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# BANKRUPTCY.

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**No. 31 of 1932.**

An Act to amend the *Bankruptcy Act* 1924-1930.

[Assented to 31st May, 1932.]

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

Short title and  
citation.

1.—(1.) This Act may be cited as the *Bankruptcy Act* 1932.

(2.) The *Bankruptcy Act 1924-1930\** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Bankruptcy Act 1924-1932*.

2. Section four of the Principal Act is amended—

Definitions.

(a) by adding at the end of the definition of "Petition" the words "and includes a petition under Part X. of this Act";

(b) by adding at the end of the definition of "The Court" the words "and includes a Registrar when exercising the powers of the Court conferred upon him by or under this Act"; and

(c) by omitting the definition of "Trustee" and inserting in its stead the following definition:—

"Trustee" includes the trustee in bankruptcy of a bankrupt's estate and any person acting as a trustee or holding property in trust under any composition or scheme of arrangement under Division 5 of Part IV. or composition, scheme of arrangement or assignment under Part XI. or deed of arrangement under Part XII. respectively of this Act."

3. Section twelve of the Principal Act is amended—

Districts,  
Registrars,  
and official  
receivers.

(a) by omitting from paragraph (a) of sub-section (4.) the word "commission" and inserting in its stead the word "remuneration"; and

(b) by omitting sub-section (7.) and inserting in its stead the following sub-section:—

"(7.) An official receiver shall act under the general authority of the Attorney-General and shall be controlled by the Court."

4. Section thirteen of the Principal Act is amended by omitting the word "Registrar" (wherever occurring) and inserting in its stead the words "Inspector-General in Bankruptcy".

Deputy for  
official receiver.

5. Section fifteen of the Principal Act is amended—

Duty of official  
receiver as  
to debtor's  
conduct.

(a) by omitting from paragraph (a) the words "after the presentation of the bankruptcy petition or within such further time as is prescribed" and inserting in their stead the words "after the making of the sequestration order or within such further time as the Court allows"; and

(b) by omitting from paragraph (d) the words "Registrar or the Court directs" and inserting in their stead the words "Court or the Attorney-General directs".

\* Act No. 37, 1924, as amended by Acts No. 3, 1927; No. 39, 1928; No. 28, 1929; and No. 17, 1930.

Duty of  
official  
receiver as to  
debtor's  
estate.

6. Section sixteen of the Principal Act is amended by omitting from paragraph (c) of sub-section (1.) the words "it is necessary to advertise" and inserting in their stead the words "are prescribed".

Jurisdiction  
in Chambers.

7. Section twenty-one of the Principal Act is amended—

(a) by inserting after the word "shall" the words ", subject to the Regulations,";

(b) by adding at the end of paragraph (f) of the proviso the words "where the amount involved in the proof exceeds One hundred pounds"; and

(c) by omitting paragraph (h) of the proviso and inserting in its stead the following paragraph :—

"(h) Questions arising under Part XI. and Part XII. of this Act unless the Court otherwise directs."

8. After section twenty-five of the Principal Act the following section is inserted :—

Orders and  
Commissions  
for examination  
of witnesses.

"25A. The Court may, in any proceeding before it, order the examination, upon oath and either orally or on interrogatories, of any person before any officer of the Court or other person, and at any place within the Commonwealth, or may issue a commission to any person either within or beyond the Commonwealth authorizing him to take the testimony on oath of any person orally or on interrogatories, and may by the same or any subsequent order give any necessary directions touching the time, place and manner of such examination, and may empower any party to the proceeding to give in evidence before the Court the testimony so taken on such terms (if any) as the Court directs."

Shorthand  
notes of  
evidence.

9. Section fifty-one of the Principal Act is amended by omitting sub-section (1.) and inserting in its stead the following sub-section :—

"(1.) When the examination of a bankrupt or a witness, the hearing of a motion, the trial of any question of fact or the hearing of any argument, is held before the Court, the Court may direct that the evidence, argument, ruling or direction be taken down by a shorthand writer appointed by the Court. The charges and costs incurred by the carrying out of any direction given under this section, including the costs of any copy of the transcript of the notes ordered by, and for the use of, the Court, shall be costs in the proceedings and shall be payable by such person, in such manner and in such priority as the Court directs."

