereafter provided for.

(3) The Judge shall also have full power and authority to remove such official assignee from being the official assignee of any particular estate, and may appoint any other of the official assignees to be the official assignee of such estate, and in case of such removal, the right, title, and interest of the official assignee so removed shall, by the order appointing the official assignee in his place vest in the official assignee so appointed as aforesaid.

(4) The Judge shall also have full power and authority to order any official assignee to bring into Court any sums of money which he may find to be in the hands of such official assignee, and also may call upon any official assignee to account fully for all moneys which have come to his hands at any time and to show how the same were disposed of, and generally may exercise all necessary powers and authorities to compel any official assignee fully to disclose all his dealings with all or any of the estates so vested in him.

(5) The Judge may also upon the application of the Colonial Treasurer or of any person interested, direct and investigation by the Colonial Treasurer or of any person instructed by the Colonial Treasurer, or by the Registrar, of the books, accounts, vouchers, papers, and documents of any such official assignee, and may order such books, accounts, vouchers, papers or documents to be handed over to the Colonial Treasurer or to any person instructed by him, or to the Registrar; and may direct an inquiry as to the conduct, omissions, and dealings of any such assignee, and may remove him from his office for misconduct or neglect.

(6) Every official assignee appointed an official assignee of any estate under the provisions of this section shall be subject to all the provisions of this section, in respect of the estate to which he is so appointed.

PART IV.

Procedure.

Discretionary powers of the Court. 51 Vic. No. 19, s. 102.

107. (1) Subject to the provisions of this Act and to rules of Court, the costs of and incidental to any proceeding under this Act shall be in the discretion of the Court.

(2) Where any issue is tried by a jury the costs shall follow the event, unless the Court otherwise orders.

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

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

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

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

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

Consolidation of petitions. *Ibid.* s. 103.

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

109.

Power to change carriage of proceedings.

109. Where the petitioner does not proceed with due diligence, on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor. 51 Vic. No. 19, s. 104.

Continuance of proceedings on death of debtor.

110. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were still alive. *Ibid.* s. 105. 60 Vic. No. 29, s. 2 (22).

Power to stay proceedings.

111. The Court may at any time, for sufficient reasons, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court may think just. 51 Vic. No. 19, s. 106.

Power to present petition against one partner.

112. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others. *Ibid.* s. 107.

Power to dismiss petition against one partner.

113. Where there are more respondents than one to a petition the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them. *Ibid.* s. 108.

PART V.

Application of Act.

Exclusion of limited companies.

114. A sequestration order shall not be made against any corporation, or against any partnership or association or company registered under the Act thirty-seventh Victoria number nineteen or any Act consolidating or amending the same. *Ibid.* s. 109.

Sequestration of partnership estate.

115. (1) Any creditor of a partnership may present a bankruptcy petition against such partnership, if he would be entitled to present such a petition against any one of the members of such partnership. *Ibid.* s. 110.

(2) An order of sequestration may be made against a partnership estate although all the partners be not included therein.

Voluntary sequestration of partnership estate.

116. The estate of a partnership trading or having any estate in New South Wales may be sequestrated upon the petition of the greater number of the partners resident in New South Wales. *Ibid.* s. 111.

Consolidation of proceedings in case of partnerships.

117. Where an order for sequestration has been made on a bankruptcy petition against or by one member of a partnership, and another bankruptcy petition against or by a member of the same partnership is filed, the Court may give such directions for consolidating the proceedings under the petitions as it thinks just. *Ibid.* s. 112.

Actions by official assignee or trustee and bankrupt's partners.

118. Where a sequestration order is made against a member of a partnership the Court may authorise the official assignee or trustee to commence and prosecute any action in the names of the assignee or trustee 51 Vic. No. 19, s. 113

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

Actions in joint contracts. *Ibid.* s. 114.

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

Proceedings in partnership's name. *Ibid.* s. 115.

120. Any two or more 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 such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise as the Court may direct.

Petition against estate of a deceased person. *Ibid.* s. 116.

121. Any creditor of the estate of a person deceased may present a bankruptcy petition, if any executor or administrator of such estate has committed an act of bankruptcy whereby the creditors may be defeated or delayed in obtaining payment of their debts, praying that the estate may be sequestrated—and the like proceedings may be taken concerning such estate and its representatives as in the case of other estates and persons.

Voluntary sequestration by executor or administrator. *Ibid.* s. 117.

122. Any person in whom the administration of the estate of a person deceased is vested, or in whom the estate of any person is vested in trust for creditors, may present a bankruptcy petition, and the like proceedings may be taken against and concerning such estate and its representatives as in the case of other estates and persons.

Married women. *Ibid.* s. 118.

123. A bankruptcy petition may be presented by and against a married woman in respect of her separate estate.

General rules. *Ibid.* s. 119.

124. (1) The Judges or any three of them may make general rules for regulating the practice, procedure, and forms in respect of all matters under this Act.

(2) A copy of every such rule shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in session, or otherwise within fourteen days after the commencement of the next ensuing session.

Saving of rights under Life Assurance Act. 51 Vic. No. 19, s. 120.

125. Nothing in this Act shall affect the operation of or prejudice the provisions of the Life Assurance Encouragement Act of 1862 or any Act amending or consolidating the same.

PART

PART VI.

INDICTABLE OFFENCES.

126. Whosoever commits any of the offences mentioned in this section shall be guilty of a misdemeanour and be liable to imprisonment with or without hard labour for any time not exceeding three years, and may be ordered to pay damages to any person whom he has injured by such offence, that is to say:— *Ibid.* s. 121.

(*a*) Whosoever wilfully conceals any property being part of the estate of a bankrupt with intent to defraud his creditors. Concealing property.

(*b*) Whosoever forges the signature of the Judge or Registrar or District Registrar to any order, certificate, or process of the Court or Judge, or serves or enforces any such forged order or process knowing the same 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 such paper or writing to be false, or who acts or endeavours to act under colour or pretence of such process. Forging process.

(*c*) Whoever 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 the same to have been so attached, and with intent to defeat the attachment, or obstructs or endeavours to obstruct the sheriff, messenger, or other person authorised to make the same in the discharge of his duty. Removing property under attachment.

(*d*) Whosoever, whether before or after the sequestration of an estate, receives any property from the bankrupt or from any person on his behalf with intent to defraud or to assist such bankrupt in defrauding his creditors. Receiving property from bankrupt.

(*e*) Whosoever inserts or causes to be inserted in any newspaper any advertisement purporting to be under this Act without authority or knowing the same to be false in any material particular with intent in any such case to defraud or deceive. Inserting false advertisements.

(*f*) Whosoever in any proceeding in bankruptcy or while an estate is under liquidation by arrangement or composition with creditors makes any false claim or any declaration or statement of account which is untrue in any material particular with intent to defraud. False claim, &c.

127. A bankrupt who with intent either to defraud his creditors, or dishonestly to conceal the state of his affairs, or otherwise to violate or defeat the law— Offences by bankrupt. 51 Vic. No. 19, s. 122.

(*a*) does not to the best of his knowledge and belief fully disclose on examination under this Act or to his assignee or trustee all his property real and personal, and how, and to whom,

whom, and for what consideration, and when he has disposed thereof except such part as has been disposed of in the ordinary way of his business or laid out in the ordinary expense of his family; or

(*b*) does not deliver to the assignee or trustee, or as such assignee or trustee directs, all his property or such as is under his control, and which he is required by law so to deliver; or

(*c*) does not deliver to the assignee or trustee, or as such assignee or trustee directs, all books, documents, papers, and writings under his control relating to his property or affairs; or

(*d*) whether before or after sequestration conceals any part of his property to the value of ten pounds or any debt due to or by him, or after sequestration removes any part of his property of that value; or

(*e*) makes any material omission in any statement relating to his affairs; or

(*f*) knowing that a false debt has been proved under the bankruptcy fails for one month to inform his assignee thereof; or

(*g*) after sequestration prevents the production of any book, document, paper, or writing relating to his property or affairs; or

(*h*) whether before or after sequestration conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document relating to his property or affairs; or

(*i*) whether before or after sequestration makes or is privy to making a false entry in any book or document relating to his property or affairs; or

(*j*) whether before or after sequestration parts with any book or document relating to his property or affairs or alters or makes any omission therein; or

(*k*) after or within four months before sequestration attempts to account for his insolvency by fictitious losses or expenses; or

(*l*) within four months before sequestration has, by any false representation or under the pretence of carrying on business in the ordinary way of trade, obtained any property for which he has not paid; or

(*m*) within four months before sequestration pledges or disposes of otherwise than in the ordinary way of trade any property which he has obtained on credit and for which he has not paid; or

(*n*) makes any false representation 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

(*o*) within four months before sequestration departs or makes preparation for departing from New South Wales with any of his property to the amount of twenty pounds which ought by law to be divided among his creditors;

shall be guilty of a misdemeanour and be liable to imprisonment with or without hard labour for any time not exceeding three years.

Fraudulently obtaining credit. 51 Vic. No. 19, s. 123.

128. A bankrupt shall, in each of the cases mentioned in this section, be guilty of a misdemeanour and be liable to imprisonment for any time not exceeding two years with or without hard labour, that is to say:—

(*a*) If in incurring any debt or liability he has obtained credit by false representations or by means of any other fraud.

(*b*) If he has made, or caused to be made, any gift, delivery, or transfer of his property, or any part thereof, or created any charge thereon, with intend to defraud his creditors or any of them.

(*c*) If he has concealed or removed any part of his property after or within two months before the date of any unsatisfied judgment against him with intent to defraud his creditors.

General provision as to punishment. *Ibid.* s. 123.

129. Where a person is liable to punishment under any other Act or at Common Law for an offence punishable by this Act, he may be proceeded against under such other Act or at Common Law or under this Act, but so always that he be not punished twice for the same offence.

Power of Court to commit for trial. *Ibid.* s. 124.

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

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

(3) Any offence under this part of this Act shall be deemed to be included in the term "fraudulent insolvency" within the meaning of any treaty or convention between Great Britain and any foreign power for the extradition of criminals.

Criminal liability after discharge or composition. *Ibid.* s. 125.

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

Court may order certain expenses to be paid out of "Bankruptcy Suitors' Fund." 51 Vic. No. 19, s. 126.

132. If it appears to the Court upon the application of the assignee or trustee that inquiries or proceedings relating to a bankrupt estate ought to be instituted or carried on, or any prosecution ought to be carried on against any person for any offence under this Act, and that there are no funds in the particular estate available for such inquiries,

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 upon every such order the Governor shall issue his warrant for the payment of the amount of such taxed costs, and the Treasurer shall pay the same out of the said fund.

PART VII.

JURISDICTION.

DIVISION 1.—*Bankruptcy Division in Supreme Court.*

Composition and jurisdiction of Court.

133. (1) The jurisdiction in insolvency as exercised prior to the coming into operation of the Act fifty-first Victoria number nineteen, by the Supreme Court, or by a Judge thereof, or by the Chief Commissioner of Insolvent Estates respectively, shall be vested in and exercised by the Court, and shall, together with the jurisdiction of the Court under this Act, be the bankruptcy jurisdiction of the Supreme Court. *Ibid.* ss. 127 (1), 131.

(2) The bankruptcy jurisdiction of the Supreme Court shall, except as is herein otherwise provided, be exercised by such Judge of the Supreme Court as may from time to time be duly appointed in that behalf by the Governor under the title of the Judge in Bankruptcy, and the Court shall be holden before such Judge for the determination of all matters in its bankruptcy jurisdiction subject to appeal as is hereinafter provided.

(3) Whenever the terms "Insolvency" or "Insolvent" are used in any Statute now in force, such terms shall include the terms "Bankruptcy" and "Bankrupt" respectively, and wherever the "Chief Commissioner of Insolvent Estates" is mentioned or signified in any such Statute, the term shall be interpreted to mean the Judge. *Ibid.* s. 127 (2).

Jurisdiction.

134. (1) The Court shall, for the purposes of such jurisdiction in bankruptcy, have full powers to decide all questions of priorities, and all questions whatsoever, whether at law or in equity or of fact, in any case of bankruptcy coming within the cognizance of the Court, or which it may deem expedient or necessary to decide for the purpose of doing complete justice or making complete distribution of property in any such case. *Ibid.* s. 130.

(2) If in any proceeding in bankruptcy there arise any question of fact which either of the parties desires to be tried by a jury, or which the Court thinks ought to be tried by a jury, then a trial may be directed to be had before the Judge, or before any other

Judge

Judge of the Supreme Court, and a jury, or before any Judge of a District Court and a jury, and the trial may be had accordingly in the Supreme Court in the same manner as if it were a trial of an issue of fact in an action, and in the District Court in the manner in which jury trials in ordinary cases are by law held in that Court. In every such case the Court may grant a new trial if it thinks fit.

(3) No such issue of fact shall be tried as above in a District Court unless all parties to the proceeding consent thereto, or the money, money's worth, or right in dispute does not in the opinion of the Court exceed in value two hundred pounds.

(4) Whenever the official assignee or trustee claims any property as part of the bankrupt's estate, or claims any right against any person, whether such person is or is not a party to the bankruptcy, the Court may upon motion by the assignee or trustee or any person interested in such property hear and determine, either upon affidavit or upon oral evidence, or both upon affidavits and oral evidence, the question raised by such claim, and make such order thereupon as he may deem expedient or necessary, for the purpose of doing complete justice between all the parties interested.

(5) The notice of such motion shall contain the grounds of such claim and shall be served in the manner prescribed by rules of Court, and the Court may require service of such notice to be made upon any person who in its opinion is a proper party to such motion:

Provided that the grounds of such claim may be amended at the hearing of the motion upon such terms as the Court may think fit.

(6) Every order of the Court made under this Act in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment of the Supreme Court to the same effect.

(7) The Court shall have the same power of giving relief to any party interested in any matter or proceeding before him under this Act as the Supreme Court would have if such matter or proceeding were pending before it in either its common law or equitable jurisdiction.

(8) The Court shall not be subject to be restrained in the execution of its power under this Act by the order of any other Court, nor shall any appeal lie from its decision except in the manner directed by this Act.

Jurisdiction of Judge.
51 Vic. No. 19, s. 131.

135. Subject to any general rule of the Supreme Court, the Judge may assign to the appropriate ministerial officer as he may direct any of the matters in respect of which jurisdiction is given to the Court by this Act.

Exercise of jurisdiction in chambers.
Ibid. s. 132.

136. Subject to the provisions of this Act and to rules of Court the Judge may exercise in chambers the whole or any part of his jurisdiction.

137. The Judge may delegate to the Registrar such of the powers vested in the Court as it may be deemed expedient for the Judge to delegate to him, subject nevertheless to review on summary application to the Judge. Power to delegate authority to Registrar. *Ibid.* s. 133. 52 Vic. No. 11, s. 2.

138. (1) An appeal to the Full Court shall lie against any order, decision, or ruling of the Judge, and such appeal shall be by way of rehearing and shall be subject to such terms and conditions as may be prescribed by rules of Court, and subject thereto according to the practice for the time being in force with reference to appeals in the equitable jurisdiction of the Supreme Court. Appeal to be by way of rehearing. 51 Vic. No. 19, s. 135. 60 Vic. No. 29, s. 29 (1).

(2) An appeal shall lie against any order or decision or ruling of the Registrar or of any District Registrar to the Judge within such time and on such terms and in such manner as may be prescribed by rules of Court.

(3) The Court or Judge or Registrar may review, rescind, or vary any order made by it or him respectively in the bankruptcy jurisdiction. All orders to be subject to review. 60 Vic. No. 29, s. 29 (11).

DIVISION 2.—*Officers of Court.*

139. (1) The Governor may from time to time appoint a Registrar and may also appoint persons resident in the country parts of New South Wales as District Registrars, and may also appoint ministerial officers to carry into effect the provisions of this Act, and all persons so appointed shall be officers of the Supreme Court. Appointment and salaries of ministerial officers. 51 Vic. No. 19 s. 136.

(2) Whenever it is made to appear to the Judge that a District Registrar is prevented by illness or any other cause from holding any meeting or examination which under the provisions of this Act or any Act amending the same is required to be held before such District Registrar, the Judge may appoint a person to act as District Registrar for the purpose of holding such meeting or examination who shall have, for the purpose aforesaid, the same powers and duties as a District Registrar. Judge may appoint District Registrar for special purposes. 60 Vic. No. 29, s. 24.

(3) The salaries to be paid to the Registrar and to the clerks and officers of the bankruptcy jurisdiction shall be paid out of the Consolidated Revenue, and the Court fees to the amount provided by the Fourth Schedule hereto shall be collected and paid into the Colonial Treasury. Salaries to be paid out of Consolidated Revenue, and fees collected and paid into Treasury.

140. Every official assignee or trustee shall, out of every estate being administered after the coming into operation of the Act fifty-first Victoria number nineteen, pay into the Colonial Treasury towards the expenses of administering this Act such sum not less than one-eighth of a pound or not exceeding four pounds per centum on the gross amount coming into his hands from time to time in any such estate, after deducting any sums paid to secured creditors out of the proceeds of their securities, and a scale within the limits aforesaid, and the time of payment shall be fixed and varied from time to time by any regulations Payment of percentage. 51 Vic. No. 19, s. 137. 60 Vic. No. 23, s. 2 (23).

regulations by the Judge with the approval of the Colonial Treasurer, and such regulations, with the approval thereof, shall be submitted to Parliament.

Power to transfer special proceedings, or proceedings generally to country districts.

141. The Court, at any time after sequestration, on the application of the official assignee, trustee, or a creditor, or upon its own motion, may, if it is for the advantage of the creditors, order that an examination, single meeting, enquiry, or account may be held or taken before a District Registrar, or that any future proceedings in the administration of an estate, or any part thereof, be taken at such place or places as it may name in the order. *Ibid.* ss. 138, 139.

Points of law.

142. If any question of law arises in any bankruptcy proceedings the Judge may, with the consent of all parties interested, state the facts in the form of a special case, for the opinion of the Full Court. *Ibid.* s. 140.

Jurisdiction in bankruptcy of Registrar.

143. (1) The Registrar shall have, in addition to the powers which may be delegated to him by the Judge under the provisions of this Act, the powers, duties, and jurisdiction of the Court in this section mentioned, and any order made or act done by such Registrar, in the exercise of the said powers, duties, and jurisdiction shall, except for the purposes of appeal, be deemed the order or act of the Court, that is to say,— *Ibid.* s. 141.

(*a*) to hear debtors' petitions and to make sequestration orders thereon, or to give leave to withdraw the same; 51 Vic. No. 19, s. 9 (2).

(*b*) to extend the time for submitting statements of affairs; *Ibid.* 14 (2).

(*c*) to approve of a resolution of creditors to allow a bankrupt to retain any of his personal property; 60 Vic. No. 29, s. 9.

(*d*) 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 such examination or further or adjourned examination; to put such questions to the bankrupt as he thinks expedient, and to declare any such examination concluded; 51 Vic. No. 19, s. 18, subs. 1, 3, 8, 9. 60 Vic. No. 29, s. 2 (4).

(*e*) to approve compositions or schemes of arrangement when they are not opposed; 51 Vic. No. 19, s. 141.

(*f*) to summon and examine the bankrupt or his wife, 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 dealings, or property, and otherwise to exercise the powers of the Court contained in section thirty of this Act, and to exercise the power of committal and discharge contained in section thirty-one of this Act; *Ibid.* ss. 30, 31, 141.

(*g*) to do any act or thing or give any direction or permission by this Act, authorised or required to be done or given by the committee of inspection, where there is no such committee; *Ibid.* s. 66.

(*h*)

(*h*) to grant certificates of discharge where the application is not opposed; *Ibid.* s. 141.

(*i*) to direct payment out of salary, income, half-pay, pension, or compensation of any bankrupt, and the application of the same; *Ibid.* s. 61. 60 Vic. No. 29, s. 19 (1).

(*k*) to order an official assignee or trustee, or party interested, to show cause why a plan of distribution should not be amended; 51 Vic. No. 19, s. 70.