Acts of  
bankruptcy.

10. Section fifty-two of the Principal Act is amended by inserting in paragraph (l), after the words "that section", the words "or annulled in pursuance of section One hundred and sixty-one A".

Conditions on  
which creditor  
may petition.

11. Section fifty-five of the Principal Act is amended by inserting in paragraph (b) of sub-section (1.), after the word "sum," the words "whether due at law or in equity or partly at law and partly in equity, and".

12. Section fifty-seven of the Principal Act is repealed and the following section inserted in its stead :—

“ 57.—(1.) A debtor’s petition shall allege that he is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing of any declaration of inability to pay his debts, and the Court may thereupon make, or refuse for good and sufficient cause to make, a sequestration order.

Debtor’s  
petition and  
order thereon.

“ (2.) A debtor shall, at the time of the presentation of his petition, file with the Registrar a statement of his affairs, and furnish a copy thereof to the official receiver, in like manner as is provided in sub-section (1.) of section sixty-six of this Act.”

13. Section sixty-five of the Principal Act is amended by omitting the words “ and shall be lodged in the office of the Registrar of Titles, or Registrar-General or other proper officer of each State and in such other places as are prescribed ”.

Publication of  
sequestration  
order.

14. Section sixty-six of the Principal Act is amended—

Debtor’s  
statement of  
affairs.

(a) by omitting the words “ debtor, he shall make out and file with the Registrar, and furnish to the official receiver a copy of a statement of his affairs in the prescribed form, verified by affidavit, and showing ” and inserting in their stead the words “ debtor upon a creditor’s petition, the debtor shall—

(i) make out and file with the Registrar a statement of his affairs in the prescribed form, verified by affidavit; and

(ii) furnish to the official receiver a copy of such statement,

and such statement shall show ”;

(b) by omitting sub-section (2.) and inserting in its stead the following sub-section :—

“ (2.) The statement shall be filed within seven days from the date of the order :

Provided that the Registrar may, for special reasons, extend the time.”; and

(c) by adding at the end thereof the following sub-section :—

“ (5.) A debtor who fails to file a statement of his affairs as required by this Act shall be guilty of contempt of Court.”.

15. Section sixty-nine of the Principal Act is amended—

Further public  
examination of  
bankrupt.

(a) by omitting sub-section (4.) and inserting in its stead the following sub-section :—

“ (4.) The official receiver or trustee may take part in the examination and may, for that purpose, employ a barrister, solicitor or attorney.”;

(b) by omitting from paragraph (a) of sub-section (11.) the word “ or ” (last occurring); and

(c) by omitting from paragraph (b) of sub-section (11.) the word “ or ” and inserting in its stead the word “ and ”.

Composition or  
scheme of  
arrangement.

16. Section seventy-one of the Principal Act is amended by omitting from sub-section (12.) the words " or under an affiliation order, or under a judgment against him as a " and inserting in their stead the words " or for breach of promise of marriage, or under an affiliation or maintenance order, or under a judgment against him as a respondent or ".

Bankrupt may  
be excused  
from attending  
first meeting  
of creditors.

17. Section seventy-six of the Principal Act is amended by inserting in paragraph (a) of sub-section (1.), after the word " requires ", the words " , unless excused from attendance by the official receiver ".

Arrest of  
debtor.

18. Section seventy-seven of the Principal Act is amended—

- (a) by inserting in paragraph (b) of sub-section (1.), after the words " any of his " (wherever occurring), the words " money or " ; and
- (b) by inserting in paragraph (c) of sub-section (1.), after the word " any ", the words " money or ".

Priority of  
debts.

19. Section eighty-four of the Principal Act is amended—

- (a) by omitting from paragraph (h) of sub-section (1.) the word " and " (last occurring) ;
- (b) by inserting in paragraph (i) of that sub-section, after the word " rent " (first occurring), the words " reckoned from day to day " ; and
- (c) by adding at the end of that sub-section the following paragraph and sub-section :—

" ; and (j) Eighthly, in payment of such preferences, priorities or advantages in favour of any creditor or group of creditors as regards any other creditor or group of creditors and in payment of such costs, charges and expenses incurred in the interests of creditors prior to—

- (i) sequestration ;
- (ii) the date of any composition or assignment registered under Part XI. of this Act ;
- (iii) any scheme of arrangement entered into under that Part ; or
- (iv) the date of any deed of arrangement registered under Part XII. of this Act,

as are passed by a special resolution of creditors at a general meeting, the notice convening which contains a copy of the resolution to be submitted :

" Provided that no payments shall be made under this paragraph until twenty-eight days after a certificate that the notice convening the meeting was duly forwarded to the debtor and to every creditor appearing in the statement of affairs or debtor's affidavit has been filed in the Court together with a copy of such resolution. Before the expiration of that period of twenty-eight days the bankrupt or debtor or any creditor may apply to the Court to reverse or vary the decision of the creditors and the Court may make such order as it thinks fit.

“(1A.) (a) Where the bankrupt is under a contract of insurance (entered into before he became a bankrupt) insured against liabilities to third parties, then in the event of any such liability being incurred by the insured (either before or after he becomes a bankrupt) the amount of the liability so incurred shall upon being received by the trustee from the insurer be paid to the third party to whom such liability was incurred in priority to all the payments referred to in the last preceding sub-section, except those in paragraphs (a), (d), and (f) of that sub-section.

(b) If the liability of the insurer to the insured is less than the liability of the insured to the third party nothing in this sub-section shall limit the rights of the third party in respect of the balance.

(c) The provisions of this sub-section shall take effect notwithstanding any agreement to the contrary entered into after the commencement of this Act.”.

20. Section eighty-eight of the Principal Act is repealed and the following section inserted in its stead :—

“ 88. After the making of an order of sequestration, or an order for the administration of the estate of a deceased person, or after the execution of a deed of assignment under Part XI. of this Act or the execution of a deed of arrangement under Part XII. of this Act, no distress for rent shall be levied or proceeded with as against the estate of the debtor whether that debtor be a tenant of the landlord or a stranger owning goods found on the premises on which such distress is made.”.

21. Section eighty-eight A of the Principal Act is repealed and the following section inserted in its stead :—

“ 88A.—(1.) Where any administration is followed by any subsequent administration, any expenses properly and reasonably incurred by and lawfully authorized by any trustee and any lawfully authorized and *bona fide* commitments of any trustee or debtor under the prior administration and such proportionate part of the remuneration of the trustee as the Court directs shall be allowed or paid *pari passu* by the trustee under the subsequent administration so far as the assets which pass to such last mentioned trustee will permit as a first charge thereon and, in the event of there being two or more previous administrations, the expenses and remuneration of an antecedent administration shall have priority over any administration subsequent thereto.

“(2.) Any payment made or to be made in or under any administration which came into force prior to the commencement of this section shall, subject to any order which may have been made by the Court in any case prior to the commencement of this section, be deemed to have been as validly made as if sub-section (1.) of this section had been in force at the time of the antecedent administration coming into force and as regards payments made prior to the commencement of this section irrespective of whether such payment was made by the trustee or the debtor under the first or only administration or by the trustee under the later administration.

Rent.

Payment of expenses incurred by trustee under registered deeds.

“(3.) For the purposes of this section, ‘administration’ means the administration of the estate of a debtor or bankrupt—

- (a) in bankruptcy;
- (b) under any composition, scheme of arrangement, or deed of assignment duly made or entered into under Part XI. of this Act; or
- (c) under any document duly registered under Part XII. of this Act.”.

Description of  
bankrupt's  
property  
divisible  
amongst  
creditors.