(*l*) to give directions to the official assignee or trustee in relation to any matter relating to a bankruptcy; *Ibid.* s. 91.

(*m*) to adjourn any proceedings before him, to amend any written process or proceeding under this Act, and to take the whole or any part of the evidence in any matter either viva voce or otherwise; *Ibid.* s. 102 (2), (3), (5).

(*n*) to authorise the official asignee or trustee to commence and prosecute any action in the name of the assignee or trustee and of the bankrupt's partner; *Ibid.* s. 113.

(*o*) to postpone any application or proceeding before him under this Act; *Ibid.* s. 150 (2).

(*p*) to declare any proceeding in bankruptcy invalidated by a formal defect or irregularity; *Ibid.* s. 151 (1).

(*q*) to remit or reduce fees; 60 Vic. No. 29, s. 30.

(*r*) to extend the time for the summoning of the first meeting of creditors; 51 Vic. No. 19, Sch. I, cl. 1.

(*s*) to declare that a secured creditor voting in respect of his whole debt shall not be deemed to have surrendered his security; *Ibid.* Sch. I, cl. 10.

(*t*) to declare invalid any vote given by a claimant who has not proved his debt; 60 Vic. No. 29, s. 3 (*c*).

(*u*) to make orders with respect to the cost of a creditor proving his debt; 51 Vic. No. 19, Sch. II, cl. 6. 60 Vic. No. 29, s. 4 (*a*).

(*v*) to give directions as to sale of property comprised in any security; 51 Vic. No. 19, Sch. II, cl. 12 (*b*).

(*w*) to expunge a proof or reduce its amount; *Ibid.* Sch. II, cl. 23. 60 Vic. No. 29, s. 4 (*b*).

(*x*) to make interim orders in any case of urgency, and to hear and determine any unopposed or ex parte application; 51 Vic. No. 19, s. 141.

(*y*) to make any order or exercise any jurisdiction which is prescribed by any rule of Court as proper to be made or exercised in Chambers; *Ibid.* s. 141.

(*z*) to administer oaths where necessary in all proceedings within his jurisdiction under this Act. *Ibid.* s. 141.

(2) The powers given to the Registrar by virtue of subsection 1 (*e*), (*h*), (*x*), (*y*), (*z*), and the power to hear debtors' petitions may be limited by rules of Court.

144. (1) All schedules, statements, accounts, examinations, plans of distribution, reports, and all other documents or proceedings whatsoever required by the provisions of this Act to be submitted to, produced, Documents, &c., to be filled. 51 Vic. No. 19, s. 142.

or

or held before the Court, Judge, Registrar, District Registrar, official assignee, or trustee, shall be filed of record by the Registrar, and the same shall be under the custody of the Registrar, and shall when filed be open to inspection, and extracts may be taken therefrom, as and upon payment of such fee as may be from time to time prescribed by rules of Court.

(2) If the Registrar be satisfied that it is undesirable to file the originals of any of the beforementioned documents or proceedings, he may file certified copies of the same in lieu thereof.

145. A District Registrar shall have the same powers and jurisdiction as the Registrar in respect of any examination, issuing of summonses, enquiry, or account held or taken before him, the adjournment of proceedings before him, and the taking of evidence viva voce or otherwise.

Jurisdiction of district registrar.
Ibid. ss. 102 (2) (5), 143.

PART VIII.

MISCELLANEOUS PROVISIONS.

146. (1) A copy of the Gazette containing any notice inserted therein in pursuance of this Act shall be primâ facie evidence of the facts stated in the notice.

Gazette to be evidence.
51 Vic. No. 19, s. 144.

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

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

Evidence of proceedings at meetings of creditors.
Ibid. s. 145.

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

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

Death of witness.
Ibid. s. 147.

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

Certificate of appointment of trustee.
Ibid. s. 148.

150. Where anything is directed or authorised to be done by the creditors under this Act, and no method is prescribed by which the creditors may signify their wishes, they may do so by ordinary resolution. Method of procedure by creditors. *Ibid.* s. 149.

151. (1) 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. *Ibid.* s. 150.

(2) Such notice shall date from the date at which in due course of post they would be received by the person to whom they are directed.

(3) The Court may postpone any application or proceedings under this Act, if in its opinion sufficient notice of the same has not been given to any party interested.

152. (1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court before whom an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court. Formal defects not to invalidate. 51 Vic. No. 19, s. 151.

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

153. Every deed, conveyance, assignment, surrender, admission, or other assurance relating solely to freehold, leasehold, copyhold, or customary property, or to any mortgage, charge, or other encumbrance on, or any estate, right, or interest in any real or personal property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment, surrender, admission, or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the official assignee or trustee under the bankruptcy, and every power of attorney, proxy, paper, writ, order, certificate, affidavit, bond relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Act. Exemption of deeds, &c., from stamp duty. *Ibid.* s. 152.

154. For all or any of the purposes of this Act a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic, or insane or incapable person, or insane patient, may act by his committee or curator bonis, or such other person in whom the management and control of the estate of such person is for the time being vested. Acting of corporations, partners, &c. *Ibid.* s. 153.

155. Whenever any person shall at any time at or after the coming into operation of this Act have been imprisoned—

(*a*) in execution of a judgment for defamation or libel obtained under the Act eleventh Victoria number thirteen, or any Act consolidating or amending the same for a period of twelve months; or Sequestration of estates of persons under imprisonment for debt. 60 Vic. No. 29, s. 28.

(*b*) in virtue of any order made under the Matrimonial Causes Act or any Act consolidating or amending the same for a period of twelve months for nonpayment of a sum due in respect of alimony or maintenance, or for a period of six months for nonpayment of costs; or

(*c*) in any other case for debt for a period of three months,

and has not presented a bankruptcy petition against himself, the Minister for Justice may present a petition against such person, and a sequestration order may thereupon be made, and shall have effect in all respects as if made upon the petition of such person himself.

156. The Court may, upon good cause shown, remit or reduce any of the fees payable under the Fourth Schedule to this Act. Remission of fees in certain cases. *Ibid.* s. 30.

SCHEDULES.

SCHEDULES.

Section 15.

FIRST SCHEDULE.

Date of Act.	Title of Act.	Extent of repeal.
7 Vic. No. 19 ...	An Act to amend an Act intituled "*An Act for giving relief to insolvent persons and providing for the administration of Insolvent Estates and to abolish imprisonment for debt.*"	Section 15 (the unrepealed section).
10 Vic. No. 14...	An Act to remove difficulties in the disposal, administration, and distribution of Insolvent Estates.	Section 3 (the unrepealed section).
38 Vic. No. 1 ...	An Act to expedite and lessen the expense of proceedings in Insolvency.	Sections 6, 7, and 8 (the unrepealed sections).
51 Vic. No. 19...	Bankruptcy Act, 1887	The whole, except sections 128, 129, 135, and 146.
52 Vic. No. 11...	Bankruptcy Act Amendment Act, 1888... ...	The whole.
60 Vic. No. 29...	Bankruptcy Acts Amendment Act, 1896 ...	Sections 1–30 and section 35.

THE SECOND SCHEDULE.

MEETINGS OF CREDITORS.

Time of first meeting. 51 Vic. No. 19, Sch. I, cl. 1. 60 Vic. No. 29, s. 3 (*a*)

1. The first meeting of creditors shall be summoned for a day not later than twenty-one days after the date of the sequestration order, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.

Advertisement thereof. 51 Vic. No. 19, Sch. I, cl. 2. 60 Vic. No. 29, s. 3(*b*).

2. The Registrar shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the Gazette and in a local paper. The official assignee shall also whenever practicable give notice of the time and place thereof to each creditor named in the statement of affairs then resident in New South Wales or his authorised agent.

Provisional report. 51 Vic. No. 19, Sch. I, cl. 3.

3. The official assignee shall at such first meeting bring up a provisional report based upon the bankrupt's statement of affairs.

Place. 51 Vic. No. 19, Sch. I. cl. 4.

4. The meeting shall be held at such place as is in the opinion of the official assignee most convenient for the majority of the creditors.

Subsequent meetings. 51 Vic. No. 19, Sch. I, cl. 5.

5. The official assignee or 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-fourth in value of the creditors.

Mode of summoning. 51 Vic. No. 19, Sch. I, cl. 6.

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 bankrupt's statement of affairs, or at such other address as may be known to the person summoning the meeting.

Chairman. 51 Vic. No. 19, Sch. I, cl. 7.

7. The official assignee, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint.

Right to vote. 51 Vic. No. 19, Sch. I, cl. 8.

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 bankrupt, and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained. Unascertained debts. 51 Vic. No. 19, Sch. 1, cl. 9.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence. Vote by secured creditor. 51 Vic. No. 19, Sch. I, cl. 10.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the bankrupt, and against whom a sequestration order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof. Note on bill or note. *Ibid.* cl. 11.

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

13. 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. Vote by joint creditor. *Ibid.* cl. 13.

14. When, for any cause appearing to the Registrar, the Registrar shall be of opinion that a claimant who has not proved his debt may eventually be able to establish the same, the Registrar may allow such claim to be entered for the purpose of voting, and may give such time as he may think fit for establishing the same, and the official assignee shall make provision for the same in any account and plan of distribution filed prior to the expiration of such time: Provided that any vote given by the claimant may be declared invalid in the event of the claim not being established within the time allowed, but subject to such terms as the Court may think fit. Admission of votes. 60 Vic. No. 29, s. 3 (c).

15. A creditor may vote either in person or by proxy. Mode of voting. 51 Vic. No. 19, Sch. I, cl. 15.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official assignee, and every insertion therein shall be in the handwriting of the person giving the proxy. Proxy form. *Ibid.* cl. 16.

17. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor. General proxy. *Ibid.* cl. 17.

18. A creditor may give a special proxy to any person to vote at any specified meeting, or adjournment thereof, for or against any specific resolution, or for or against any specified person as trustee, or member of a committee of inspection. Special proxy. *Ibid.* cl. 18.

19. A proxy shall not be used unless it is deposited with the official assignee before the meeting at which it is to be used except with the leave of the Judge or Registrar. Deposit of proxy. *Ibid.* cl. 19. 60 Vic. No. 29, s. 3 (d).

20. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of an official assignee, trustee, or manager, or receiver in obtaining proxies, or in procuring the trusteeship, managership, or receivership, except by the direction of a meeting of creditors, the Court may 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. Canvassing for votes. *Ibid.* cl. 20.

21. A creditor may appoint the official assignee of the bankrupt's estate to act in manner prescribed as his general or special proxy. Official receiver as proxy. 51 Vic. No. 19, Sch. I, cl. 21.

22. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place. Adjournment. *Ibid.* cl. 22.

23. A meeting shall not be competent to act for any purpose, except the election of a chairman, and the adjournment of the meeting, unless there are present or represented thereat at least three creditors, or all the creditors if their number does not exceed three. Quorum. *Ibid.* s. 23.

24. 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 the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days. Quorum not present. *Ibid.* cl. 24.

25. 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. Minutes. *Ibid.* cl. 25.

26. 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 ratably with the other creditors of the debtor: Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly. Interested vote. *Ibid.* cl. 26.

27. Nothing in clauses twenty-three and twenty-four of this Schedule shall apply to the case of a single meeting. Single meetings. 60 Vic. No. 29, s. 3 (e).

THE THIRD SCHEDULE.

Proof of Debts.

Proof in ordinary cases.

1. Every creditor shall prove his debt as soon as may be after the making of an order of sequestration. Time for proof. 51 Vic. No. 19, Sch. II, cl. 1.

2. A debt may be proved by delivering or sending through the post in a pre-paid letter to the Registrar an affidavit verifying the debt. Mode of proof. *Ibid.* cl. 2.

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

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

5. The affidavit shall state whether the creditor is or is not a secured creditor. Security. *Ibid.* cl. 5.

6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders. Cost. *Ibid.* cl. 6. 60 Vic. No. 29, s. 4 (*a*).

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. Inspection of proofs. 51 Vic. No. 19, Sch. II, cl. 7.

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

Proof by secured creditors.

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

10.

10. If a secured creditor surrenders his security to the official assignee or trustee for the general benefit of the creditors, he may prove for his whole debt. Surrender. 51 Vic. No. 19, Sch. II, cl. 10.

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

12. (*a*) Where a security is so valued the official assignee or trustee may at any time redeem it on payment to the creditor of the assessed value. Redemption. *Ibid.* cl. 12.

(*b*) If the official assignee or trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official assignee or trustee, or as, in default of such agreement, the Court may direct. If the sale be by public auction the creditors or the official assignee 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 official assignee or trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the official assignee or 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 official assignee or trustee shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee, or the trustee, or the Registrar, 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 Registrar shall order. Revaluation. *Ibid.* cl. 13.

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

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

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

17. Subject to the provisions of Rule twelve, a creditor shall in no case receive more than twenty shillings in the pound, and interest as provided by this Act. Maximum dividend. *Ibid.* cl. 17.

Proof in respect of distinct contracts.

18. If a debtor was at the date of the order of sequestration liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as a 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. Distinct contracts. *Ibid.* cl. 18.

Periodical

Periodical payments.

19. When any rent or other payment falls due at stated periods, and the order of sequestration 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.

Periodical payments. 51 Vic. No. 19, Sch. II, cl. 19.

Interest.

20. (1) 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 order of sequestration and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding six 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 was 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.

Interest. *Ibid.* cl. 20.

(2) Where a debt has been proved upon a bankrupt's estate under this Act, and such debt includes interest or any pecuniary consideration in lieu of interest, such interest or consideration shall for the purposes of dividend be calculated at a rate not exceeding eight 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.

60 Vic. No. 29, s. 22.

Debt payable at a future time.

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

Future debts. 51 Vic. No. 19, Sch. II, cl. 21.

Admission or rejection of proofs.

22. The Registrar 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.

Admission of proofs. *Ibid.* cl. 22.

23. The official assignee or a trustee may upon further evidence, and upon notice to the creditor who has made the proof, apply to the Court to expunge such proof or reduce its amount.

Expunging. 60 Vic. No. 29, s. 4 (b).

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

Appeal. 51 Vic. No. 19, Sch. II, cl. 24. 60 Vic. No. 29, s. 4 (c).

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

Who may apply. 51 Vic. No. 19, Sch. II, cl. 25.

FOURTH SCHEDULE.

Court and other Fees to be taken.

Registrar in Bankruptcy.	s.	d.
Every declaration by a debtor of inability to pay debts	2	6
Upon filing every petition surrendering an estate as bankrupt including the order of the Court thereon where the assets shall appear not to exceed £200	2	6
When above that amount	15	0
For drawing and inserting each advertisement besides the expenses paid for advertising when required to be done	2	6
Upon receiving and filing every petition against a person having committed an act of bankruptcy	15	0
For filing every affidavit	1	0
For every order of the Court	5	0
For every bankruptcy notice	5	0
For filing same or any other proceeding	1	0
For every person examined or document exhibited	1	0
For taxing costs in any case—same as in the Supreme Court Office.		
For making every necessary application and report to the Court and minute of the order thereon...	2	6
For every warrant of attachment of movable property	2	6
For every summons for the attendance of a person to give evidence or be examined	5	0
For every certified extract from or copy of proceedings relating to bankrupt estates of less than seventy-two words	2	6
And above that number per folio	0	4
For every inspection of proceeding in each estate for each half hour	1	0
For every certificate of discharge	10	0
For every other process before the Court—same as in the Supreme Court either at Law or in Equity as the case may be.		
For each meeting of creditors or examination in estates under £200 assets	10	0
For any other meeting of creditors or examination per diem ...	20	0
For every proof of debt to be paid by the person offering it ...	1	0
For swearing every affidavit by the party sworn	1	0
For every person examined by the party producing him	1	0
For every warrant for apprehension of bankrupt	5	0
For every warrant of commitment of any person	7	6
Sheriff's Fee.		
For registering every order for sequestration or bankruptcy notice	1	0
The Registrar-General's Fee.		
For registering every order of sequestration	1	0

FIFTH SCHEDULE.

In the Supreme Court of New South Wales— In Bankruptcy.

BANKRUPTCY NOTICE.
(*Title.*)

To A.B. [*or* A.B. & Co. of .]

TAKE notice that within [seven] days after service of this notice on you, excluding the day of such service, you must pay to C.D., of , the sum of £ claimed by him as being the amount due on a final judgment obtained by him against you in the Court, dated ; whereon execution has not been stayed, or you must secure or compound for the said sum to [his] satisfaction or the satisfaction of the Judge; or you must satisfy the Judge that you have a counter-claim, set-off, or cross-demand against C.D., which equals or exceeds the sum claimed by him, and which you could not set up in the action in which the judgment was obtained.

Dated

By the Court,
Registrar.

INDORSEMENT ON NOTICE.

You are specially to note,—

THAT the consequences of not complying with the requisitions of this notice are that you will have committed an act of bankruptcy, on which bankruptcy proceedings may be taken against you.

If, however, you have a counter-claim, set-off, or cross-demand, which equals or exceeds the amount claimed by C.D. in respect of the judgment, and which you could not set up in the action in which the said judgment was obtained, you must within days apply to the Judge to set aside this notice, by filing with the Registrar an affidavit to the above effect, setting out the particulars thereof and the reasons why you could not set up the same in the said action.

[*Name and address of Solicitor suing out the notice*] *or*

This notice is sued out by [C.D.] in person.

Sydney: William Applegate Gullick, Government Printer.—1893.

[2*s.* 3*d.*]

Memo. and Certificate to accompany the Bankruptcy Bill.

THIS Bill consolidates the whole or parts of the following Acts :—

7 Vic. No. 19 ;
10 Vic. No. 14 ;
38 Vic. No. 1 ;
51 Vic. No. 19 (Bankruptcy Act, 1887) ;
52 Vic. No. 11 (Bankruptcy Act Amendment Act, 1888) ;
60 Vic. No. 29 (Bankruptcy Acts Amendment Act, 1896).

In section 127 of 51 Vic. No. 19 (Bankruptcy Act, 1887) the whole of the then existing jurisdiction in insolvency was declared to be the bankruptcy jurisdiction of the Supreme Court, and was vested in the Judge in Bankruptcy. The same Act gave additional powers, which were to be exercised, not by the "Court," but by the "Judge," and it uses throughout the expressions "the Judge"—"the Court or Judge." This is somewhat confused, and raises some doubts and obscurities. It might be argued, for example, that in an appeal on any of the newly-created matters of jurisdiction the Supreme Court had no jurisdiction at all. Then, by 60 Vic. No. 29, section 29 (1), all appeals from the Judge in Bankruptcy are by way of rehearing, as in Equity appeals. It has seemed, therefore, better throughout this consolidation to speak of the jurisdiction as being that of the Court, exercised by the Judge or Registrar, as the case might be. The Judge in Bankruptcy, Mr. Justice A. H. Simpson, on being consulted, entirely concurs in this view. In certain cases (for instance, in clauses 15 (3) and 18 (8)), the words "Judge" or "Registrar" have not been altered into the word "Court," because the Acts there spoken of have been ministerial or individual in their nature.

In various places throughout the Bill verbal errors in the original Acts have been corrected. Thus in clause 6 (*c*) "on" has been put for "in" ; in various clauses "debtor," which had been inadvertently copied from sections in English Acts, where it was correctly used, has been changed into "bankrupt," the proper word here ; "or" has been inserted between "use" and "occupation" in clause 62 (4) ; "their Act" has been made "this Act" in clause 66 ; "limited time" in clause 80 (1) has been made "time limited" ; and so on. These were all palpable slips.

Clause 3 (1).—Words have been added to the definition of "Property," and the definition now stands the same as in the English Act. There does not seem to be any reason for omitting the words from our Act.

Clause 10 (6) has been framed as though the words "a Judge" in the corresponding section of 51 Vic. No. 19, s. 10 (5) were "the Judge. This seems to be correct, as the power to stay actions, is by the Act vested in "the Judge."