22. Section ninety-one of the Principal Act is amended—

- (a) by inserting in paragraph (b), after the word “endowment”, the words “in respect of his own life”;
- (b) by omitting from paragraph (d) the words “the tools implements and instruments of trade” and inserting in their stead the words “the ordinary hand tools, hand implements and hand instruments (not including conveyances or machinery propelled or worked by horse or motor power)”;
- (c) by inserting in paragraph (e), before the word “goods”, the words “except as provided in this section”;
- (d) by omitting from paragraph (ii) the word “and” (last occurring); and
- (e) by adding at the end thereof the following paragraph :—  
“; and  
(iv) the claim or right of the bankrupt to property under any contract, bill of sale, hire purchase agreement, mortgage or lien made by or with the bankrupt or debtor on his trustee discharging or offering to discharge any legal liability with respect thereto.”.

Duties of  
Sheriff as to  
proceeds of  
sale.

23. Section ninety-three of the Principal Act is amended—

- (a) by inserting, after sub-section (1.), the following sub-section :—  
“(1A.) The provisions of the last preceding sub-section shall, so far as applicable, apply to any execution against land.”; and
- (b) by omitting sub-section (2.) and inserting in its stead the following sub-section :—

“(2.) Where, under an execution in respect of a judgment for a sum exceeding Twenty pounds, the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a petition having been presented by or against the debtor he shall continue to hold the balance until the petition shall be heard or withdrawn. If a sequestration order is made on any such petition or on any other petition of which the sheriff has notice, he shall pay the balance to the trustee who shall be entitled to retain it as against the execution creditor :

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

24. Section ninety-five of the Principal Act is amended by inserting after the word "preference" (wherever occurring), the words ", a priority or an advantage". Avoidance of preferences.

25. After section ninety-six A of the Principal Act the following section is inserted :—

"96B. Nothing in paragraph (b) of section fifty-two of this Act shall affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt, or the rights of a purchaser in good faith and for valuable consideration and in the ordinary course of business." Rights of person making title in good faith.

26. Section one hundred and three of the Principal Act is amended by inserting in sub-section (4.), after the word "sequestration", the words "or upon any composition, scheme of arrangement or assignment under Part XI. of this Act or under any deed of arrangement under Part XII. of this Act". Vesting and transfer of property.

27. Section one hundred and seven of the Principal Act is amended by adding at the end thereof the following proviso :—  
"Provided that a sale to a *bona fide* purchaser for value without notice shall not be affected by the failure to obtain such permission or leave." Powers exercisable by trustee by permission.

28. Section one hundred and nineteen of the Principal Act is amended by inserting in paragraph (b) of sub-section (2.), after the word "debt", the words "or whose name appears in the debtor's statement of affairs". Discharge of bankrupt.

29. Section one hundred and twenty-one of the Principal Act is amended by inserting in paragraph (c) of sub-section (1.), after the word "as" (first occurring), the words "a respondent or". Effect of order of discharge.

30. Section one hundred and twenty-two of the Principal Act is amended— Discrimination between creditors.

- (a) by omitting the word "liabilities" and inserting in its stead the word "property"; and
- (b) by omitting the word "do" and inserting in its stead the word "does".

31. Section one hundred and twenty-three of the Principal Act is amended by omitting the words " , and shall be lodged in the office of the Registrar of Titles or Registrar-General or other proper officer of each State and in such other places as are prescribed". Notice of order of discharge.



Power to annul  
sequestration  
order.

32. Section one hundred and twenty-four of the Principal Act is amended by omitting sub-section (3.) and inserting in its stead the following sub-section :—

“(3.) Notice of the order annulling a sequestration order, stating the name, address and description of the debtor, the dates of the sequestration order and order annulling such sequestration order, the Courts by which the respective orders were made, and the date of the petition, shall be published in the *Gazette*, and in such other manner as is prescribed.”.

Registration of  
persons  
qualified to act  
as trustees.

33. Section one hundred and twenty-six of the Principal Act is amended—

(a) by inserting at the end of sub-section (1.) the following sub-section :—

“(1A.) For the purposes of the last preceding sub-section, ‘person’ does not include any company, partnership, corporation or association.”; and

(b) by adding at the end thereof the following sub-section :—

“(6.) Any person not registered as in this section provided who acts as a trustee in contravention of this Act shall be liable on summary conviction to a fine not exceeding Five pounds for every day on which he is proved to have acted as trustee unless he satisfies the Court that his contravention of the law was due to inadvertence or that his action has been confined to taking such steps as were necessary for the protection of the estate.”.

Appointment  
of qualified  
persons as  
trustees.

34. Section one hundred and twenty-eight of the Principal Act is amended—

(a) by inserting in sub-section (1.), after the word “shall”, the words “, upon the appointee signifying in writing his acceptance of the office,”; and

(b) by omitting from sub-section (3.) the words “notify to the Court that they object” and inserting in their stead the words “or the Registrar lodges with the Court an objection”.

35. Section one hundred and thirty-three of the Principal Act is repealed and the following section inserted in its stead :—

Remuneration  
of trustee.

“133.—(1.) Where the creditors appoint any person other than the official receiver to be trustee of an estate in any bankruptcy proceeding under this Act, his remuneration (if any) may, from time to time, be fixed by a resolution of the creditors, or if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission fixed within the prescribed limits on the amount realized or brought to credit by the trustee after the deduction of—

(a) any principal sums paid to secured creditors in respect of their securities; and

(b) all moneys spent in carrying on the business of the debtor :

Provided that in the case of a composition, the commission shall be calculated upon the amount received by the trustee for distribution.

“(2.) Notwithstanding anything contained in the last preceding sub-section, the remuneration of the trustee may, if the creditors so resolve, be a sum of money.

“(3.) In the case of two or more trustees acting in succession, the commission or sum fixed in the foregoing sub-sections shall be apportioned in such manner as the Registrar determines.

“(4.) The creditors may by resolution fix a higher commission not exceeding the prescribed rate on the collection of book debts by the trustee.

“(5.) Where the trustee carries on the business of the debtor or where a debtor’s business is carried on under the supervision of a trustee pursuant to a resolution of the creditors, he may be allowed such periodical sums or commission on the turnover or sales made in the ordinary course of carrying on the business as are fixed from time to time by resolution of the creditors and agreed to by the debtor, or as the Court on application directs.

“(6.) If one-fourth in number or value of the creditors dissent from any resolution fixing the remuneration of the trustee, or the debtor or any creditor satisfies the Court that the remuneration is unnecessarily large, the Court shall fix the amount of the remuneration.

“(7.) If the creditors fail to fix the remuneration, the Court may on the application of the trustee fix the remuneration.

“(8.) Notwithstanding anything contained in this section, the Court may, on application of the Registrar, order the remuneration of a trustee to be increased or reduced.

“(9.) Any resolution of creditors under this section shall state explicitly what expenses, if any, the remuneration is to cover, and liability shall not attach to the debtor’s estate, or to the creditors, in respect of such expenses.

“(10.) Where a trustee acts without remuneration, he shall be allowed out of the debtor’s estate such proper expenses incurred by him in or about the proceedings as the creditors, with the sanction of the Registrar, approve.

“(11.) Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by this Act or by the Rules to be performed by the trustee or manager.

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

36. Section one hundred and thirty-four of the Principal Act is amended by omitting from paragraph (a) of sub-section (1.) the words “by the creditors and payable out of the estate” and inserting in their stead the words “under the provisions of this Act”.

Trustee not  
to accept  
extra benefit.

Taxation of costs.

37. Section one hundred and thirty-six of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the words “ and brokers ” and inserting in their stead the words “ agents, managers, and other persons not being trustees or persons exclusively employed by trustees ”; and
- (b) by inserting in sub-section (2.), after the word “ trustee ”, the words “ and was reasonable and necessary ”.

Trustees to pay money into bank.

38. Section one hundred and thirty-eight of the Principal Act is amended by inserting in sub-section (1.), after the word “ trustee ” (first occurring), the words “, not being an official receiver acting as trustee,”.

Control of Court over trustees.

39. Section one hundred and forty-nine of the Principal Act is amended by inserting in paragraph (a) of sub-section (1.), after the word “ trustee ”, the words “ making charges or claiming expenses either on his own behalf or on behalf of an employee which in the opinion of the Court are not authorized by law or are excessive or unreasonable or ”.