Clause 21.—Some words have been omitted as unnecessary, in view of the definition of "trustee."

Clause 30.—From a comparison of sections 30, 31, and 141 (2) (*h*), it would appear probable, though not clear, that the Registrar is to exercise the powers mentioned in section 30. In practice he does exercise them all, and the matter has been now made clear in the new clause 143.

Clause 39.—The words "or suspend" inserted before "or grant" are consequential on the increased powers given in the Amending Act.

Clause 54.—Subsection (3) of the original section is omitted as unnecessary, having been apparently copied from the English Act without full advertence to the difference of the law in this country. In England (*see* 46 and 47 Vic., c. 52, ss. 4 (1. *e*), 46) the Sheriff's sale is of itself an act of bankruptcy ; in New South Wales (sec. 4 subs. 1 (*e*)), it is not so. *See* clause 56 (3).

Clause 55 (2).—The word "trustees," which was a slip, has been changed to "official assignee or trustee in bankruptcy," an expression which has been used throughout the Bill, because of clause 19 (12), under which it appears possible that a trustee may still be sometimes acting alone under a composition or scheme.

Clause 55 (4).—A proviso has been here omitted as unnecessary, in view of section 8 of the Interpretation Act.

Clause 62.—As section 62 of 51 Vic. No. 19 now stands, if property comes to the knowledge of an official assignee one day before the expiration of the three months, he does not come within the proviso and has only one day in which to disclaim; s. 55 of the English Act gave at least two months for this purpose, and that time has been extended by the Amending Act of 1890. The section has been amended in this clause to remedy this defect.

Clause 88 (1).—The earlier words of the original section are omitted as unnecessary.

Clause 105 (1).—The earlier part of the original section 101 are exhausted and omitted.

Clause 114.—The proviso to the original section, 109, is omitted, both as unnecessary and because of the remarks of Mr. Justice Owen in the case of *re* Hidden Star Gold-mining Co., at page 40 of 10 N.S.W.R., Equity.

Clause 124.—The power of the Judges to make rules has been brought into conformity with other Acts.

Clause 138.—Only a portion of the original section 135 has been here consolidated, the whole section, with sections 128 and 129, has been left unrepealed, to be dealt with in the consolidation dealing with the Supreme Court.

Clause 139.—The final provisions of the original section 136 (3) have been apparently repealed by 60 Vic. No. 17, and are omitted.

Clause 143 (*i*).—It has here been made clear that the Registrar has power to direct the application of certain moneys as well as to order their payment.

The powers of the Registrar scattered through the old Acts are for convenience gathered together in this section.

Clause 154.—Some words have been added here more appropriate to New South Wales than the original words, copied from English Acts.

The last part of Schedule 3 of the Bankruptcy Act has been omitted. It depends upon section 133 of the Companies Act, which is really obsolete, and which will be omitted in the Companies Acts Consolidation. Other verbal changes, besides those specially mentioned, have been made for various reasons, but do not alter the sense.

I certify that save, as hereinbefore mentioned, this Bill solely consolidates, and in no way alters, adds to, or amends the Acts thereby consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

Bankruptcy Bill.

TABLE showing how the sections of Acts intended to be consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
	7 VICTORIA No. 19.	
15	67	
	10 VICTORIA No. 14.	
3	68	
	51 VICTORIA No. 19.	
1–66	1–66	Omitting sections 10 (1); 16 (2), and (3); 40 (7); 56, 57; 61 (1); 65 (1) repealed; 15 (2) redundant, as the same provision is in s. 27 (1); 17 (3) obsolete; 17 (4) redundant, as the same provision is in s. 67; and 54 (3) inapplicable in New South Wales, and omitting the powers of the Registrar which are collected in section 143; ss. 43 and 44 are altered as to position and placed in division 7 with the provisions with regard to releases.
67	69	
68	70	
69	71	
70	71 (3), (4), 143	
71	72 (1)	
72	73	
73	74 (1)	
74	75	
75	76	
76	78	
77	79	
78	80	
79	81	
80	82	
81	83	
82	84	
83	85	
84	86	
85	87	
86	88	
87	89	
88	90	
89	91	
90	92	
91	95, 143	
92	96	
93	97	
94	.....	Repealed.
95	99	
96	100	
97	101	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
	51 Victoria No. 19.	
98	102	
99	103	
100	104	
101	105	Omitting words of section to the words "such deduction." Exhausted.
102	107, 143, 145	
103	108	
104	109	
105	110	
106	111	
107	112	
108	113	
109	114	
110	115	
111	116	
112	117	
113	118, 143	
114	119	
115	120	
116	121	
117	122	
118	123	
119	124	Remodelled.
120	125	
121	126	
122	127	
123	128	
124	130	
125	131	
126	132	
127	133	
128	.....	Not repealed; to be dealt with in general provision as to Judges.
129	.....	Not repealed; to be dealt with in general provision as to Judges.
130	134	
131	133, 135	Omitting subsec. (*a*) and (*b*). Exhausted.
132	136	
133	137	
134	.....	Omitted. *Vide* 55 Vic. No. 31.
135	138	Not repealed; provisions as to Judge to be dealt with as in the case of ss. 128, 129.
136	139 (1), (3)	Subsec. (2) is provided for in section 2 (2), and is omitted from this section.
137	140	
138	141	
139	141...	Subsec. (2) is provided for in section 2 (2), and is omitted from this section.
140	142	
141	143	
142	144	
143	145	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
	51 Victoria No. 19.	
144	146	
145	147	
146	....	Omitted. *Vide* Evidence Act. Not repealed.
147	148	
148	149	
149	150	
150	143, 151	
151	143, 152	
152	153	
153	154	
Schedule I	Schedule II }	Omitting powers of the Registrar which are collected in section 143.
Schedule II	Schedule III }	
Schedule III	Schedule IV	
Schedule IV	.....	Omitted. Exhausted.
Schedule V	Schedule V	
	52 Victoria No. 11.	
1	.....	
2	4, subsec. (1) (*e*); 11; 19; 137; Schedule IV.	
3	106	
4	93	
5	67, 68	
6	94	
	60 Victoria No. 29.	
1	.....	
2	8 (3) and (10); 10 (2); 17 (2); 18 (1), (3), (8), and (9); 19 (15); 21 (1); 22 (2); 30 (3), (4), and (5); 39; 42 (5); 50; 51; 52 (*e*); 58; 80; 83; 85 (4), (5), (6), and (7); 88; 101; 105; 110; 140; 143	
3	Schedule II, clauses 1, 2, 14, 19, 23, 24; 143	
4	Schedule III, clauses 6, 23, 24; 143	
5	67	
6 (1)	4 (6)	
6 (2)	4 (7), (8)	
6 (3)	4 (9)	
7	10 (1) and (2)	
8	51 (2)	
9	16 (2), 143	
10	77	
11	39 (4), (5)	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
	60 Victoria No. 29.	
12	39 (3), (4), (5)	
13	40 (*o*), (*p*), (*q*), (*r*)	
14	40 (*h*)	
15	.....	Repealing section.
16	44 (3)	
17	56	
18	57	
19	61, 143	
20	65 (1)	
21	98	
22	Schedule III, clause 20 (2)	
23	4 (10), (11); 6; 8 (3); 58.	
24	139 (2)	
25	59 (6)	
26	74 (2), (3), (4)	
27	72 (2)	
28	156	
29	138 (1), (5)	
30	143, 156	
31–34 (inclusive)	.....	Bills of Sale Act.
35	55 (4)	

Legislative Council.

No. , 1898.

A BILL

To consolidate the Law relating to Bankruptcy.

[Mr. Want;—30 *June*, 1898.]

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

1. This Act may be cited as the "Bankruptcy Act, 1898," and is divided into parts and divisions as follows:— Short title of Act. 51 Vic. No. 19, s. 1.

PART I.—Proceedings from act of bankruptcy to discharge of bankrupt.

Division 1.—*Section* 4—*Acts of bankruptcy.*

Division 2.—*Sections* 5–12—*Sequestration order.*

Division 3.—*Sections* 13–18—*Proceedings consequent on order.*

Division 4.—*Sections* 19–20—*Composition or scheme of arrangement.*

DIVISION 5.—*Sections* 21–26—*Creditors' trustees and committee of inspection.*

DIVISION 6.—*Sections* 27–33—*Control over person and property of bankrupt.*

DIVISION 7.—*Sections* 34–38—*Release of estate, and annulment of sequestration order.*

DIVISION 8.—*Sections* 39–44—*Bankrupt's certificate.*

PART II.—ADMINISTRATION OF PROPERTY.

DIVISION 1.—*Sections* 45–47—*Proof of debts.*

DIVISION 2.—*Sections* 48–50—*Preferential debts.*

DIVISION 3.—*Sections* 51–52—*Property available for payment of debts.*

DIVISION 4.—*Sections* 53–58—*Effect of bankruptcy on antecedent transactions.*

DIVISION 5.—*Sections* 59–68—*Realisation of property.*

DIVISION 6.—*Sections* 69–81—*Distribution of estate.*

PART III.—CREDITORS' TRUSTEES AND OFFICIAL ASSIGNEES.

DIVISION 1.—*Sections* 82–86—*Remuneration of trustees or assignees.*

DIVISION 2.—*Section* 87—*Official name.*

DIVISION 3.—*Sections* 88–94—*Appointment and removal.*

DIVISION 4.—*Sections* 95–106—*Control over assignees and trustees.*

PART IV.—PROCEDURE.

Sections 107–113.

PART V.—APPLICATION OF ACT.

Sections 114–125.

PART VI.—INDICTABLE OFFENCES.

Sections 126–132.

PART VII.—JURISDICTION.

DIVISION 1.—*Sections* 133–138—*Bankruptcy Division of Supreme Court.*

DIVISION 2.—*Sections* 139–145—*Officers of the Court.*

PART VIII.—MISCELLANEOUS PROVISIONS.

Sections 146–156.

Repeal.
First Schedule.

2. (1) The several enactments mentioned in the First Schedule to this Act are to the extent therein expressed hereby repealed.

(2) All persons appointed by virtue of any Act hereby repealed and holding office at the passing of this Act, shall be deemed to have been appointed hereunder.

(3) All rules of Court made under the authority of any Act hereby repealed and being in force at the passing of this Act, shall be deemed to have been made under the authority of this Act.

Interpretation of terms.
51 Vic. No. 19, s. 3.

3. (1) In this Act, unless the context otherwise requires :—

"The Judge" means the Judge having jurisdiction in bankruptcy under this Act or any Judge acting as such :

"Available Act of bankruptcy" means any Act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the sequestration order is made :

"Debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy :

"Goods" include all chattels personal :

"The Court" means the Supreme Court in its bankruptcy jurisdiction :

"Local Bank" means any bank in or in the neighbourhood of the district in which the proceedings are taken :

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

"Property" includes money, goods, things in action, land, and every description of property, whether real or personal, and whether situate in New South Wales 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 :

"Secured creditor" means a person holding a mortgage, charge, or lien on the property of the debtor, or any part thereof :

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

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

The term "trustee" shall in all cases where not inconsistent with the context include the official assignee when he fills the office of trustee.

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

PART

PART I.

Proceedings from act of bankruptcy to bankrupt's examination.

Division 1.—*Acts of Bankruptcy.*

Acts of bankruptcy.
51 Vic. No. 19, s. 4.

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

(*a*) If in New South Wales or elsewhere he makes a conveyance or assignment of his property to a trustee for the benefit of his creditors generally:

(*b*) If in New South Wales or elsewhere he makes a conveyance, gift, delivery, assignment, or transfer of his property, or of any part thereof, with intent to defeat or delay his creditors, or any of them:

(*c*) If in New South Wales or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon which would under this or any other Act be void as a fraudulent preference if a sequestration order were made against him:

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

52 Vic. No. 11 s. 2.

(*e*) If execution issued against him has been levied by seizure and sale of his goods under process in an action in any Court, or in any civil proceeding in the Supreme Court, and if he has not within five days of such sale, satisfied the debt by payment:

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

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

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

(*i*) If he has been adjudged bankrupt or insolvent by a British Court of competent jurisdiction in or out of New South Wales, and has not received a certificate of discharge or other corresponding release—of any of which facts a copy of the order or orders or certificate or release made or given by such Court certified under its seal shall be sufficient evidence:

(*j*) If he has not presented a bankruptcy petition against himself or filed in the Court a declaration of his inability to pay his debt within forty-eight hours after having at a convened meeting of his creditors admitted that he is unable to pay his debts, and been thereupon required by a majority in number of his creditors present to present such petition or file such declaration.

(2) A bankruptcy notice under this Act shall be in the form prescribed in the Fifth Schedule hereto, and shall state the consequences of non-compliance therewith, and shall be served in the manner prescribed by the rules of Court; it shall be under the hand of the Registrar, and may be granted upon the application of the creditor claiming to be entitled thereto.

(3) Upon the debtor satisfying the Court that such notice ought not to have issued, the Court may order the payment to him by the creditor applying for such notice of all the costs occasioned by the issue thereof, and if satisfied that the notice was issued maliciously and without reasonable and probable cause may at the request of the debtor assess the damages occasioned thereby.

(4) Upon security being given by the debtor for payment of the debt and the cost of establishing it, the Court may stay all proceedings on the notice, and may stay execution on the judgment in respect of which such notice was issued, for such a time, in either case, as he thinks fit.

(5) Upon the affidavit of any creditor who would be entitled to present a bankruptcy petition that a debtor, being a trader, has committed an act of bankruptcy and is diminishing his assets to the prejudice of his creditors, whether voluntarily or for consideration, by conveyance, gift, delivery, assignment, pledge, mortgage, transfer, or execution upon a collusive judgment, the Court may grant an injunction restraining such debtor and all other persons from disposing of or dealing with such assets or any part thereof until the hearing of the bankruptcy petition against such debtor:

Provided that before such injunction be granted the creditor applying shall give security to the satisfaction of the Registrar to present a bankruptcy petition forthwith, and to be responsible for all damages which may be occasioned by issuing such injunction.

60 Vic. No. 29, s. 6 (1).

(6) Any person who is for the time being entitled to enforce a final judgment shall be deemed a creditor who has obtained a final judgment within the meaning of this section.

Married women.
Ibid. s. 6 (2).

(7) Any final judgment obtained against a married woman shall be deemed to be a final judgment within the meaning of subsection (1) (*g*) of this section, and a bankruptcy notice in the form prescribed by the Fifth Schedule hereto may issue and be served upon her in respect thereof as if judgment had been obtained against her as a feme sole, and the fact that no execution can issue at law on such judgment shall not prevent the non-compliance with such notice being deemed an act of bankruptcy under the said subsection.

Ibid. s. 6 (2).

(8) Nothing herein contained shall be construed to render a married woman liable to be made bankrupt except in respect of her separate estate and upon evidence that she is possessed of separate estate, or to alter or repeal anything contained in the Married Woman's Property Act, 1893, or any Act consolidating or amending the same.

Ibid. s. 6 (3).

(9) Any decree or order which is in its terms or effect final shall be deemed to be a final judgment within the meaning of this section.

Unregisterd deeds of assignment.
Ibid. s. 23.

(10) Every deed of conveyance or assignment for the benefit of creditors may be registered by filing in the office of the Registrar-General an examined copy signed by one or more of the parties to the original deed of assignment and certified by the oath of some credible person taken before a Judge or before the Registrar-General or his deputy, or before any commissioner for affidavits; and if so registered within one month from the execution of the same by the assignor shall be within the protection of this Act.

Ibid. s. 23.

(11) The Registrar-General shall upon the said copy being so filed as aforesaid register the same accordingly.

Division 2.—*Sequestration order.*

Jurisdiction to make sequestration order.
51 Vic. No. 19, s. 5.

5. (1) Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a sequestration order.

(2) When a sequestration order has been made, the debtor thereby becomes a bankrupt, and continues a bankrupt until a certificate of discharge has been issued to him, or the order for sequestration be discharged or annulled in manner hereinafter provided.

6.

6. A creditor shall not be entitled to present a bankruptcy petition against a debtor unless— Conditions on which creditor may or may not petition.

(*a*) The debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to fifty pounds; and 51 Vic. No. 19, s. 6. 60 Vic. No. 29, s. 23.

(*b*) The debt is a liquidated sum, payable either immediately or at some certain future time, whether due at law or in equity; and

(*c*) The act of bankruptcy on which the petition is grounded has occurred within six months before the presentation of the petition:

Provided that, if the alleged act of bankruptcy is one of those mentioned in subsection (*i*) of section four, the petition may be presented within three months after the alleged act came to the knowledge of the petitioning creditor; and unless

(*d*) The debtor is domiciled in New South Wales, 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 New South Wales:

Provided that when the alleged act of bankruptcy is that set forth in subsection (*a*) of section four, and the deed of conveyance or assignment has been registered within one month from the execution thereof by the assignor in accordance with the provisions of subsection ten of the said fourth section, no sequestration order shall be made upon the petition of a creditor or creditors, if such creditor or creditors do not represent at least one-fifth in value of all the creditors.

7. If the petitioning creditor is a secured creditor he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of a sequestration order being made, or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated in the same manner as if he were an unsecured creditor. Secured creditor. *Ibid.* s. 7.

8. (1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf, having knowledge of the facts, and served in the prescribed manner. Proceedings and order on creditor's petition. *Ibid.* s. 8.

(2) At the hearing the Court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and, if satisfied with the proof, may make a sequestration order in pursuance of the petition. 60 Vic. No. 29, s. 2 (1); s. 23.

(3) If the debtor has made a conveyance or assignment of his property to a trustee for the benefit of his creditors generally, and the same has been registered within one month from the execution thereof Trustees shall receive notice of hearing.

thereof by the assignor in accordance with the provisions of subsection ten of section four of this Act, the trustee under such assignment shall also receive the prescribed notice of the hearing, and may appear and show cause for the dismissal of the petition, and if it appears to the Court that it will be for the advantage of the creditors that the estate should be administered under the said deed such petition may be dismissed.

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

(5) If it appears to the Court upon the hearing of the petition that the petition was unfounded and vexatious or malicious, he may allow the respondent then, or at some other fixed time, to prove any damage sustained thereby, and may award such sum in respect thereof not exceeding two hundred pounds as the Court deems fit:

Provided that nothing herein shall affect the right of the respondent to sue the petitioner for damages beyond the amount awarded by the Court.

Staying proceedings on petition upon security being given.

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

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

(8) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a 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 stayed as aforesaid.

(9) A creditors petition shall not, after presentment, be withdrawn without the leave of the Court.

(10)

(10) Where a petition is withdrawn or discharged, or where proceedings upon a petition are stayed in consequence of the petitioning creditor's default, or his collusion with the debtor, the Court, within six months after such withdrawal or discharge or stay of proceedings, may, on the petition of any other creditor or creditors, whose debt or debts existed at the date of the service of the said petition, direct that a sequestration order shall be made. Proviso for revival on proceeding being stayed.

(11) If any person against whom a sequestration order has been made pays any money to any petitioning creditor or to any one on his behalf, or gives to such creditor any security for his debt or part thereof, such payment, gift, or security shall be a new act of bankruptcy, and the person receiving such money, gift, or security shall deliver up such security and repay or deliver the money or gift or its full value to the assignee for the benefit of the creditors, and shall pay all the costs incurred by any other creditor in obtaining a sequestration order upon such act of bankruptcy. Preference to petitioning creditor to be a new act of bankruptcy.

9. (1) A debtor's petition shall allege that the debtor is unable to pay his debts, and upon the presentation thereof the Court shall make a sequestration order. Debtor's petition and order thereon. 51 Vic. No. 19, s. 9.

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

10. (1) Upon the making of a sequestration order the property of the bankrupt shall vest in one of the official assignees to be named in such order, and be divisible among the creditors of the bankrupt in accordance with the provisions of this Act. Effect of sequestration order. *Ibid.* s. 10. 60 Vic. No. 29, ss. 2 (2); 7.

(2) Upon the making of an order for the sequestration of the estate of an undischarged bankrupt or insolvent, the property of such bankrupt or insolvent possessed by him at the date of the second order of sequestration shall, if the official assignee or trustee appointed under the prior order has not intervened, vest in the official assignee named in the subsequent order, and be divisible in the first instance among the creditors of the bankrupt in the subsequent bankruptcy. Sequestration of estate of undischarged bankrupt.

(3) After a sequestration order has been made, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence or take any fresh step in any action or other legal proceedings unless with the leave of the Court and on such terms as the Court may impose.

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

Power to stay legal proceedings.

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

(6) 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 such proceeding.

(7) All actions or proceedings at law or in equity commenced by any person, against whom a sequestration order is afterwards made, shall, upon such order being made, be stayed until the official assignee or trustee make election to prosecute or discontinue the same, and such official assignee 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 such action or proceedings, or otherwise shall be deemed to have abandoned the same :

Provided that any bankrupt shall be permitted to 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 of his family.

Registration of sequestration order and bankruptcy notice.

51 Vic. No. 19, s. 11.

52 Vic. No. 11, s. 2.

11. The Registrar shall forthwith publish in the Gazette a notice of every sequestration order, and also send a like notice to the Registrar-General, who shall make a note of the same in every index and registered instrument kept in his office for public inspection. The Registrar shall also send notice of every such order and notice of the issue of any bankruptcy notice to the sheriff, who shall forthwith register the same respectively in his office.

Agent of creditor may act for him.

51 Vic. No. 19, s. 12.

12. Where a creditor entitled to present a bankruptcy petition is absent from New South Wales, his agent, if authorised to recover his debts or effects, may present the petition and make the proof required in lieu of such creditor :

Provided that the person whom it is sought to make bankrupt shall have, in addition, the same rights and remedies in every such case against such agent as he has against the person in whose name such proceeding is taken, and all notices, summonses, orders, and documents may be served upon such agent, and shall have the same effect as if served upon the creditor.

DIVISION 3.—*Proceedings consequent on order.*

Power to appoint special manager. 51 Vic. No. 19, s. 13;

13. (1) At any time after the making of a sequestration order, the official assignee 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 the appointment of a special manager or receiver of the estate or business, or any part thereof, other than the official assignee, appoint a manager or receiver thereof accordingly to act until a trustee is appointed, or so long as the creditors may by resolution require.

(2) Every such special manager or receiver shall, for all the purposes of obtaining and retaining possession of the property or business of the bankrupt, be in the same position in all respects as a receiver and manager appointed by the Supreme Court in its equitable jurisdiction, and the Court may enforce such acquisition or retention accordingly.

(3) Every person aggrieved by any act of a receiver or manager may apply to the Court, who may confirm or disallow the act complained of, and make such order in the premises as is just.

(4) Such special manager or receiver shall receive such remuneration as the creditors may by resolution determine, or in default of any such resolution as may be prescribed.

Bankrupt's statement of affairs. *Ibid.* s. 14.

14. (1) Where a sequestration order is made the bankrupt shall make out and lodge in the office of the Registrar and furnish to the official assignee a copy of a statement of and in relation to his affairs in the form prescribed by rules of Court verified by affidavit, and showing :—

(*a*) the particulars of the bankrupt's assets, debts, and liabilities ;

(*b*) the names, residences, and occupations of the debtors to his estate and of his creditors ;

(*c*) the amounts due by and to each, and the securities given or held by them respectively ;

(*d*) the dates when such debts and securities arose and were granted ; and

(*e*) such further or other information as may be prescribed or as the official assignee may require.

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

(*a*) If the order is made on the petition of the debtor, upon the making of the sequestration order.

(*b*) If the order is made on the petition of a creditor, within seven days from the date of the service of the order.

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

(3) The bankrupt shall also deliver to the official assignee all books of account, vouchers, and other documents and writings in the

the possession or power of such bankrupt relating to his estate and dealings, and shall at all times as far as lies in his power assist the official assignee, trustee, and manager in the collection and realisation of the assets.

(4) If the bankrupt fails without reasonable excuse to comply with the requirements of this section the Court may, on the application of the official assignee or of any creditor, adjudge him guilty of contempt of Court and punish him accordingly.

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

First creditors meeting.
51 Vic. No. 19, s. 15.

15. (1) As soon as may be after the lodgment of the bankrupt's statement of affairs as aforesaid a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held at an advertised time and place.

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

(3) In the interpretation of the said rules the words first meeting shall include single meeting, except that such single meeting shall be presided over by the Judge or Registrar, anything in the said rules to the contrary notwithstanding.

Proceedings at first meeting.
Ibid. s. 16.

16. At such first meeting the following business may be transacted:—

(1) The creditors may consider whether any and what proposal for a composition or scheme of arrangement shall be entertained.

60 Vic. No. 29 s. 9.

(2) The official assignee may, with the consent of the creditors given by resolution at the first or any other meeting of creditors and with the approval of the Court, allow the bankrupt to retain any of his personal property; and such approval shall have the effect of vesting the said property in the bankrupt as from the date of such resolution. Notice of the intention to allow a bankrupt to retain any of his personal property shall be given to all proved creditors seven days at least before a vote is taken on the resolution.

(3) A trustee or committee of inspection may be appointed as hereinafter provided.

(4)

(4) Other business may also be transacted at such meeting, and the business specified in this section may be transacted at any other meeting as well as at the first meeting.

Single meetings for small bankruptcies. 51 Vic. No. 19, s. 17. 60 Vic. No. 29, s. 2 (3).

17. (1) If the estate of the bankrupt does not appear to the official assignee to be of the value of two hundred pounds or upwards, there shall ordinarily be only a single meeting of creditors, which shall specially be so termed and be advertised accordingly.

(2) At such single meeting the bankrupt shall attend, and all such matters may be done and directions given as are authorised to be done or given at any meeting of creditors where the value of the estate exceeds two hundred pounds.

(3) If the assets appear at a single meeting to exceed two hundred pounds other meetings may be summoned, and all proceedings and directions shall be given or taken as provided in the case of a bankruptcy where the estate exceeds two hundred pounds.

Public examination of bankrupt. *Ibid.* s. 18. *Ibid.* s. 2 (4).

18. (1) Where the Court makes a sequestration order it shall hold a public 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, dealings, and property.

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

(3) The Court may adjourn the examination from time to time, and may direct such further examinations to be had from time to time as it may think fit at a date and place to be appointed by it.

(4) Any creditor who has proved, or his representative authorised in writing, may question the bankrupt concerning his affairs and the causes of his failure; and any creditor who has tendered a proof or his representative authorised in writing, may question the bankrupt upon any matters which may serve to establish his alleged claim to be counted as a creditor.

(5) The official assignee may take part in the examination of the bankrupt.

(6)

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

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

(8) The bankrupt shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him. The evidence shall be taken down in writing or in shorthand, and when transcribed, shall be read over to and signed by the bankrupt before the Judge or Registrar either at the same or at a future time, and it shall be open to the inspection of any creditor at all reasonable times.

(9) When the Court is of opinion that the affairs of the bankrupt have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors, and the Court may at any time direct a further examination on being satisfied of its propriety.

DIVISION 4.—*Composition or scheme of arrangement.*

Power for creditors to accept and Court to approve composition or arrangement.
51 Vic. No. 19, s. 19.
52 Vic. No. 11, s. 2.
60 Vic. No. 29, s. 2 (5).

19. (1) The creditors may at the first or any other meeting, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the bankrupt, or a proposal for a scheme of arrangement of the bankrupt's affairs.

(2) The composition or scheme shall not be binding on the creditors unless it is confirmed by a resolution passed by a majority in number representing three-fourths in value of all the creditors who have proved at a subsequent meeting of the creditors, and is approved by the Court.

Any creditor who has proved his debt may assent to, or dissent from such composition or scheme, by a letter addressed to the official assignee, in the form prescribed by rules of Court, and attested by a witness, so as to be received by such official assignee not later than two days preceding such subsequent meeting, and such creditor shall be taken as being present and voting at such meeting.

(3) The subsequent meeting shall be summoned by the official assignee by not less than seven days' notice, and shall not be held until after the public examination of the bankrupt is concluded. The notice shall state generally the terms of the proposal, and it shall be accompanied by a report of the official assignee thereon.

(4) The bankrupt or the official assignee may, after the composition or scheme 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.

(5)

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

(6) If the Court is of opinion that the terms of the composition or scheme are not calculated to benefit the general body of creditors, the Court may, in its discretion, refuse to approve the composition or scheme.

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

(8) A composition or scheme accepted or 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.

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

(10) 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 may be deemed a contempt of Court.

(11) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme cannot in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the bankrupt, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application 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. And any debt provable in other respects, which has been contracted before the date of the sequestration order, shall be provable in the bankruptcy.

(12) If under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property or manage his business, the provisions of Parts III and VII of this Act, so far as the nature of the case and the terms of the composition or scheme admit, shall apply to the trustee as if he were a creditor's trustee in a bankruptcy, and as if the terms "bankruptcy," and "bankrupt," included respectively a composition or scheme of arrangement, and a compounding or arranging debtor.

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

(14) No composition or scheme shall be approved of by the Court which does not provide for payment to the creditors of seven shillings and sixpence in the pound, unless in the opinion of the Judge the bankruptcy was caused by misfortune without any misconduct on the part of the debtor: Provided that if at any time after such approval the Court shall be satisfied that such opinion was erroneous it may declare the creditors released from the terms of the composition, but no payment made in the meantime thereunder shall be disturbed.

(15) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by a certificate of discharge.

Effect of composition or scheme.
51 Vic. No. 19, s. 20.

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

DIVISION 5.—*Creditors' trustees and committee of inspection.*

Appointment of trustee.
Ibid. s. **21.**
60 Vic. No. 29, s. 2 (6).

21. (1) Whether the creditors resolve to entertain a proposal for a composition or not they may at the first or any meeting elect such persons as they think fit not exceeding two to be trustees of the estate in addition to the official assignee.

(2) Every such trustee may be a creditor or may be one of the official assignees.

(3) Instead of electing trustees as aforesaid the creditors may by resolution leave their appointment to the committee of inspection hereinafter named.

(4) When more persons than one are elected or appointed to the office of trustee, the creditors or the committee of inspection (as the case may be) may at any time declare whether any act or all acts required or authorised to be done by the trustees is or are to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee" (except where the context otherwise requires).

(5) The creditors or the committee (as the case may be) may at the time of the original election or appointment or at any subsequent time elect or appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or not being approved of by the Court.

(6)

(6) Trustees shall be joint tenants of the property of the bankrupt.

Security.
51 Vic. No. 19, s. 22.
60 Vic. No. 29, s. 2 (7).

22. (1) Creditors may direct what security (if any) shall be given by every elected trustee and to whom for the due performance of the duties of his office.

(2) No trustee shall be appointed after the termination of the first or single meeting except by leave of the Court.

Confirmation of election.
51 Vic. No. 19, s. 23.

23. (1) Upon the written acceptance by a trustee of his office and proof of his having given the security required of him the Court may make an order confirming his election.

(2) No official assignee shall be required to give security upon being elected trustee.

(3) Any creditor may object to the confirmation of the election of a trustee upon the ground—

(*a*) that it was not made in good faith by a majority in number and value of the creditors voting, or

(*b*) that the majority in number and value of the creditors dissent from his appointment, or

(*c*) that the person appointed is not fit to act as trustee, or

(*d*) that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interest of the creditors generally.

(4) If any such objection appears to the Court to be frivolous the creditor making such objection may be ordered to pay the costs occasioned thereby.

(5) Notice of every confirmation or removal under this section shall forthwith be published by the Registrar in the Gazette, and the production of such Gazette shall be evidence that the trustee named has been duly elected and confirmed or removed as the case may be.

Vesting of estate in trustee.
Ibid. s. 24.

24. (1) Every order confirming the election of a trustee shall divest the estate, and every right, title, and remedy from the person (if any) ceasing to hold the office of trustee, and shall vest the same jointly in the official assignee and the persons who on the confirmation of the said election are the trustees.

(2) The property of the bankrupt shall pass from trustee to trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

(3) A sequestration order and the order of appointment of a trustee shall for all purposes of any law requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly.

Acts done in good faith to be valid.
51 Vic. No. 19, s. 25.

25. No defect or irregularity in the election of a trustee, or of a member of the committee of inspection, shall vitiate any act done in good faith, and no act of any trustee or of the committee shall be invalid by reason of any failure to elect a co-trustee or any of its members.

Committee of inspection.
Ibid. s. 26.

26. (1) The creditors qualified to vote may at their first or any subsequent meeting by resolution appoint from among the creditors qualified to vote, or the holders of general proxies or general powers of attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property. The committee of inspection shall consist of not more than five or less than three persons.

(2) 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 official assignee or a trustee, or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) 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 at the meeting.

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

(5) 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.

(6) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the office of a member of the committee the official assignee or 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 other person eligible as above to fill the vacancy.

(8) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it does not exceed five.

DIVISION 6.—*Control over person and property of bankrupt.*

Duties of bankrupts as to discovery and realisation of property.

51 Vic. No. 19, s. 27.

27. (1) Every bankrupt shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall also, if required by the official assignee or a trustee or creditor, attend any and every other meeting or adjournment thereof, and shall submit to such examination and give such information as the meeting may require.

(2) He shall whenever required to do so bring with him, and give such information as may be required about any books of account, vouchers, and other documents in writing in his possession, relating to his estate and dealings, and about his assets, and about any particular in his statement of affairs.

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

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

(5) If a bankrupt wilfully fails to perform any of 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 assignee, or to the trustee, or to any person authorised by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

Arrest of debtor or bankrupt under certain circumstances.

Ibid. s. 28.

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

(*a*) If after a bankruptcy notice has been issued under this Act, or after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable reason for believing that he is about to abscond with a view of avoiding payment of the debt in respect of which the bankruptcy notice

notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying, or embarrassing proceedings in bankruptcy against him.

(*b*) If, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his goods with a view of preventing or delaying possession being taken of them by the official assignee or manager or trustee, or that there is probable ground for believing that he has concealed 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 on him of the notice of a bankruptcy petition, prescribed by rules of Court, he removes any goods in his possession above the value of five pounds, without the leave of the official assignee or trustee, if any.

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

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

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

Redirection of bankrupt's letters.
51 Vic. No. 19, s. 29.

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

Discovery of bankrupt's property.
Ibid. s. 30.
60 Vic. No. 29, s. 2 (8).

30. (1) The Court may, on the application of the official assignee or trustee, at any time after a sequestration order has been made against a debtor, summon before it the bankrupt or his wife, or 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 any person whom the Court may deem capable of giving information respecting the bankrupt, his dealings or property, and the Court may require any such person to produce any documents in his custody or power relating to the bankrupt, his dealings or property.

(2)

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

(3) The Court may examine on oath, or allow to be examined by the official assignee and trustee and any creditor, or by any solicitor or counsel on behalf of such assignee, trustee, or creditor, in such cases where a solicitor or counsel may be employed as provided by this Act, either by word of mouth or by written interrogatories, any person concerning the bankrupt, his dealings or property.

(4) If any person on examination before the Court or in answer to interrogatories admits, or if by other evidence it is proved to the satisfaction of the Court that he is indebted to the bankrupt, the Court may, on the application of the official assignee or trustee, forthwith order him to pay to such assignee or trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination and order.

(5) If any person on examination before the Court or in answer to interrogatories admits, or if by other evidence it is proved to the satisfaction of the Court, that he has in his possession any property belonging to the bankrupt, the Court may, on the application of the official assignee or trustee, forthwith order him to deliver to the official assignee or trustee such property, or any part thereof, at such time, and in such manner, and on such terms as to the Court may seem just, with or without costs of the examination and order.

Committal for refusing to obey or for prevarication. 51 Vic. No. 19, s. 31.

31. If the bankrupt or any other person (including the wife of such bankrupt) at any examination under the preceding section, or any adjournment thereof, being thereto required (and not having any lawful excuse in that behalf), shall refuse to surrender any book, document, or writing relating to the estate, or shall refuse to be sworn, or to answer any lawful question touching any of the matters aforesaid, or to subscribe his examination, the Court may commit him to prison, there to remain, until he shall have done the thing so required of him, or shall be discharged by the Court. And if any such person while under examination is guilty of prevarication, or evasion, or indecent conduct, the Court may commit him to prison for any term not exceeding fourteen days.

32.

As to discharge from commitment.
51 Vic. No. 19, s. 32.

32. Any person committed under the last preceding section may be discharged from such committal on appeal therefrom to the Full Court if committed by the Judge, and to the Judge if committed by the Registrar, and in such last-mentioned cases a further appeal shall lie to the Full Court. If the committal was for refusing to answer a question, such question shall be set out in the warrant, and if it appears that the person committed has fully answered all lawful questions put to him, or, if committed for refusing to be sworn or to produce a document or for not signing his examination, that he had a sufficient reason for such refusal, the Court shall order the person committed to be discharged.

Answers to questions when admissible.
Ibid. s. 33.

33. No question put to the bankrupt in any examination shall be deemed unlawful by reason only that the answer thereto may expose him to punishment:

Provided that no answer to any such question shall be admitted in evidence against him on the trial of any indictment other than on a prosecution against him for perjury.

DIVISION 7.—*Release of estate, and annulment of sequestration order.*

Release on composition or arrangement.
Ibid. s. 34.

34. After the acceptance and approval of a composition or scheme of arrangement in manner hereinbefore provided, the bankrupt may apply for an order releasing his estate from sequestration, and, on his satisfying the Court that the approved terms of such composition or scheme have been complied with, so far as is at the time practicable, the Court may make such order on such terms as it thinks just:

Provided that the terms of the composition or scheme may at any time be enforced notwithstanding the release in the same manner as is by this Act provided.

Release on payment, &c.
Ibid. s. 35.

35. 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 a like order for the release of his estate; and on being satisfied that the creditors have been so paid or have released their debts and that no proceedings of a criminal nature are pending or contemplated against the bankrupt, the Court may make a like order upon such terms as it thinks just.

Effect of order.
Ibid. s. 36.

36. Any order, whereby the estate is released from sequestration, shall have the effect of revesting in the bankrupt or such person as the Court may appoint, subject to such conditions as he may prescribe, all the property of the bankrupt undisposed of, as if the estate had never been sequestrated:

Provided that all sales and dispositions of the property and payments made and acts theretofore done by the official assignee or trustee shall be valid; and

Provided

Provided that the release of the estate shall not operate as a discharge of the bankrupt unless the Court shall so order.

Power for Court to annul sequestration in certain cases. 51 Vic. No. 19, s. 43.

37. (1) Where in the opinion of the Court a sequestration order ought not to have been made, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, the Court may on the application of any person interested by order discharge such order.

(2) Where a sequestration order is discharged under this section all sales and dispositions of property duly made, and all acts theretofore done by the official assignee, trustee, or other person acting under their authority, or by the Judge, Registrar, or District Registrar, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the Court may declare by order.

(3) Notice of the order discharging a sequestration order shall be forthwith published in the Gazette.

Meaning of payment of debts in full. *Ibid.* s. 44.

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

Division 8.—*Bankrupt's certificate.*

Certificate how and when applied for. 51 Vic. No. 19, s. 37. 60 Vic. No. 29, ss. 2 (9); 11; 12.

39. Whether a composition or scheme of arrangement has been approved as hereinbefore provided or not, and whether his estate has been released or not, the bankrupt may, after the expiration of three months from the date of sequestration, cause an advertisement to be inserted in the Gazette and a newspaper published in the place where the bankrupt resided at the date of the sequestration order, stating his intention to apply on a day fixed by the Judge or Registrar, and named therein, not less than fourteen nor more than thirty days from the day of first publication for a certificate of discharge under this Act: Provided that where the Court has granted a release of the bankrupt's estate under section thirty-five, the bankrupt may forthwith apply for a certificate of discharge, anything in this section to the contrary notwithstanding.

(1) He shall give fourteen days' notice in writing to the official assignee of such intention.