Summary administration.

40. Section one hundred and fifty-four of the Principal Act is amended by omitting from sub-section (1.) the words “ neither the assets nor the liabilities of the debtor are ” and inserting in their stead the words “ the assets of the debtor are not ”.

Estates of persons dying insolvent.

41. Section one hundred and fifty-five of the Principal Act is amended by inserting, after sub-section (4.), the following sub-section :—

“(4A.) The provisions of Division 4 of Part VI. of this Act shall, so far as they are applicable, apply to the case of an order for administration under this section in like manner as to a sequestration order.”.

Voluntary sequestration of deceased person's estate.

42. Section one hundred and fifty-six of the Principal Act is amended by adding at the end thereof the words “ under the last preceding section ”.

Meeting of creditors.

43. Section one hundred and fifty-seven of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the words “, his solicitor, or agent ” and inserting in their stead the words “ or his solicitor ”; and
- (b) by adding at the end thereof the following sub-section :—
  - “(3.) Notwithstanding that notification of the meeting was not given to any creditor, the Court may, if it is satisfied that the omission arose from inadvertence and that the amount of the debt of the creditor does not exceed ten per centum of the debtor's total unsecured liabilities (proof of each of which shall lie upon the debtor) declare the meeting to have been duly called and competent to act for the purposes of this Part.”.

44. Section one hundred and fifty-nine of the Principal Act is amended— Stay of proceedings.

(a) by inserting, after sub-section (2.), the following sub-section:—

“(2A.) The costs of any execution up to the date of the order staying proceedings in the execution and the taxed costs incurred by any creditor in the action or proceeding under which the execution issued or such costs as are fixed or allowed by the Court before which the action or proceeding was tried or heard (not exceeding Fifty pounds) shall be a first charge on the property and the trustee may sell the property or an adequate part thereof for the purpose of satisfying the charge.”; and

(b) by omitting sub-section (3.).

45. Section one hundred and sixty of the Principal Act is amended— Provisions as to meeting.

(a) by omitting from paragraph (b) the words “and liabilities” and inserting in their stead the words “and the value thereof and of his liabilities and the amounts thereof respectively”;

(b) by adding at the end of paragraph (b) the following proviso:—

“Provided that the creditors present at any meeting may excuse the debtor from attendance at any subsequent or confirmatory meeting;”;

(c) by omitting from paragraph (h) the word “and” (last occurring); and

(d) by inserting, after paragraph (i), the following paragraph:—

“; and (j) Any meeting may by resolution be adjourned from time to time for any period not exceeding three months.”.

46. Section one hundred and sixty-one of the Principal Act is amended— Meeting may resolve to accept composition or scheme.

(a) by omitting from paragraph (b) the words “, his solicitor or agent” and inserting in their stead the words “or his solicitor”;

(b) by inserting in paragraph (c), after the word “certificates”, the words “, together with particulars of the proposal accepted at the meeting and the signed statements of assets and liabilities referred to in paragraph (b) of the last preceding section,”;

(c) by omitting from paragraph (c) the words “, in the absence of fraud be conclusive” and inserting in their stead the words “be *prima facie*”;

(d) by inserting, after paragraph (c), the following paragraph:—

“(ca) If the debtor does not attend a meeting, the chairman shall in his certificate state the reason, if any, furnished for such non-attendance;”;

(e) by inserting in paragraph (h), after the words “application of”, the words “the Registrar,”.

47. After section one hundred and sixty-one of the Principal Act the following section is inserted :—

Statement to be filed where composition or scheme provides for payment by debtor.

“ 161A.—(1.) Where any composition or scheme provides for any payment by or on behalf of the debtor in satisfaction of the debts due to his creditors, the debtor shall file a statement in the Court in which the certificates signed in accordance with paragraph (c) of the last preceding section were filed, as follows:—

(a) Where payment is to be made on or before a fixed date, or within a stated period—within fourteen days after that date or the expiration of that period ; or

(b) Where a date or period, before or within which payment is to be made, is not fixed—within three months of the date of filing of the certificates.

“ (2.) The statement shall contain a full, true and correct account of all receipts and all payments made in pursuance of the composition or scheme, and shall be signed by the debtor, or on his behalf by a person registered under Part VIII. of this Act as qualified to act as a trustee, and shall be verified by the affidavit of the person signing the same.

“ (3.) If wilful default is made in filing any statement as required by this section, the Court may, on the application of the Registrar, 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 it.

“ (4.) An order under the last preceding sub-section shall not be made unless the Registrar has served upon the debtor, not less than fourteen days before the day fixed for the hearing of the application, a notice requesting that the statement be filed within seven days of service of the notice.

“ (5.) For the purposes of this section, the report of the Registrar that default has been made in filing any statement required by this section shall be *prima facie* evidence of the statements contained therein.”.

48. Section one hundred and sixty-two of the Principal Act is amended by omitting sub-section (6.).

Right of creditor to require debtor to execute a deed.  
Provisions relating to deed.

49. Section one hundred and sixty-three of the Principal Act is amended—

(a) by inserting in paragraph (b) of sub-section (1.), after the word “ property ” (first occurring), the words “ which under a sequestration order would be divisible amongst his creditors ” ;

(b) by omitting from paragraph (b) of sub-section (1.) the words “, except such articles of household furniture, wearing apparel of the debtor and his family, tools or implements of his trade, and other like necessaries, not exceeding in the whole the value of Fifty pounds, as the debtor selects, and such other household property as a majority of the creditors may by resolution determine ” ;

(c) by inserting in sub-section (1.), after paragraph (e), the following paragraph :—

“(ea) If the debtor duly executes the deed but the trustee named in the resolution fails to execute the deed within fourteen days from the passing of the resolution or within such extended time as the Court allows, any creditor may apply to the Court for the appointment of an official receiver or a person duly registered under Part VIII. of this Act as qualified to act as a trustee to be the trustee in respect of the deed. Notice of every such application shall be given in the prescribed manner. The debtor, any creditor, the official receiver or the trustee named in the resolution may be heard upon the application. If the Court makes an order directing that an official receiver or some other person act as trustee, the official receiver or other person shall duly execute the deed within seven days of the order being made;”;

(d) by inserting in paragraph (f), after the word “debtor” (first occurring), the words “and the trustee”;

(e) by omitting from paragraph (f) the words “, and the cost of advertising the notice in the *Gazette* shall at the same time be paid, and a copy of the notice shall be lodged in the office of the Registrar of Titles, or Registrar-General or other proper officer of each State and in such other places as are prescribed”;

(f) by omitting paragraph (j) and inserting in its stead the following paragraph :—

“(j) Every assent shall be given by signature to the deed or by written document, and shall be accompanied by a proof of debt in the prescribed form, prepared by and at the cost of the creditor making it; and”;

(g) by adding at the end thereof the following sub-section :—

“(3.) Such deed shall not operate to assign or make any of the debtor’s property divisible amongst his creditors which would not under section ninety-one of this Act be so divisible under a sequestration order, unless the deed, in express and specific terms, by direct reference thereto, assigns the particular property in question for the purposes of the deed.”.

50. Section one hundred and sixty-four of the Principal Act is amended by adding at the end thereof the words “and shall file a copy of the notice in the Court in which notice of the deed has been filed, and the notice when filed shall, on an application under section one hundred and seventy-six, be conclusive evidence of non-compliance with the requirements of paragraph (g) of sub-section (1.) of the last preceding section”.

Notice to  
creditors if  
assents not  
obtained.

Deed to be a release of all provable debts.

51. Section one hundred and sixty-five of the Principal Act is amended—

- (a) by inserting, after the words “provable debts”, the words “except those from which a debtor would not be released by an order of discharge in a sequestration,” ; and
- (b) by omitting the words “(except such necessities as are mentioned in paragraph (b) of section one hundred and sixty-three of this Act)” and inserting in their stead the words “which in a sequestration would be divisible amongst his creditors”.

Application of Act, as if sequestration order made.