(2) The application shall be heard on the appointed day and on any day or days of adjournment, and the official assignee and any creditor may be heard in opposition to such application upon giving notice of the grounds thereof.

(3)

(3) On the hearing of the application the Court shall take into consideration a report of the official assignee or trustee as to the bankrupt's conduct or affairs, and may either—

(*a*) grant or refuse an absolute order of discharge, or

(*b*) suspend the operation of the order for a specified time, or

(*c*) grant an order of discharge or suspend the operation of such order subject to any conditions with respect to any earnings or income which may then be or afterwards become due to the bankrupt or with respect to his after acquired property.

(4) The Court shall refuse the discharge in all cases where he is satisfied that the bankrupt has done or omitted anything which in the opinion of the Court amounts to a misdemeanour under this Act or any amendment thereof, and shall, on proof of any of the facts hereinafter mentioned, either refuse the order or suspend the operation of the order for a specified time, or suspend the operation of, or grant, an order of discharge subject to such conditions as aforesaid.

(5) The Court may, as one of the conditions of granting an order of discharge under this section, require the bankrupt to consent to judgment being entered against him by the official assignee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, but in no case shall execution be issued without leave of the Court on a judgment consented to by the bankrupt under the provisions of this subsection.

Grounds for refusing or suspending certificate.

51 Vic. No. 19, s. 38.

60 Vic. No. 29, ss. 13, 14.

40. The facts referred to in the last preceding section are—

(*a*) That the bankrupt has omitted to keep such books of account as are usual and proper in the business or occupation carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy.

(*b*) That the bankrupt has wilfully delayed surrendering his estate or avoided its sequestration in order to benefit or assist one creditor or more to the disadvantage of the rest.

(*c*) That the bankrupt has continued to trade or obtained credit in one or more sums to the amount of fifty pounds or upwards after knowing himself to be insolvent.

(*d*) That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall be on him) of being able to pay it.

(*e*) That the bankrupt has brought on his bankruptcy by rash and hazardous speculations or unjustifiable extravagance in living.

(*f*)

(*f*) That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action or other proceeding properly brought against him.

(*g*) That the bankrupt has within three months preceding the date of the sequestration order, when unable to pay his debts as they become due, given an undue preference to any of his creditors.

(*h*) That the bankrupt has on any previous occasion been adjudged bankrupt or insolvent, or made a statutory composition or arrangement with his creditors, or assignment for the benefit of creditors at common law, unless his estate then produced ten shillings in the pound, or a majority in number and value of the creditors in that estate certify that in their opinion the bankruptcy or insolvency was the result of misfortune only.

(*i*) That the bankrupt has not upon surrendering his estate or after his sequestration made a full and fair disclosure of his property in possession, reversion, or expectancy.

(*j*) That the bankrupt has wilfully violated or omitted to comply with any of the provisions of this Act.

(*k*) That the bankrupt being at the time insolvent has made away with or disposed of any of his property otherwise than in good faith and for valuable consideration.

(*l*) That the bankrupt has unlawfully expended for his own benefit or appropriated to his own use any property of which he at the time had the charge or disposition as a trustee, factor, broker, or agent only, or that he has been guilty of any fraudulent breach of trust.

(*m*) That there is an unsatisfied judgment against the bankrupt in an action for assault, breach of promise, seduction, or any malicious injury, or for damages or costs under any laws relating to divorce.

(*n*) That the bankrupt has carried on business by means of a fictitious capital.

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

(*p*) That the bankrupt has entered into any agreement not to register or to delay the registration of a bill of sale which is in existence at the date of the sequestration order, and has not been duly registered in accordance with the law in force for the time being dealing with the registration of bills of sale.

(*q*) That the bankrupt has given a bill of sale at any time within three months preceding the date of the sequestration order, he being at the time insolvent within the meaning of section fifty-six of this Act.

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

Fraudulent settlements.
51 Vic. No. 19, s. 39.

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

(1) In the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(2) In the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

If the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant, or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend the certificate of discharge, or suspend or grant one 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 come within the provisions of the last preceding section.

Discharge of bankrupt.
51 Vic. No. 19, s. 40.
60 Vic. No. 29, ss. 2 (10); 15.

42. (1) For the purposes of the last two preceding sections the report of the official assignee or trustee shall be prima facie evidence of the statements therein contained.

(2) Notice of the appointment by the Judge or Registrar of the day for hearing the application for a certificate of discharge shall be published in the manner prescribed by rules of Court, and the Court may hear the official assignee and the trustee, and may also hear any creditor, either personally or by counsel. At the hearing the Court may put such questions to the bankrupt and receive such evidence as it thinks fit.

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

(4) No certificate of discharge shall be issued until the bankrupt has paid all fees due by him in respect of any proceedings under this Act including such fees as may be payable upon the granting of and in respect of the said certificate, and no bankrupt shall be deemed to be discharged within the meaning of this Act until such certificate has issued.

(5) A certificate of discharge shall be issued by the Registrar after an order has been made in that behalf by the Court, and such certificate shall bear the seal of the Court, and be in the form prescribed by rules of Court.

(6) If in consequence of the estate not being sufficiently administered, or for want of sufficient evidence, or for any other reason, the Court is unable to decide whether a certificate should or should not be granted, suspended, or refused, he may adjourn the application for such certificate from time to time :

Provided that the Court shall give its decision as soon as may be after the final dividend has been declared as hereinafter provided, and the bankrupt shall then be entitled to demand that such decision be given without delay.

Application after twelve months.
51 Vic. No. 19, s. 41.

43. (1) No application by the bankrupt for a certificate shall be allowed after twelve months from the date of sequestration unless notice of his intention to apply has been duly advertised before the expiration of that period, except by leave of the Court on such terms as it thinks proper.

Proceedings where bankrupt does not apply

(2) If the bankrupt has not within nine months after sequestration applied for his certificate, the Court may, on application of the official assignee or trustee, require him by summons, and in case of his refusal or neglect may compel him by warrant, to appear before the Court and show cause, if he has any, why a certificate of discharge should not in his case be refused or suspended, and on such appearance the Court may deal with the case, and grant, refuse, or suspend such certificate, and otherwise deal with such bankrupt as if the certificate had been applied for by him.

Effect of certificate of discharge.
Ibid. s. 42.
60 Vic. No. 29, s. 16.

44. (1) A certificate of discharge shall not release the bankrupt from any debt on a recognisance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer, on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Colonial Treasurer certify in writing his consent to his being discharged therefrom.

(2)

(2) A certificate of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(3) A certificate of discharge shall not release the bankrupt from any order made under section sixty-one of this Act, or any amendment thereof, or from any liability under a judgment against him as defendant in an action for seduction, libel, or slander, or from liability as a respondent or co-respondent in a suit in the divorce jurisdiction or under an affiliation order, except to such extent and subject to such conditions as the Court may think just.

(4) A certificate of discharge shall release the bankrupt from all other debts provable in bankruptcy.

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

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

(7) Any assignee or trustee becoming bankrupt and being indebted to the estate of which he was such assignee or trustee in respect of money improperly retained or employed by him shall not be discharged from such debt as to any future assets although he may have obtained his certificate.

PART II.

ADMINISTRATION OF PROPERTY.

DIVISION 1.—*Proof of debts.*

Description of debts provable in bankruptcy.
Ibid. s 45.

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

(2)

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

(3) Save, as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the 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.

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

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

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

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

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

Mutual credit and set-off.
51 Vic. No. 19, s. 46.

46. Where there have been mutual credits, mutual debts, or other mutual dealings between a debtor against whom a sequestration order is made under this Act and any other person proving or claiming to prove a debt under such sequestration order, an account shall be taken of what is due from the one party to the other in respect of such

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 as paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, notice of an act of bankruptcy committed by the debtor and available against him.

Rules as to proof of debt.
51 Vic. No. 19, s. 47.

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

Division 2.—*Preferential debts.*

Priority of debts.
Ibid. s. 48.

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

(*a*) All wages or salary of any clerk or servant in respect of the services rendered to the bankrupt during six months before the date of the sequestration order, not exceeding fifty pounds; and

(*b*) All wages of any labourer or workmen, not exceeding fifty pounds, whether payable for time or piece-work in respect of the services rendered to the bankrupt during six months before the date of the sequestration order.

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

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

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

(5) Nothing in this section shall alter the effect of the Act fifty-fifth Victoria number twelve, or shall prejudice the provisions of the Friendly Societies Act thirty-seventh Victoria number four, or of the twenty-sixth Victoria number thirteen, or any Acts amending or consolidating the same or any of them.

49.

Preferential claim in case of apprenticeship.
51 Vic. No. 19, s. 49.

49. (1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the sequestration order shall, if either the bankrupt or apprentice or clerk gives notice in writing to the official assignee or 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 official assignee or trustee may, on the application of the apprentice or clerk or of some person on his behalf, pay such sum as the official assignee or trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture of articles before the commencement of the bankruptcy, and to the other circumstances of the case.

(2) Where it appears expedient to an official assignee or trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

Rent.
Ibid. s. 50.
60 Vic. No. 29, s. 2 (11).

50. No distress for rent which has accrued due before the date of the sequestration order shall be levied or proceeded with as against the estate of the bankrupt after the sequestration order, but the landlord shall receive out of the estate so much rent as was then due or accruing due or as by this Act is made provable, but for a period not exceeding three months, and may prove and share ratably with other creditors for the balance.

Division 3.—*Property available for payment of debts.*

Relation back of official assignee's or trustees title.
51 Vic. No. 19, s. 51.
60 Vic. No. 29, s. 2 (12).

51. (1) The bankruptcy of a debtor, whether the same 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 an order is made for the sequestration of his estate, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within six months next preceding the date of the presentation of the bankruptcy petition; but 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.

Court may make order antedating commencement of bankruptcy.
60 Vic. No. 29, s. 8.

(2) The Court may at any time on the motion of the official assignee and on being satisfied that an act of bankruptcy has been

been committed by the bankrupt within six months next preceding the date of the presentation of the petition upon which the sequestration order was made, order and declare that the bankruptcy shall be deemed to have relation back to and commence on the date of such act of bankruptcy, and such order or declaration shall be prima facie evidence of the fact of the alleged act of bankruptcy and of the commencement of the bankruptcy on such date as aforesaid.

Description of bankrupt's property divisible amongst creditors.

51 Vic. No. 19, s. 52.
60 Vic. No. 29, s. 2 (13).

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

(*a*) Property held by the bankrupt on trust for any other person:

(*b*) The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole:

But it shall comprise the following particulars:

(*c*) All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him before his discharge; and

(*d*) The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and

(*e*) All goods being, at the commencement of the bankruptcy or at any time between that time and the date of the order of sequestration in the possession, order, or disposition of the bankrupt, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof; provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

Division 4.—*Effect of bankruptcy on antecedent transactions.*

Restriction of rights of creditor under execution or attachment.

51 Vic. No. 19, s. 53.

53. (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 official assignee or trustee of the bankrupt unless he has completed the execution or attachment before the date of the sequestration order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

(2)

(2) For the purposes of this Act, an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure and sale, or, in the case of an equitable interest, by the appointment of a receiver.

Duties of sheriff as to goods taken in execution. 51 Vic. No. 19, s. 54.

54. (1) Where property of a debtor is taken in execution, and before the sale thereof notice is served on the sheriff that a sequestration order has been made against the debtor, the sheriff shall, on request, deliver the property to the official assignee or trustee under the order, but the costs of the execution shall be a charge on the property so delivered, and the official assignee or trustee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

(2) Where the property of a debtor is sold under an execution in respect of a judgment for a sum exceeding twenty pounds, the sheriff shall deduct the costs of the execution from the proceeds of sale, and retain the balance for seven days, and if within that time notice is served on him of a bankruptcy petition having been presented against or by the debtor, and the debtor is adjudged bankrupt thereon or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the official assignee or trustee, who shall be entitled to retain the same as against the execution creditor, but otherwise he shall deal with it as if no notice of the presentation of a bankruptcy petition had been served on him.

Avoidance of voluntary settlements. *Ibid.* s. 55.

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

(2) Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the official assignee or trustee in the bankruptcy.

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

60 Vic. No. 29, s. 35.

(4) Nothing in this section shall be deemed to affect or invalidate the rights of any person deriving title to any property in good faith and for valuable consideration through or under any person taking or claiming as a donee of any settlement.

Preferences.

Ibid. s. 17.

56. (1) Every alienation, transfer, gift, surrender, delivery, mortgage, or pledge of any estate or property, real or personal, every warrant of attorney or judicial proceeding made, taken, or suffered by a person being at the time insolvent or in contemplation of surrendering his estate under this Act, or knowing that proceedings for placing the same under sequestration have been commenced, or within sixty days before the sequestration thereof, and, whether fraudulent or not, having the effect in any such case of preferring any then existing creditor to another shall be absolutely void.

(2) For the purpose of this section the word insolvent means the inability of a person to pay his debts as they become due from his own moneys.

(3) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Protection of bona fide transactions, payments, advances, &c., without notice.

Ibid. s. 18.

57. Subject to the 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 subject to the provisions of this Act with respect to the avoidance of certain preferences except as hereinafter provided, nothing in this Act shall invalidate in the case of a bankruptcy :—

(*a*) Any payment by the bankrupt to any of his creditors for or on account of any just debt due at the time of payment.

(*b*) Any payment or delivery to the bankrupt.

(*c*) Any conveyance or assignment by the bankrupt for valuable consideration.

(*d*) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration.

(*e*) Any transaction to the extent of any present advance bonâ fide made by any existing creditor.

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

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

(2)

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

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

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

Assignment when void.
51 Vic. No. 19, s. 58.
60 Vic. No. 29, ss. 2 (14), 23.

58. Every distribution of property which is under this Act an available act of bankruptcy shall be void as against the official assignee or trustee, save only that in the case of a conveyance or assignment by the bankrupt of property in trust for his creditors registered within one month from the execution thereof by the assignor in accordance with the provisions of subsection ten of section four of this Act, all dealings with such property, and all acts done in good faith by any trustee under such instrument, shall be valid unless at the time of the dealing or act he knew or had notice that proceedings to sequestrate the assignor's estate had been or were about to be taken.

Division 5.—*Realisation of Property.*

Possession of property by official assignee.
51 Vic. No. 19, s. 59.

59. (1) The official assignee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery.

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

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

(4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to be assignable and to have been duly assigned to the official assignee; and the official assignee, or the trustee in the event of the estate of the official assignee vesting in a trustee, may sue in any Court in the name of the bankrupt, or continue any action or suit begun by the bankrupt at the date of the sequestration order.

(5)

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

Books, &c., may be destroyed with leave of the Court.
60 Vic. No. 29, s. 25.

(6) After the expiration of five years from the date of the sequestration order, or two years from the date of the certificate of discharge, whichever shall first happen, the official assignee may with the leave of the Court cause all or any of the books and other documents and papers lodged with him by a bankrupt or insolvent to be destroyed.

Seizure of property of bankrupt.
51 Vic. No. 19, s. 60.

60. (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, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and when 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.

(2) Any person acting under such warrant shall make an inventory thereof, and leave with the person in whose possession any such property is attached a copy of the warrant and inventory having subjoined thereto a notice that the property has been attached as belonging to the bankrupt estate, and that any person who knowing the same to have been so attached removes, retains, conceals, or receives any part thereof with intent to defeat the said attachment is guilty of a misdemeanour.

Power to direct payment by Civil Servant, &c., out of salary.
60 Vic. No. 29, s. 19 (1).

61. (1) Where the bankrupt is an officer of the Army or Navy, or of the Colonial Forces, or an officer or clerk, or otherwise employed or engaged in the Civil Service of the Crown, the Court may, on the application of the official assignee or trustee, make an order for the payment to such assignee or trustee for distribution among the creditors of the bankrupt of so much of the bankrupt's pay and salary then due or thereafter to become due as he thinks fit.

(2) Before making any order under the preceding subsection, the Court shall communicate with the chief officer of the department under which the pay or salary is enjoyed as to the amount, times, and manner of such payment, and shall hear and give consideration to any report which such chief officer may make as to the circumstances of the case.

(3)

(3) When the bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay or pension, or any compensation charged on the Consolidated Revenue, the Court, on the application of the official assignee or trustee, may make such order as he thinks just for the payment of the salary, income, half-pay, pension, compensation, or of any part thereof to the official assignee or trustee, to be applied by him in such manner as the Court may direct. 51 Vic. No. 19, s. 61 (2). 60 Vic. No. 29, s. 19 (2).

(4) Nothing in this section shall take away or abridge any power of the chief officer of any public department to dismiss a bankrupt, or to declare the pension, half-pay, or compensation of any bankrupt to be forfeited. 51 Vic. No. 19, s. 61 (3).

62. (1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the official assignee or trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may by writing signed by him, at any time within three months after the date of the sequestration order, disclaim the property. Disclaimer of onerous property. *Ibid.* s. 62.

(2) Where any such property has not come to the knowledge of the official assignee or trustee within one month after the date of the sequestration order he may, upon obtaining permission from the Court, disclaim such property at any time within two months after he first became aware thereof.

(3) 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 official assignee or 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 official assignee or trustee from liability) affect the rights or liabilities of any person.

(4) An official assignee or trustee shall not be entitled to disclaim a lease without leave of the Court, except in any cases which may be prescribed by rules of 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, compensation for use or occupation of the premises since the date of sequestration, and other matters arising out of the tenancy as the Court thinks just.

(5)

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

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

(7) The Court may, on application by any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as he thinks fit make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance 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 underlessee or as mortgagee by demise, except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or underlessee declining to accept a vesting order upon such terms shall be excluded from all interest in, and security upon the property, and if there be no person claiming under the bankrupt who is willing to accept an order upon such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

(9)

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

Powers of official assignee or trustee independently of committee of inspection. 51 Vic. No. 19, s. 63.

63. Subject to the provisions of this Act the official assignee or trustee may do all or any of the following things :—

(1) Sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt) by public auction, with power to transfer the whole thereof to any person or company or to sell the same in parcels.

(2) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof.

(3) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt.

(4) Exercise any powers, the capacity to exercise which is vested in the official assignee or trustee under this Act, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of this Act.

(5) Deal with any property to which the bankrupt is beneficially entitled as tenant-in-tail in the same manner as the bankrupt might have dealt with it.

Powers exercisable by official assignee or trustee, with permission of committee of inspection. *Ibid.* s. 64.

64. The official assignee or trustee may, with the permission of the committee of inspection, do all or any of the following things :—

(1) Carry on the business of the bankrupt so far as may be necessary for the beneficial winding-up of the same.

(2) Bring, institute, or defend any action or other legal proceeding relative to the property of the bankrupt.

(3) Employ a solicitor, counsel, or other agent to take part in any examination of the bankrupt or other person under this Act or to take any proceedings or to do any business which may be sanctioned by the committee of inspection.

(4) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the committee think fit.

(5) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts.

(6) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums payable at such times, and generally on such terms as may be agreed on.

(7)

(7) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy.

(8) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the official assignee or trustee by any person, or by the official assignee or trustee on any person.

(9) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

(10) Appoint the bankrupt himself to superintend the management of the property of the bankrupt or any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee or trustee may direct.

(11) Make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding-up his estate, but any such allowance may be reduced by the Court.

(12) 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 private sale.

Permission to be specific.
60 Vic. No. 29, s. 20.
51 Vic. No. 19, s. 65 (2).

65. (1) The permission given for the purposes of the preceding section shall not be a general permission to do all or any of the things therein mentioned, but only a permission to do the particular thing for which permission is sought in the specified case.

(2) It shall not be necessary for persons dealt with by the assignee or trustee to ascertain whether he had the necessary sanction, but its existence shall be conclusively presumed for the purposes of the transaction, if the person dealt with shall in good faith have acted in reliance on the fact that there was such sanction.

Court may give permission.
Ibid. s. 66.

66. If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Court.

Title conveyed by official assignees or trustees.
7 Vic. No. 19, s. 15.
52 Vic. No. 11, s. 5.
60 Vic. No. 29, s. 5.

67. The same title or property whether real or personal belonging to or forming part of any bankrupt or insolvent estate may be conveyed or transferred in fee or otherwise, as the case may be, to any purchaser, mortgagee, or other person by the assignee or trustee of such estate for the time being as the bankrupt or insolvent himself had

had or was by law entitled or able to convey or transfer immediately before the sequestration of his estate, and it shall not be essential to the validity of any such conveyance or transfer (so far as it respects the right of any person to execute the same as assignee) to prove more than the fact of his appointment, or, in the case of a trustee or elected assignee, his confirmation in that character, that at the time of the execution of the instrument he had not been removed from office, and that there was then no assignee or trustee in or of the estate in question other than the assignee or trustee executing the same, of which several facts the certificate of the Chief Commisssoner, Judge, or Registrar indorsed on such instrument of transfer shall be conclusive evidence.

Deeds executed by official assignee or trustee to be deemed effectual to convey.
10 Vic. No. 14, s. 3.
52 Vic. No. 11, s. 5.

68. (1) All deeds duly executed by the assignee or trustee for the time being of any bankrupt or insolvent estate purporting to convey, assign, release, or assure any part of the property of a bankrupt or insolvent to any purchaser, mortgagee, or other person for any estate or interest therein shall be valid both at law and in equity for conveying, assigning, releasing, and assuring such property for the estate and interest in such deed mentioned.

Purchasers relieved from the effect of omissions.

(2) Such purchaser, mortgagee, or other person, and every person claiming under him shall be relieved from inquiring whether the advertisements have been inserted, and meetings of creditors called, or direction of creditors obtained as by law required, notwithstanding the same have not been inserted, called, or obtained.

(3) Any person who deals or contracts with or takes any conveyance or other assurance from any assignee or trustee for the time being as aforesaid of any bankrupt or insolvent estate shall not be bound to inquire into the power or authority of such assignee or trustee with respect to such dealing, contracting, conveyance, or assurance as aforesaid, but such assignee or trustee shall for the purposes aforesaid, and as between him and such person as aforesaid, be deemed and considered as beneficial owner of the real and personal property of the bankrupt or insolvent.

But assignees not exonerated.

(4) Nothing in this Act contained shall be construed to exonerate any such assignee or trustee from any liability for the non-observance or non-performance of his duty as such assignee or trustee as aforesaid.

(5) In this section and the last preceding section the expression "assignee" shall include an official assignee of any bankrupt or insolvent estate and an elected assignee whose election has been confirmed by the Court.

DIVISION 6.—*Distribution of estate.*

Account and plan of distribution.
51 Vic. No. 19, s. 67.

69. As soon as possible, and not later than four months after sequestration (or three months in respect of estates requiring only a single meeting), the official assignee or trustee shall frame and lay before the Court an exact account of the balance of the estate, specifying the proceeds of sales and debts collected and all debts outstanding, together with an inventory of all property still unsold, and showing the debts due by the estate, and shall present a plan for distribution of the assets, specifying first such creditors as are entitled to preference in their order of legal preference, and secondly the unsecured creditors and the balance remaining for division amongst them. A similar account and plan shall be submitted from time to time as the Court may direct.

Audit and notice thereof.
51 Vic. No. 19, s. 68.

70. As soon as the Registrar has audited such account and made his report thereon, and the plan for distribution has been approved of by the Court, it shall lie in the office of the Registrar for inspection by the creditors and bankrupt for such reasonable time as may be directed, but not less than fourteen days from the advertisement thereof, and the official assignee or trustee shall cause notice thereof to be given to the creditors and inserted in the Gazette.

As to objections thereto.
Ibid. s. 69.

71. (1) The bankrupt, and any party interested in the estate, and any creditor, may, within the time aforesaid, enter his objection in writing with the Registrar stating the grounds thereof.

(2) The Court may permit such objection to be entered at any time before final confirmation of the plan on such terms as the Court thinks fit.

Proceedings thereon.
Ibid. s. 70.

(3) The person objecting to the account or plan shall apply to the Judge or Registrar for an order calling on the official assignee or trustee and also on the party whose interest may be affected thereby to show cause why the plan should not be amended, and thereupon the Court upon hearing the parties may make such order as it thinks fit.

(4) Whenever any amendment is ordered in the plan, whereby the interest of any party who has not been heard is affected, the plan shall again be open for inspection and notice thereof be given as aforesaid.

Confirmation and effect thereof.
Ibid. s. 71.

72. (1) After expiration of the time appointed for inspection of the account and plan of distribution without any objection being entered thereto, or, if an objection has been entered, then, after disposal thereof, the official assignee or trustee may apply to the Court that the plan may be confirmed, and thereupon the Court may confirm the same; and such confirmation shall have the effect of a final judgment as between the bankrupt and his creditors, except as to the amount of any debt afterwards expunged or reduced, and except against such creditors as are afterwards admitted to prove their debts against the estate at any time before its final distribution. (2)

(2) If a bankrupt removes out of the jurisdiction before the confirmation of the account and plan of distribution in his estate, except with the consent of three-fourths in number and value of the proved creditors in his estate or by leave of the Court, the Court may, on the information of the official assignee or trustee or of any creditor, by warrant addressed to the sheriff or any constable or officer of the Court prescribed by rules of Court, cause such bankrupt to be arrested and to be safely kept as prescribed by rules of Court until such time as the Court may order.

Bankrupt liable to arrest if he removes out of the jurisdiction before the account and plan is confirmed. 60 Vic. No. 29, s. 27.

73. (1) Where a sequestration order is made against one partner of a firm, 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.

Joint and separate dividends. 51 Vic. No. 19, s. 72.

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

74. (1) 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 official assignee or trustee any dividend he may have 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.

Right of creditor who has not proved debt before declaration of a dividend. *Ibid.* s. 73.

(2) After a plan of distribution has been approved of by the Court no creditor shall be entitled by proof of his debt to disturb the plan of distribution unless he satisfy the Court that he could not, by the exercise of due diligence, have proved his debt prior to such approval.

Plan of distribution not to be disturbed in certain cases. 60 Vic. No. 29, s. 26.

(3) In any order allowing a disturbance of the plan of distribution the Court may impose such terms as to costs or otherwise as he may think fit.

Ibid. s. 26.

(4) If an amendment is ordered in the plan under section seventy-one of this Act any creditor who has proved his debt before the order is made directing such amendment shall be entitled to rank for dividend on the amended plan.

Ibid. s. 26.

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

No action for dividend. 51 Vic. No. 19, s. 74.

76. The official assignee or trustee shall cause notice to be given as prescribed by rules of Court when and where dividends are payable to creditors and others interested in the estate.

Official assignee or trustee to give notice of dividend.

77. *Ibid.* s. 75.

Distribution of assets where creditors give indemnity for costs. 60 Vic. No. 29, s. 10.

77. In cases 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 reference to the distribution of such assets with a view to giving the indemnifying creditors an advantage over others in consideration of the risk run by them in giving such indemnity.

Official assignee to file periodical statements. 51 Vic. No. 19, s. 76.

78. (1) The official assignee or trustee shall, at periods prescribed by rules of Court, file with the Colonial Treasurer and the Registrar statements showing how each bankrupt estate has been applied and disposed of under the following heads, that is to say:—

(*a*) Gross amount of assets realised.
(*b*) Costs, charges, allowances, and expenses.
(*c*) Remuneration or commission.
(*d*) Preferential payments.
(*e*) Dividends to general creditors.
(*f*) Balance undisposed of.

(2) If any part of the estate has not then been collected or disposed of such statement shall specify the nature of such unrealised estate.

(3) The official assignee or trustee shall make out and file such further or fuller statements in any case as the Court may think proper.

Court may disallow costs, charges, &c. *Ibid.* s. 77.

79. The Court may, on the complaint of any creditor or person interested, or upon any report or audit by the Colonial Treasurer or Registrar, allow or disallow all or any part of the costs, charges, allowances, and expenses claimed by any official assignee or trustee or of any payment made by such assignee or trustee, and make such order thereon as the Court thinks fit.

Final dividend. *Ibid.* s. 78. 60 Vic. No. 29, s. 2 (15).

80. (1) When the official assignee or trustee has realised all the property of the bankrupt, or so much thereof as can, in the opinion of such official assignee or trustee, or in the joint opinion of himself and of the committee of inspection where such committee has been appointed, be realised without needlessly protracting the winding-up of the estate, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed by rules of Court to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims.

(2) After the expiration of the time so limited, or, if the Court on application by any such claimant grant him further time for establishing his claim, then on the expiration of such further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other person.

81.

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

Right of bankrupt to surplus.
51 Vic. No. 19, s. 79.

PART III.

Creditors' Trustees and Official Assignees.

Division 1.—*Remuneration of trustees and assignees.*

82. (1) Where the creditors appoint any person to be trustee of a bankrupt's estate, his remuneration (if any) shall 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 or percentage, of which one part shall be payable on the amount realized, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

Remuneration of trustees.
Ibid. s. 80.

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

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

(4) Where no remuneration has been voted to a trustee he shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him in or about the proceedings of the bankruptcy as the Registrar may allow.

(5) The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as a 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.

83. (1) Where no trustee is appointed an official assignee shall receive in the absence of any resolution of the creditors allowing a larger amount, a remuneration in the nature of a commission or percentage at the rate of five per centum, of which one half shall be payable on the gross amount coming into the hands of the official assignee in each estate, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other half shall be payable upon each dividend as and when it is declared.

Remuneration of official assignee.
Ibid. s. 81.
60 Vic. No. 29, s. 2 (16).

(2)

(2) An official assignee, who is elected to act as trustee, shall receive remuneration as such trustee, provided that it is not less than the remuneration by this section allowed to an official assignee.

(3) Where trustees are duly appointed under this Act (of whom the official assignee is not one), the official assignee shall receive from such trustees such sum for his services as the Registrar may from time time declare to be reasonable, but such sums in the aggregate shall not exceed (except upon special order of the Court on that behalf and made under the next following section) the amount allowed by this section when no creditors' trustee has been appointed.

Power to increase remuneration for special services.
51 Vic. No. 19, s. 82.

84. The Court may from time time order that the remuneration of a trustee or official assignee be increased, and may take into account in allowing such increase :—

(*a*) Any special services rendered by such trustee or assignee.

(*b*) Any special circumstance, which, in the opinion of the Judge, increased the difficulty of realizing the estate.

(*c*) The smallness of the amount realizable in the estate.

An official assignee or trustee to be recouped expenses.
Ibid. s. 83.
60 Vic. No. 29, s. 2 (17), (18).

85. (1) An official assignee or trustee is entitled to receive out of the estate in priority to the payment of a dividend payment for moneys disbursed, and for liabilities and costs incurred by him on behalf of the estate and in accordance with the provisions of this Act.

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

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

Allowance and taxation of costs.

(4) All bills and charges of solicitors, managers, accountants, auctioneers, brokers, official assignees, or trustees, and other persons shall be taxed by the Registrar or other taxing officer appointed by the Judge, and no payments in respect thereof shall be allowed in the official assignee's or trustee's accounts without proof of such taxation having been made, and the Registrar or other taxing officer appointed by the Judge shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned.

(5) Every such person shall, on request by the official assignee or trustee (which request the official assignee or trustee shall make a sufficient time before declaring a dividend) deliver his bill of costs or charges to the Registrar or other taxing officer appointed by the Judge for taxation, and if he fails to do so within seven days after receipt of the request, or such further time as the Judge or Registrar, or other taxing officer appointed by the Judge, on application, may grant,

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

(6) The Registrar or other taxing officer appointed by the Judge may refer for taxation any common law charges in any bill of costs or charges to the Prothonotary, and any equity or conveyancing charges to the Master or Deputy Registrar in equity; and in respect of such charges the decision of the Prothonotary or Master or Deputy Registrar shall be deemed to be the decision of the Registrar or other taxing officer appointed by the Judge, and be subject to appeal to the Court under this Act.

(7) An appeal shall lie to the Court from the decision of the Registrar or other taxing officer appointed by the Judge in allowing or disallowing any item on the motion of the official assignee or trustee, or any creditor of the estate or any other person interested.

Prohibition of secret understandings. 51 Vic. No 19, s. 84.

86. (1) No official assignee, trustee, receiver, manager, or member of a committee of inspection shall, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditor or allowed by this Act and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee to the bankrupt, or any solicitor or other person that may be employed about a bankruptcy.

(2) Any person offending against this section shall be guilty of a misdemeanour.

Division 2.—*Official name.*

Official name of trustee. *Ibid.* s. 85.

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

Division 3.—*Appointment and removal.*

Official assignees to be appointed by Governor. *Ibid.* s. 86. 60 Vic. No. 29, s. 2 (19).

88. The Governor may, with the approval of the Judge, appoint such number of persons official assignees in bankruptcy as may be, in the opinion of the Judge, from time to time required, and both

both such official and elected assignees shall be under the direction and control of the Judge.

(2) Every official assignee shall, upon his appointment, give such security as may be prescribed by rules of Court.

(3) For the purpose of affidavits, verifying proofs, petitions, or other proceedings under this Act an official assignee may administer oaths.

Office of trustee vacated by bankruptcy. 51 Vic. No. 19, s. 87.

89. If an order of sequestration is made against an official assignee or a trustee he shall thereby vacate his office.

Removal of trustee. *Ibid.* s. 88.

90. (1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee elected by them, or appointed by the committee of inspection, and may at the same or any subsequent meeting appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.

(2) The Judge may remove any official assignee or trustee for misconduct or neglect or omission in the performance of his duties under this Act, or for absence from New South Wales, or for any other reasonable cause; but if the creditors, by ordinary resolution, disapprove of the removal of a trustee, he or they may appeal against it to the Full Court.

Proceedings in case of a vacancy in the office of trustee. *Ibid.* s. 89.

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

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

(3) If the creditors do not, within three weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the official assignee shall report the matter to the Court, and the Court may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee as in the case of a first appointment.

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

Resignation. *Ibid.* s. 90.

92. (1) Any official assignee or trustee or manager or receiver may apply to the Court for leave to resign his office, and if no valid objection be stated, and if the Court be satisfied that he has complied with the provisions of this Act, and with the rules of Court, his application may be granted; but if any objection be stated thereto the Court shall proceed to determine the same, and shall make such order thereon as it deems fit, and if the application of any such official assignee, or trustee, or manager, or receiver for leave to resign be granted, the Court may make such orders as may be necessary for the preservation and administration

administration of the estate until a new official assignee, or trustee, or manager, or receiver be appointed or elected and confirmed, and for the discharge and acquittance of such assignee, or trustee, or manager, or receiver, and for the security and payment of any unclaimed dividends to the parties entitled to the same.

(2) No order of the Court allowing such assignee, trustee, manager, or receiver to resign shall prevent the official assignee, trustee, manager, or receiver thereafter appointed or elected and confirmed in his stead from calling upon him to account for anything done or left undone prior to his resignation.

Court may make vesting order. 52 Vic. No. 11, s. 4.

93. For the purpose of transferring any estate vested in an official assignee or trustee (whether such estate were vested before or after the passing of this Act) to, and vesting the same in some other official assignee or trustee, the Court may make such vesting order as in its opinion will effectually carry out such transfer to, and the vesting of such estate in, the person named in such order, and such order when made shall have the effect of vesting in the person therein named the whole right, title, and interest of the official assignee or trustee from whom such right, title, and interest is intended to be divested or transferred.

Provision against abatement in certain cases. *Ibid.* s. 6.

94. (1) No action or proceeding of any kind to which an official assignee or trustee has been a party shall be deemed to have abated by the death or resignation, or vacation of, or removal from, office of any such official assignee or trustee; but in every such case such action or proceeding may be continued in the name of the official assignee or trustee appointed in the place of the official assignee or trustee who has died, resigned, or vacated, or been removed from his office: Provided that a suggestion in the usual way is made of such death, resignation, removal, or vacation.

Division 4.—*Control over assignees and trustees.*

Discretionary powers of official assignee and trustee and control thereof. 51 Vic. No. 19, s. 91.

95. (1) Subject to the provisions of this Act the assignee and trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by any resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The assignee or trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as

the creditors, by resolution, either at the meeting appointing the trustee or otherwise may direct, or whenever requested in writing to do so by one fourth in value of the creditors.

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

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

Appeal to Court against official assignees or trustees.
51 Vic. No. 19, s. 92.

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

Control of Judge over official assignees and trustees.
Ibid. s. 93.

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

(2) The Judge may at any time require an assignee or trustee to answer any inquiry made by him in relation to any bankruptcy in which such assignee or trustee is engaged, and may, if he thinks fit, examine on oath such assignee or trustee or any other person concerning the bankruptcy.

(3) The Judge may also direct an investigation to be made of the books and vouchers of the assignee or trustee by the Colonial Treasurer or Registrar.

Audit of official assignees' or trustees' account.
60 Vic. No. 29, s. 21.

98. (1) Every official assignee and trustee shall, at such times as may be prescribed by rules of Court, but not less than twice in each year during his tenure of office, sent to the Registrar and to the Colonial Treasurer, an account of his receipts and payments as such assignee or trustee.

(2) The account shall be in the form prescribed by rules of Court and shall be made in duplicate, and shall be verified by affidavit in the form prescribed by rules of Court.

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

(4)

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

The official assignee or trustee to furnish list of creditors.
51 Vic. No. 19, s. 95.

99. The official assignee or trustee shall, whenever required by any creditor so to do, and on payment by such creditor of the fee prescribed by rules of Court, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors.

Books to be kept by official assignee or trustee.
Ibid. s. 96.

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

Annual statement of proceedings.
Ibid. s. 97.
60 Vic. No. 29, s. 2 (20).

101. (1) Every official assignee or trustee in a bankruptcy shall from time to time, as may be prescribed by rules of Court, and not less than once in every year, so long as he has any assets unadministered in his hands, transmit to the Court a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the particulars, and made out in the form prescribed by rules of Court.

(2) The Court shall cause the statement as transmitted to be examined, and call the official assignee or trustee to account for any misfeasance, neglect, or omission which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect, or omission.

Payment of money into Bankruptcy Estates Account.
51 Vic. No. 19, s. 98.

102. (1) An account called the "Bankruptcy Estates Account" shall be kept by the Registrar with such bank as the Colonial Treasurer may from time to time direct, and all moneys received by the Registrar, in respect of proceedings under this Act shall be paid to that account.

(2) Every official assignee and every trustee shall, in such manner and at such times as may be prescribed by rules of Court, pay the money received by him to the Registrar, who shall furnish a receipt of the money so paid.

(3) If it appear to the official assignee or, if a committee of inspection has been appointed, to such committee, that for the purpose of carrying on the debtor's business, or of obtaining advances, or because of the probable amount of the cash balance, or, if the Registrar certify that for any other reason it is for the advantage of the creditors that the official assignee or trustee should have an account with a bank, the Registrar shall authorise the official assignee or trustee to make his payments into and out of such bank as the Registrar may select.

(4) Such account shall be opened and kept by such assignee or trustee in the name of the bankrupt's estate; and any interest receivable in respect of the account shall be part of the assets of the estate.

(5)

(5) If an official assignee or trustee at any time retain for more than ten days a sum exceeding fifty pounds, or such other amount as in any particular case the Registrar authorises him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall have no claim for remuneration, and may be removed from his office, and shall be liable to pay any expenses occasioned by reason of his default.

(6) All payments out of moneys standing to the credit of the Registrar in the "Bankruptcy Estates Account" shall be made by the Registrar or other officer prescribed by rules of Court in the manner thereby prescribed.

(7) The Judge or the Colonial Treasurer may at any time require the production of and inspect any books or accounts kept by the Registrar, and the Colonial Treasurer shall cause the accounts of the Registrar to be audited once at least every quarter, and for the purpose of such audit the Registrar shall furnish the Colonial Treasurer with such vouchers and information as he shall require.

No payments allowed into private accounts. 51 Vic. No. 19, s. 99.

103. No official assignee or trustee shall pay any sums received by him as such assignee or trustee into his private banker's account, or otherwise than as hereinbefore directed.

Investment of surplus funds. *Ibid.* s. 100.

104. (1) Whenever the cash balance standing to the credit of the "Bankruptcy Estates Account" is in excess of the amount which in the opinion of the Registrar is required for the time being to answer demands in respect of bankrupt estates, the Registrar shall notify the same to the Colonial Treasurer, and shall pay over the same or any part thereof as the Colonial Treasurer may require to the Colonial Treasurer to such account as the Colonial Treasurer may direct, and the Colonial Treasurer may invest the said sums or any part thereof in Government securities to be placed to the credit of the said account.

(2) Whenever any part of the money so invested is, in the opinion of the Registrar, required to answer any demands in respect of bankrupts' estates the Registrar shall notify to the Colonial Treasurer the amount so required, and the Colonial Treasurer shall thereupon repay to the Registrar such sums as may be required to the credit of the "Bankruptcy Estates Account," and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on the investments under this section shall be paid to such account as the Colonial Treasurer may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of bankruptcy proceedings.

Unclaimed dividends and balances to be paid into Unclaimed Dividend Fund. *Ibid.* s. 101. 60 Vic. No. 29, s. 2 (21).

105. (1) All dividends and balances in estates administered under the provisions of this Act which are unclaimed by the parties entitled thereto for the space of six months next after the same are payable shall, unless the Judge otherwise orders, be paid into the Colonial Treasury to the credit of a fund to be called the "Bankruptcy Unclaimed Dividend Fund."

(2)

(2) The Governor may direct that all sums paid to the credit of the said fund shall be invested in Government debentures, and the interest arising from such investment shall be paid to the credit of a fund to be called the "Bankruptcy Suitors' Fund." Bankruptcy Suitors' Fund.

(3) Any person entitled to receive any dividend or balance hereby directed to be paid into the said "Unclaimed Dividend Fund" may apply to the Court for the payment of such dividend or balance to him, and the Court may order such dividend or balance to be paid to him, and upon every such order the Governor shall issue his warrant for the payment of the amount specified in such order, and the Treasurer shall pay the same out of the said fund. Unclaimed dividends and balances may under circumstances be paid to persons entitled.

Insolvent estates.

106. (1) In any case where the estate of any person has under the Acts relating to insolvency been vested in any official assignee, the Judge shall, in respect of such official assignee and every estate so vested in him, have, and may exercise, all the powers and all such other jurisdiction as might have been exercised in respect of such official assignee or such estate by the Chief Justice or by the Chief Commissioner of insolvent estates. Jurisdiction, &c., in respect of estates vested in official assignees before passing of the Act 51 Vic. No. 19. 52 Vic. No. 11, s. 3.

(2) The Judge shall also have full power and authority to inquire into, and investigate, the dealings of such official assignees with each estate vested in him or with any part thereof, whether such dealings took place before or since the passing of the Act fifty-first Victoria number nineteen, or before his removal as hereafter provided for.

(3) The Judge shall also have full power and authority to remove such official assignee from being the official assignee of any particular estate, and may appoint any other of the official assignees to be the official assignee of such estate, and in case of such removal, the right, title, and interest of the official assignee so removed shall, by the order appointing the official assignee in his place vest in the official assignee so appointed as aforesaid.

(4) The Judge shall also have full power and authority to order any official assignee to bring into Court any sums of money which he may find to be in the hands of such official assignee, and also may call upon any official assignee to account fully for all moneys which have come to his hands at any time and to show how the same were disposed of, and generally may exercise all necessary powers and authorities to compel any official assignee fully to disclose all his dealings with all or any of the estates so vested in him.

(5) The Judge may also upon the application of the Colonial Treasurer or of any person interested, direct and investigation by the Colonial Treasurer or of any person instructed by the Colonial Treasurer,

Treasurer, or by the Registrar, of the books, accounts, vouchers, papers, and documents of any such official assignee, and may order such books, accounts, vouchers, papers or documents to be handed over to the Colonial Treasurer or to any person instructed by him, or to the Registrar; and may direct an inquiry as to the conduct, omissions, and dealings of any such assignee, and may remove him from his office for misconduct or neglect.

(6) Every official assignee appointed an official assignee of any estate under the provisions of this section shall be subject to all the provisions of this section, in respect of the estate to which he is so appointed.

PART IV.

PROCEDURE.

Discretionary powers of the Court.
51 Vic. No. 19, s. 102.

107. (1) Subject to the provisions of this Act and to rules of Court, the costs of and incidental to any proceeding under this Act shall be in the discretion of the Court.

(2) Where any issue is tried by a jury the costs shall follow the event, unless the Court otherwise orders.

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

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

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

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

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

Consolidation of petitions.
Ibid. s. 103.

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

109.

109. Where the petitioner does not proceed with due diligence, on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of a petitioning creditor. Power to change carriage of proceedings. 51 Vic. No. 19, s. 104.

110. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were still alive. Continuance of proceedings on death of debtor. *Ibid.* s. 105.

111. The Court may at any time, for sufficient reasons, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court may think just. 60 Vic. No. 29, s. 2 (22). Power to stay proceedings. 51 Vic. No. 19, s. 106.

112. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others. Power to present petition against one partner. *Ibid.* s. 107.

113. Where there are more respondents than one to a petition the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them. Power to dismiss petition against one partner. *Ibid.* s. 108.

PART V.

Application of Act.

114. A sequestration order shall not be made against any corporation, or against any partnership or association or company registered under the Act thirty-seventh Victoria number nineteen or any Act consolidating or amending the same. Exclusion of limited companies. *Ibid.* s. 109.

115. (1) Any creditor of a partnership may present a bankruptcy petition against such partnership, if he would be entitled to present such a petition against any one of the members of such partnership. Sequestration of partnership estate. *Ibid.* s. 110.

(2) An order of sequestration may be made against a partnership estate although all the partners be not included therein.

116. The estate of a partnership trading or having any estate in New South Wales may be sequestrated upon the petition of the greater number of the partners resident in New South Wales. Voluntary sequestration of partnership estate. *Ibid.* s. 111.

117. Where an order for sequestration has been made on a bankruptcy petition against or by one member of a partnership, and another bankruptcy petition against or by a member of the same partnership is filed, the Court may give such directions for consolidating the proceedings under the petitions as it thinks just. Consolidation of proceedings in case of partnerships. *Ibid.* s. 112.

118.

Actions by official assignee or trustee and bankrupt's partners.
51 Vic. No. 19, s. 113.

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

Actions in joint contracts.
Ibid. s. 114.

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

Proceedings in partnership's name.
Ibid. s. 115.

120. Any two or more 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 such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise as the Court may direct.

Petition against estate of a deceased person.
Ibid. s. 116.

121. Any creditor of the estate of a person deceased may present a bankruptcy petition, if any executor or administrator of such estate has committed an act of bankruptcy whereby the creditors may be defeated or delayed in obtaining payment of their debts, praying that the estate may be sequestrated—and the like proceedings may be taken concerning such estate and its representatives as in the case of other estates and persons.

Voluntary sequestration by executor or administrator.
Ibid. s. 117.

122. Any person in whom the administration of the estate of a person deceased is vested, or in whom the estate of any person is vested in trust for creditors, may present a bankruptcy petition, and the like proceedings may be taken against and concerning such estate and its representatives as in the case of other estates and persons.

Married women.
Ibid. s. 118.

123. A bankruptcy petition may be presented by and against a married woman in respect of her separate estate.

General rules.
Ibid. s. 119.

124. (1) The Judges or any three of them may make general rules for regulating the practice, procedure, and forms in respect of all matters under this Act.

(2) A copy of every such rule shall be laid before both Houses of Parliament within fourteen days from the publication thereof if Parliament be then in session, or otherwise within fourteen days after the commencement of the next ensuing session.

125.

125. Nothing in this Act shall affect the operation of or prejudice the provisions of the Life Assurance Encouragement Act of 1862 or any Act amending or consolidating the same. Saving of rights under Life Assurance Act. 51 Vic. No. 19, s. 120.

PART VI.

INDICTABLE OFFENCES.

126. Whosoever commits any of the offences mentioned in this section shall be guilty of a misdemeanour and be liable to imprisonment with or without hard labour for any time not exceeding three years, and may be ordered to pay damages to any person whom he has injured by such offence, that is to say:— *Ibid.* s. 121.

(*a*) Whosoever wilfully conceals any property being part of the estate of a bankrupt with intent to defraud his creditors. Concealing property.

(*b*) Whosoever forges the signature of the Judge or Registrar or District Registrar to any order, certificate, or process of the Court or Judge, or serves or enforces any such forged order or process knowing the same 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 such paper or writing to be false, or who acts or endeavours to act under colour or pretence of such process. Forging process.

(*c*) Whoever 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 the same to have been so attached, and with intent to defeat the attachment, or obstructs or endeavours to obstruct the sheriff, messenger, or other person authorised to make the same in the discharge of his duty. Removing property under attachment.

(*d*) Whosoever, whether before or after the sequestration of an estate, receives any property from the bankrupt or from any person on his behalf with intent to defraud or to assist such bankrupt in defrauding his creditors. Receiving property from bankrupt.

(*e*) Whosoever inserts or causes to be inserted in any newspaper any advertisement purporting to be under this Act without authority or knowing the same to be false in any material particular with intent in any such case to defraud or deceive. Inserting false advertisements.

(*f*) Whosoever in any proceeding in bankruptcy or while an estate is under liquidation by arrangement or composition with creditors makes any false claim or any declaration or statement of account which is untrue in any material particular with intent to defraud. False claim, &c.

127.

Offences by bankrupt. 51 Vic. No. 19, s. 122.

127. A bankrupt who with intent either to defraud his creditors, or dishonestly to conceal the state of his affairs, or otherwise to violate or defeat the law—

(*a*) does not to the best of his knowledge and belief fully disclose on examination under this Act or to his assignee or trustee all his property real and personal, and how, and to whom, and for what consideration, and when he has disposed thereof except such part as has been disposed of in the ordinary way of his business or laid out in the ordinary expense of his family; or

(*b*) does not deliver to the assignee or trustee, or as such assignee or trustee directs, all his property or such as is under his control, and which he is required by law so to deliver; or

(*c*) does not deliver to the assignee or trustee, or as such assignee or trustee directs, all books, documents, papers, and writings under his control relating to his property or affairs; or

(*d*) whether before or after sequestration conceals any part of his property to the value of ten pounds or any debt due to or by him, or after sequestration removes any part of his property of that value; or

(*e*) makes any material omission in any statement relating to his affairs; or

(*f*) knowing that a false debt has been proved under the bankruptcy fails for one month to inform his assignee thereof; or

(*g*) after sequestration prevents the production of any book, document, paper, or writing relating to his property or affairs; or

(*h*) whether before or after sequestration conceals, destroys, mutilates, or falsifies, or is privy to the concealment, destruction, mutilation, or falsification of any book or document relating to his property or affairs; or

(*i*) whether before or after sequestration makes or is privy to making a false entry in any book or document relating to his property or affairs; or

(*j*) whether before or after sequestration parts with any book or document relating to his property or affairs or alters or makes any omission therein; or

(*k*) after or within four months before sequestration attempts to account for his insolvency by fictitious losses or expenses; or

(*l*) within four months before sequestration has, by any false representation or under the pretence of carrying on business in the ordinary way of trade, obtained any property for which he has not paid; or

(*m*)

(*m*) within four months before sequestration pledges or disposes of otherwise than in the ordinary way of trade any property which he has obtained on credit and for which he has not paid; or

(*n*) makes any false representation 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

(*o*) within four months before sequestration departs or makes preparation for departing from New South Wales with any of his property to the amount of twenty pounds which ought by law to be divided among his creditors;

shall be guilty of a misdemeanour and be liable to imprisonment with or without hard labour for any time not exceeding three years.

Fraudulently obtaining credit. 51 Vic. No. 19, s. 123.

128. A bankrupt shall, in each of the cases mentioned in this section, be guilty of a misdemeanour and be liable to imprisonment for any time not exceeding two years with or without hard labour, that is to say:—

(*a*) If in incurring any debt or liability he has obtained credit by false representations or by means of any other fraud.

(*b*) If he has made, or caused to be made, any gift, delivery, or transfer of his property, or any part thereof, or created any charge thereon, with intend to defraud his creditors or any of them.

(*c*) If he has concealed or removed any part of his property after or within two months before the date of any unsatisfied judgment against him with intent to defraud his creditors.

General provision as to punishment. *Ibid.* s. 123.

129. Where a person is liable to punishment under any other Act or at Common Law for an offence punishable by this Act, he may be proceeded against under such other Act or at Common Law or under this Act, but so always that he be not punished twice for the same offence.

Power of Court to commit for trial. *Ibid.* s. 124.

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

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

(3) Any offence under this part of this Act shall be deemed to be included in the term "fraudulent insolvency" within the meaning of any treaty or convention between Great Britain and any foreign power for the extradition of criminals.

Criminal liability after discharge or composition. *Ibid.* s. 125.

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

132.

Court may order certain expenses to be paid out of "Bankruptcy Suitors' Fund."
51 Vic. No. 19, s. 126.

132. If it appears to the Court upon the application of the assignee or trustee that inquiries or proceedings relating to a bankrupt estate ought to be instituted or carried on, or any prosecution ought to be carried on against any person for any offence under this Act, and that there are no funds in the particular estate available for such 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 upon every such order the Governor shall issue his warrant for the payment of the amount of such taxed costs, and the Treasurer shall pay the same out of the said fund.

PART VII.

JURISDICTION.

DIVISION 1.—*Bankruptcy Division in Supreme Court.*

Composition and jurisdiction of Court.
Ibid. ss. 127 (1), 131.

133. (1) The jurisdiction in insolvency as exercised prior to the coming into operation of the Act fifty-first Victoria number nineteen, by the Supreme Court, or by a Judge thereof, or by the Chief Commissioner of Insolvent Estates respectively, shall be vested in and exercised by the Court, and shall, together with the jurisdiction of the Court under this Act, be the bankruptcy jurisdiction of the Supreme Court.

(2) The bankruptcy jurisdiction of the Supreme Court shall, except as is herein otherwise provided, be exercised by such Judge of the Supreme Court as may from time to time be duly appointed in that behalf by the Governor under the title of the Judge in Bankruptcy, and the Court shall be holden before such Judge for the determination of all matters in its bankruptcy jurisdiction subject to appeal as is hereinafter provided.

Ibid. s. 127 (2).

(3) Whenever the terms "Insolvency" or "Insolvent" are used in any Statute now in force, such terms shall include the terms "Bankruptcy" and "Bankrupt" respectively, and wherever the "Chief Commissioner of Insolvent Estates" is mentioned or signified in any such Statute, the term shall be interpreted to mean the Judge.

Jurisdiction.
Ibid. s. 130.

134. (1) The Court shall, for the purposes of such jurisdiction in bankruptcy, have full powers to decide all questions of priorities, and all questions whatsoever, whether at law or in equity or of fact, in any case

case of bankruptcy coming within the cognizance of the Court, or which it may deem expedient or necessary to decide for the purpose of doing complete justice or making complete distribution of property in any such case.

(2) If in any proceeding in bankruptcy there arise any question of fact which either of the parties desires to be tried by a jury, or which the Court thinks ought to be tried by a jury, then a trial may be directed to be had before the Judge, or before any other Judge of the Supreme Court, and a jury, or before any Judge of a District Court and a jury, and the trial may be had accordingly in the Supreme Court in the same manner as if it were a trial of an issue of fact in an action, and in the District Court in the manner in which jury trials in ordinary cases are by law held in that Court. In every such case the Court may grant a new trial if it thinks fit.

(3) No such issue of fact shall be tried as above in a District Court unless all parties to the proceeding consent thereto, or the money, money's worth, or right in dispute does not in the opinion of the Court exceed in value two hundred pounds.

(4) Whenever the official assignee or trustee claims any property as part of the bankrupt's estate, or claims any right against any person, whether such person is or is not a party to the bankruptcy, the Court may upon motion by the assignee or trustee or any person interested in such property hear and determine, either upon affidavit or upon oral evidence, or both upon affidavits and oral evidence, the question raised by such claim, and make such order thereupon as he may deem expedient or necessary, for the purpose of doing complete justice between all the parties interested.

(5) The notice of such motion shall contain the grounds of such claim and shall be served in the manner prescribed by rules of Court, and the Court may require service of such notice to be made upon any person who in its opinion is a proper party to such motion:

Provided that the grounds of such claim may be amended at the hearing of the motion upon such terms as the Court may think fit.

(6) Every order of the Court made under this Act in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment of the Supreme Court to the same effect.

(7) The Court shall have the same power of giving relief to any party interested in any matter or proceeding before him under this Act as the Supreme Court would have if such matter or proceeding were pending before it in either its common law or equitable jurisdiction.

(8) The Court shall not be subject to be restrained in the execution of its power under this Act by the order of any other Court, nor shall any appeal lie from its decision except in the manner directed by this Act. **135.**

Jurisdiction of Judge.
51 Vic. No. 19, s. 131.

135. Subject to any general rule of the Supreme Court, the Judge may assign to the appropriate ministerial officer as he may direct any of the matters in respect of which jurisdiction is given to the Court by this Act.

Exercise of jurisdiction in chambers.
Ibid. s. 132.

136. Subject to the provisions of this Act and to rules of Court the Judge may exercise in chambers the whole or any part of his jurisdiction.

Power to delegate authority to Registrar.
Ibid. s. 133.
52 Vic. No. 11, s. 2.

137. The Judge may delegate to the Registrar such of the powers vested in the Court as it may be deemed expedient for the Judge to delegate to him, subject nevertheless to review on summary application to the Judge.

Appeal to be by way of rehearing.
51 Vic. No. 19, s. 135.
60 Vic. No. 29, s. 29 (1).

138. (1) An appeal to the Full Court shall lie against any order, decision, or ruling of the Judge, and such appeal shall be by way of rehearing and shall be subject to such terms and conditions as may be prescribed by rules of Court, and subject thereto according to the practice for the time being in force with reference to appeals in the equitable jurisdiction of the Supreme Court.

(2) An appeal shall lie against any order or decision or ruling of the Registrar or of any District Registrar to the Judge within such time and on such terms and in such manner as may be prescribed by rules of Court.

All orders to be subject to review.
60 Vic. No. 29, s. 29 (II).

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

Division 2.—*Officers of Court.*

Appointment and salaries of ministerial officers.
51 Vic. No. 19 s. 136.

139. (1) The Governor may from time to time appoint a Registrar and may also appoint persons resident in the country parts of New South Wales as District Registrars, and may also appoint ministerial officers to carry into effect the provisions of this Act, and all persons so appointed shall be officers of the Supreme Court.

Judge may appoint District Registrar for special purposes.
60 Vic. No. 29, s. 24.

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

Salaries to be paid out of Consolidated Revenue, and fees collected and paid into Treasury.

(3) The salaries to be paid to the Registrar and to the clerks and officers of the bankruptcy jurisdiction shall be paid out of the Consolidated Revenue, and the Court fees to the amount provided by the Fourth Schedule hereto shall be collected and paid into the Colonial Treasury.

140.

140. Every official assignee or trustee shall, out of every estate being administered after the coming into operation of the Act fifty-first Victoria number nineteen, pay into the Colonial Treasury towards the expenses of administering this Act such sum not less than one-eighth of a pound or not exceeding four pounds per centum on the gross amount coming into his hands from time to time in any such estate, after deducting any sums paid to secured creditors out of the proceeds of their securities, and a scale within the limits aforesaid, and the time of payment shall be fixed and varied from time to time by any regulations by the Judge with the approval of the Colonial Treasurer, and such regulations, with the approval thereof, shall be submitted to Parliament.

Payment of percentage. 51 Vic. No. 19, s. 137. 60 Vic. No. 23, s. 2 (23).

141. The Court, at any time after sequestration, on the application of the official assignee, trustee, or a creditor, or upon its own motion, may, if it is for the advantage of the creditors, order that an examination, single meeting, enquiry, or account may be held or taken before a District Registrar, or that any future proceedings in the administration of an estate, or any part thereof, be taken at such place or places as it may name in the order.

Power to transfer special proceedings, or proceedings generally to country districts. *Ibid.* ss. 138, 139.

142. If any question of law arises in any bankruptcy proceedings the Judge may, with the consent of all parties interested, state the facts in the form of a special case, for the opinion of the Full Court.

Points of law. *Ibid.* s. 140.

143. (1) The Registrar shall have, in addition to the powers which may be delegated to him by the Judge under the provisions of this Act, the powers, duties, and jurisdiction of the Court in this section mentioned, and any order made or act done by such Registrar, in the exercise of the said powers, duties, and jurisdiction shall, except for the purposes of appeal, be deemed the order or act of the Court, that is to say,—

Jurisdiction in bankruptcy of Registrar. *Ibid.* s. 141.

(*a*) to hear debtors' petitions and to make sequestration orders thereon, or to give leave to withdraw the same; 51 Vic. No. 19, s. 9 (2).

(*b*) to extend the time for submitting statements of affairs; *Ibid.* 14 (2).

(*c*) to approve of a resolution of creditors to allow a bankrupt to retain any of his personal property; 60 Vic. No. 29, s. 9.

(*d*) 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 such examination or further or adjourned examination; to put such questions to the bankrupt as he thinks expedient, and to declare any such examination concluded; 51 Vic. No. 19, s. 18, subs. 1, 3, 8, 9. 60 Vic. No. 29, s. 2 (4).

(*e*) to approve compositions or schemes of arrangement when they are not opposed; 51 Vic. No. 19, s. 141.

(*f*)

Ibid. ss. 30, 31, 141.

(*f*) to summon and examine the bankrupt or his wife, 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 dealings, or property, and otherwise to exercise the powers of the Court contained in section thirty of this Act, and to exercise the power of committal and discharge contained in section thirty-one of this Act;

Ibid. s. 66.

(*g*) to do any act or thing or give any direction or permission by this Act, authorised or required to be done or given by the committee of inspection, where there is no such committee;

Ibid. s. 141.

(*h*) to grant certificates of discharge where the application is not opposed;

Ibid. s. 61.
60 Vic. No. 29, s. 19 (1).

(*i*) to direct payment out of salary, income, half-pay, pension, or compensation of any bankrupt, and the application of the same;

51 Vic. No. 19, s. 70.

(*k*) to order an official assignee or trustee, or party interested, to show cause why a plan of distribution should not be amended;

Ibid. s. 91.

(*l*) to give directions to the official assignee or trustee in relation to any matter relating to a bankruptcy;

Ibid. s. 102 (2), (3), (5).

(*m*) to adjourn any proceedings before him, to amend any written process or proceeding under this Act, and to take the whole or any part of the evidence in any matter either viva voce or otherwise;

Ibid. s. 113.

(*n*) to authorise the official asignee or trustee to commence and prosecute any action in the name of the assignee or trustee and of the bankrupt's partner;

Ibid. s. 150 (2).

(*o*) to postpone any application or proceeding before him under this Act;

Ibid. s. 151 (1).

(*p*) to declare any proceeding in bankruptcy invalidated by a formal defect or irregularity;

60 Vic. No. 29, s. 30.

(*q*) to remit or reduce fees;

51 Vic. No. 19, Sch. I, cl. 1.

(*r*) to extend the time for the summoning of the first meeting of creditors;

Ibid. Sch. I, cl. 10.

(*s*) to declare that a secured creditor voting in respect of his whole debt shall not be deemed to have surrendered his security;

60 Vic. No. 29, s. 3 (*c*).

(*t*) to declare invalid any vote given by a claimant who has not proved his debt;

51 Vic. No. 19, Sch. II, cl. 6.
60 Vic. No. 29, s. 4 (*a*).

(*u*) to make orders with respect to the cost of a creditor proving his debt;

(*v*)

(*v*) to give directions as to sale of property comprised in any security; 51 Vic. No. No. 19, Sch. II, cl. 12 (*b*).

(*w*) to expunge a proof or reduce its amount; *Ibid.* Sch. II, cl. 23. 60 Vic. No. 29, s. 4 (*b*).

(*x*) to make interim orders in any case of urgency, and to hear and determine any unopposed or ex parte application; 51 Vic. No. 19, s. 141.

(*y*) to make any order or exercise any jurisdiction which is prescribed by any rule of Court as proper to be made or exercised in Chambers; *Ibid.* s. 141.

(*z*) to administer oaths where necessary in all proceedings within his jurisdiction under this Act. *Ibid.* s. 141.

(2) The powers given to the Registrar by virtue of subsection 1 (*e*), (*h*), (*x*), (*y*), (*z*), and the power to hear debtors' petitions may be limited by rules of Court.

Documents, &c., to be filed.

144. (1) All schedules, statements, accounts, examinations, plans of distribution, reports, and all other documents or proceedings whatsoever required by the provisions of this Act to be submitted to, produced, or held before the Court, Judge, Registrar, District Registrar, official assignee, or trustee, shall be filed of record by the Registrar, and the same shall be under the custody of the Registrar, and shall when filed be open to inspection, and extracts may be taken therefrom, as and upon payment of such fee as may be from time to time prescribed by rules of Court. 51 Vic. No. 19, s. 142.

(2) If the Registrar be satisfied that it is undesirable to file the originals of any of the beforementioned documents or proceedings, he may file certified copies of the same in lieu thereof.

Jurisdiction of district registrar.

145. A District Registrar shall have the same powers and jurisdiction as the Registrar in respect of any examination, issuing of summonses, enquiry, or account held or taken before him, the adjournment of proceedings before him, and the taking of evidence viva voce or otherwise. *Ibid.* ss. 102 (2) (5), 143.

PART VIII.

MISCELLANEOUS PROVISIONS.

Gazette to be evidence.
51 Vic. No. 19, s. 144.

146. (1) A copy of the Gazette containing any notice inserted therein in pursuance of this Act shall be primâ facie evidence of the facts stated in the notice.

(2) The production of a copy of the Gazette containing any notice of an order for sequestration 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.
Ibid. s. 145.

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

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

Death of witness.
Ibid. s. 147.

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

Certificate of appointment of trustee.
Ibid. s. 148.

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

Method of procedure by creditors.
Ibid. s. 149.

150. Where anything is directed or authorised to be done by the creditors under this Act, and no method is prescribed by which the creditors may signify their wishes, they may do so by ordinary resolution.

Service of notices.
Ibid. s. 150.

151. (1) 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.

(2) Such notice shall date from the date at which in due course of post they would be received by the person to whom they are directed.

(3) The Court may postpone any application or proceedings under this Act, if in its opinion sufficient notice of the same has not been given to any party interested.

Formal defects not to invalidate.
51 Vic. No. 19, s. 151.

152. (1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the Court before whom an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of the Court. (2)

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

Exemption of deeds, &c., from stamp duty. *Ibid.* s. 152.

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

Acting of corporations, partners, &c. *Ibid.* s. 153.

154. For all or any of the purposes of this Act a corporation may act by any of its officers authorised in that behalf under the seal of the corporation, a firm may act by any of its members, and a lunatic, or insane or incapable person, or insane patient, may act by his committee or curator bonis, or such other person in whom the management and control of the estate of such person is for the time being vested.

Sequestration of estates of persons under imprisonment for debt. 60 Vic. No. 29, s. 28.

155. Whenever any person shall at any time at or after the coming into operation of this Act have been imprisoned—

(*a*) in execution of a judgment for defamation or libel obtained under the Act eleventh Victoria number thirteen, or any Act consolidating or amending the same for a period of twelve months; or

(*b*) in virtue of any order made under the Matrimonial Causes Act or any Act consolidating or amending the same for a period of twelve months for nonpayment of a sum due in respect of alimony or maintenance, or for a period of six months for nonpayment of costs; or

(*c*) in any other case for debt for a period of three months,

and has not presented a bankruptcy petition against himself, the Minister for Justice may present a petition against such person, and a sequestration order may thereupon be made, and shall have effect in all respects as if made upon the petition of such person himself.

Remission of fees in certain cases. *Ibid.* s. 30.

156. The Court may, upon good cause shown, remit or reduce any of the fees payable under the Fourth Schedule to this Act.

SCHEDULES.

Section 15.

SCHEDULES.

FIRST SCHEDULE.

Date of Act.	Title of Act.	Extent of repeal.
7 Vic. No. 19 ...	An Act to amend an Act intituled "*An Act for giving relief to insolvent persons and providing for the administration of Insolvent Estates and to abolish imprisonment for debt.*"	Section 15 (the unrepealed section).
10 Vic. No. 14...	An Act to remove difficulties in the disposal, administration, and distribution of Insolvent Estates.	Section 3 (the unrepealed section).
38 Vic. No. 1 ...	An Act to expedite and lessen the expense of proceedings in Insolvency.	Sections 6, 7, and 8 (the unrepealed sections).
51 Vic. No. 19...	Bankruptcy Act, 1887	The whole, except sections 128, 129, 135, and 146.
52 Vic. No. 11...	Bankruptcy Act Amendment Act, 1888... ...	The whole.
60 Vic. No. 29...	Bankruptcy Acts Amendment Act, 1896 ...	Sections 1–30 and section 35.

THE SECOND SCHEDULE.

Meetings of Creditors.

Time of first meeting.
51 Vic. No. 19, Sch. I, cl. 1.
60 Vic. No. 29, s. 3 (*a*)

1. The first meeting of creditors shall be summoned for a day not later than twenty-one days after the date of the sequestration order, unless the Court for any special reason deem it expedient that the meeting be summoned for a later day.

Advertisement thereof.
51 Vic. No. 19, Sch. I, cl. 2.
60 Vic. No. 29, s. 3 (*b*).

2. The Registrar shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the Gazette and in a local paper. The official assignee shall also whenever practicable give notice of the time and place thereof to each creditor named in the statement of affairs then resident in New South Wales or his authorised agent.

Provisional report.
51 Vic. No. 19, Sch. I, cl. 3.

3. The official assignee shall at such first meeting bring up a provisional report based upon the bankrupt's statement of affairs.

Place.
51 Vic. No. 19, Sch. I. cl. 4.

4. The meeting shall be held at such place as is in the opinion of the official assignee most convenient for the majority of the creditors.

Subsequent meetings.
51 Vic. No. 19, Sch. I, cl. 5.

5. The official assignee or 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-fourth in value of the creditors.

Mode of summoning.
51 Vic. No. 19, Sch. I, cl. 6.

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 bankrupt's statement of affairs, or at such other address as may be known to the person summoning the meeting.

Chairman.
51 Vic. No. 19, Sch. I, cl. 7.

7. The official assignee, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint.

Right to vote.
51 Vic. No. 19, Sch. I, cl. 8.

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 bankrupt, and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained. Unascertained debts. 51 Vic. No. 19, Sch. 1, cl. 9.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence. Vote by secured creditor. 51 Vic. No. 19, Sch. I, cl. 10.

11. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the bankrupt, and against whom a sequestration order has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof. Note on bill or note. *Ibid.* cl. 11.

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

13. 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. Vote by joint creditor. *Ibid.* cl. 13.

14. When, for any cause appearing to the Registrar, the Registrar shall be of opinion that a claimant who has not proved his debt may eventually be able to establish the same, the Registrar may allow such claim to be entered for the purpose of voting, and may give such time as he may think fit for establishing the same, and the official assignee shall make provision for the same in any account and plan of distribution filed prior to the expiration of such time: Provided that any vote given by the claimant may be declared invalid in the event of the claim not being established within the time allowed, but subject to such terms as the Court may think fit. Admission of votes. 60 Vic. No. 29, s. 3 (c).

15. A creditor may vote either in person or by proxy. Mode of voting. 51 Vic. No. 19, Sch. I, cl. 15.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official assignee, and every insertion therein shall be in the handwriting of the person giving the proxy. Proxy form. *Ibid.* cl. 16.

17. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor. General proxy. *Ibid.* cl. 17.

18. A creditor may give a special proxy to any person to vote at any specified meeting, or adjournment thereof, for or against any specific resolution, or for or against any specified person as trustee, or member of a committee of inspection. Special proxy. *Ibid.* cl. 18.

19. A proxy shall not be used unless it is deposited with the official assignee before the meeting at which it is to be used except with the leave of the Judge or Registrar. Deposit of proxy. *Ibid.* cl. 19. 60 Vic. No. 29, s. 3 (d).

20. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of an official assignee, trustee, or manager, or receiver in obtaining proxies, or in procuring the trusteeship, managership, or receivership, except by the direction of a meeting of creditors, the Court may 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. Canvassing for votes. *Ibid.* cl. 20.

Official receiver as proxy. 51 Vic. No. 19, Sch. I, cl. 21.
21. A creditor may appoint the official assignee of the bankrupt's estate to act in manner prescribed as his general or special proxy.

Adjournment. *Ibid.* cl. 22.
22. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place.

Quorum. *Ibid.* s. 23.
23. A meeting shall not be competent to act for any purpose, except the election of a chairman, and the adjournment of the meeting, unless there are present or represented thereat at least three creditors, or all the creditors if their number does not exceed three.

Quorum not present. *Ibid.* cl. 24.
24. 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 the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

Minutes. *Ibid.* cl. 25.
25. 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.

Interested vote. *Ibid.* cl. 26.
26. 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 ratably with the other creditors of the debtor: Provided that where any person holds special proxies to vote for the appointment of himself as trustee he may use the said proxies and vote accordingly.

Single meetings. 60 Vic. No. 29, s. 3 (e).
27. Nothing in clauses twenty-three and twenty-four of this Schedule shall apply to the case of a single meeting.

THE THIRD SCHEDULE.

Proof of Debts.

Proof in ordinary cases.

Time for proof. 51 Vic. No. 19, Sch. II, cl. 1.
1. Every creditor shall prove his debt as soon as may be after the making of an order of sequestration.

Mode of proof. *Ibid.* cl. 2.
2. A debt may be proved by delivering or sending through the post in a pre-paid letter to the Registrar an affidavit verifying the debt.

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

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

Security. *Ibid.* cl. 5.
5. The affidavit shall state whether the creditor is or is not a secured creditor.

Cost. *Ibid.* cl. 6. 60 Vic. No. 29, s. 4 (*a*).
6. A creditor shall bear the cost of proving his debt unless the Court otherwise specially orders.

Inspection of proofs. 51 Vic. No. 19, Sch. II, cl. 7.
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.

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

Proof by secured creditors.

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

Surrender. 51 Vic. No. 19, Sch. II, cl. 10.

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

Assessment. *Ibid.* cl. 11.

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

Redemption. *Ibid.* cl. 12.

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

(*b*) If the official assignee or trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official assignee or trustee, or as, in default of such agreement, the Court may direct. If the sale be by public auction the creditors or the official assignee 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 official assignee or trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the official assignee or 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 official assignee or 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.

Revaluation. *Ibid.* cl. 13.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official assignee, or the trustee, or the Registrar, 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 Registrar shall order.

Rights on revaluation. *Ibid.* cl. 14.

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

Realisation after valuation. *Ibid.* cl. 15.

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

Exclusion from dividend. *Ibid.* cl. 16.

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

Maximum dividend. *Ibid.* cl. 17.

17. Subject to the provisions of Rule twelve, 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.

Distinct contracts. *Ibid.* cl. 18.

18. If a debtor was at the date of the order of sequestration liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as a 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

Periodical payments.

Periodical payments. 51 Vic. No. 19, Sch. II, cl. 19.

19. When any rent or other payment falls due at stated periods, and the order of sequestration 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.

Interest. *Ibid.* cl. 20.

20. (1) 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 order of sequestration and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding six 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 was 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.

60 Vic. No. 29, s. 22.

(2) Where a debt has been proved upon a bankrupt's estate under this Act, and such debt includes interest or any pecuniary consideration in lieu of interest, such interest or consideration shall for the purposes of dividend be calculated at a rate not exceeding eight 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.

Debt payable at a future time.

Future debts. 51 Vic. No. 19, Sch. II, cl. 21.

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

Admission or rejection of proofs.

Admission of proofs. *Ibid.* cl. 22.

22. The Registrar 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.

Expunging. 60 Vic. No. 29, s. 4 (b).

23. The official assignee or a trustee may upon further evidence, and upon notice to the creditor who has made the proof, apply to the Court to expunge such proof or reduce its amount.

Appeal. 51 Vic. No. 19, Sch. II, cl. 24. 60 Vic. No. 29, s. 4 (c).

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

Who may apply. 51 Vic. No. 19, Sch. II, cl. 25.

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

FOURTH SCHEDULE.

Court and other Fees to be taken.

Registrar in Bankruptcy.	s.	d.
Every declaration by a debtor of inability to pay debts	2	6
Upon filing every petition surrendering an estate as bankrupt including the order of the Court thereon where the assets shall appear not to exceed £200	2	6
When above that amount	15	0
For drawing and inserting each advertisement besides the expenses paid for advertising when required to be done	2	6
Upon receiving and filing every petition against a person having committed an act of bankruptcy	15	0
For filing every affidavit	1	0
For every order of the Court	5	0
For every bankruptcy notice	5	0
For filing same or any other proceeding	1	0
For every person examined or document exhibited	1	0
For taxing costs in any case—same as in the Supreme Court Office.		
For making every necessary application and report to the Court and minute of the order thereon...	2	6
For every warrant of attachment of movable property	2	6
For every summons for the attendance of a person to give evidence or be examined	5	0
For every certified extract from or copy of proceedings relating to bankrupt estates of less than seventy-two words	2	6
And above that number per folio	0	4
For every inspection of proceeding in each estate for each half hour	1	0
For every certificate of discharge	10	0
For every other process before the Court—same as in the Supreme Court either at Law or in Equity as the case may be.		
For each meeting of creditors or examination in estates under £200 assets	10	0
For any other meeting of creditors or examination per diem ...	20	0
For every proof of debt to be paid by the person offering it ...	1	0
For swearing every affidavit by the party sworn	1	0
For every person examined by the party producing him	1	0
For every warrant for apprehension of bankrupt	5	0
For every warrant of commitment of any person	7	6
Sheriff's Fee.		
For registering every order for sequestration or bankruptcy notice	1	0
The Registrar-General's Fee.		
For registering every order of sequestration	1	0

FIFTH SCHEDULE.

In the Supreme Court of New South Wales— In Bankruptcy.

BANKRUPTCY NOTICE.

(*Title.*)

To A.B. [*or* A.B. & Co. of .]

TAKE notice that within [seven] days after service of this notice on you, excluding the day of such service, you must pay to C.D., of , the sum of £ claimed by him as being the amount due on a final judgment obtained by him against you in the Court, dated ; whereon execution has not been stayed, or you must secure or compound for the said sum to [his] satisfaction or the satisfaction of the Judge; or you must satisfy the Judge that you have a counter-claim, set-off, or cross-demand against C.D., which equals or exceeds the sum claimed by him, and which you could not set up in the action in which the judgment was obtained.

Dated

By the Court,
Registrar.

INDORSEMENT ON NOTICE.

You are specially to note,—

THAT the consequences of not complying with the requisitions of this notice are that you will have committed an act of bankruptcy, on which bankruptcy proceedings may be taken against you.

If, however, you have a counter-claim, set-off, or cross-demand, which equals or exceeds the amount claimed by C.D. in respect of the judgment, and which you could not set up in the action in which the said judgment was obtained, you must within days apply to the Judge to set aside this notice, by filing with the Registrar an affidavit to the above effect, setting out the particulars thereof and the reasons why you could not set up the same in the said action.

[*Name and address of Solicitor suing out the notice*] *or*

This notice is sued out by [C.D.] in person.

Sydney: William Applegate Gullick, Government Printer.—1898.

[2*s.* 3*d.*]