52. Section one hundred and sixty-six of the Principal Act is amended by omitting the words “or the deed”.

Property in reputed ownership of debtor.

53. Section one hundred and sixty-seven of the Principal Act is amended—

- (a) by omitting the words “, and of his having been reputed owner thereof, or for any other reason” and inserting in their stead the words “with the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof”; and
- (b) by adding at the end thereof the following proviso :—  
 “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 property within the meaning of this section.”.

Remuneration of trustee.

54. Section one hundred and eighty-four of the Principal Act is repealed.

55. Section one hundred and eighty-five of the Principal Act is repealed and the following section inserted in its stead :—

Persons to whom dividend to be paid.

“185. Sections one hundred and twelve to one hundred and eighteen inclusive of this Act shall apply, with such modifications and adaptations as are prescribed, in relation to the declaration and distribution of dividends under this Part.”.

Interpretation.

56. Section one hundred and eighty-nine of the Principal Act is amended by inserting in the definition of “Creditors generally”, after the words “creditors who”, the word “may”.

Form and conditions of deed of arrangement.

57. Section one hundred and ninety-two of the Principal Act is amended—

- (a) by inserting in paragraph (a) of sub-section (1.), after the word “property”, the words “which under a sequestration order would be divisible amongst the creditors of the debtor” ;
- (b) by omitting from paragraph (a) the words “, except such articles of household furniture, wearing apparel of the debtor and his family, tools or implements of his trade

and other like necessaries (not exceeding in the whole the value of Fifty pounds) as the debtor selects, and such other household furniture as a majority of the creditors may by resolution determine ” ;

(c) by inserting, after sub-section (4.), the following sub-section :—

“ (4A.) Upon the registration of the deed and upon its receiving assent as specified in the last preceding sub-section, the property shall, if the deed so provides and subject to the provisions of this Act, vest in the trustee :

Provided that the costs of the execution up to the date of the order and the taxed costs incurred by any creditor in the action or proceeding under which the execution issued or such costs as are fixed or allowed by the Court before which the action or proceeding was tried or heard (not exceeding Fifty pounds) shall be a first charge on the property and the trustee may sell the property or an adequate part thereof for the purpose of satisfying the charge.” ; and

(d) by omitting sub-section (5.) and inserting in its stead the following sub-section :—

“ (5.) A deed of arrangement shall not, without the express consent of the debtor, operate to assign or make any of his property divisible amongst his creditors which would not under section ninety-one of this Act be so divisible under a sequestration order.”.

58. Section one hundred and ninety-four of the Principal Act is amended by omitting from paragraph (b) the words “, and the names of the creditors who on or before the date of filing have assented thereto ”.

Mode of registration.

59. Section one hundred and ninety-five of the Principal Act is amended by omitting sub-section (3.) and inserting in its stead the following sub-section :—

Evidence of creditors' names and claims.

“ (3.) The trustee of the deed or the person registering it shall, within twenty-eight days of its registration or such extended time as the Court allows, file with the Registrar an affidavit stating whether the requisite majority in number and value of the creditors stated in the debtor's affidavit filed in accordance with the provisions of paragraph (b) of section one hundred and ninety-four of this Act or otherwise known to such trustee or person, have assented thereto.”.

60. Section one hundred and ninety-seven of the Principal Act is amended by omitting sub-section (2.).

Contents of register.

61. Section one hundred and ninety-nine of the Principal Act is amended—

Incorporation.

(a) by inserting in sub-section (1.), after the word “ debts ” (second occurring), the words “ and, in cases of deeds of assignment, the distribution of dividends ” ; and



(b) by adding at the end thereof the following sub-section :—

“(4.) The provisions, so far as applicable, of Part XIV. of this Act shall apply to every debtor under a deed of arrangement as fully and effectually as if an order of sequestration had been made against the debtor on the date of his execution of the deed.”.

Remuneration  
of trustees.

62. Section two hundred and three of the Principal Act is repealed.

Courts in which  
application for  
enforcement of  
trusts to be  
made.

63. Section two hundred and six of the Principal Act is repealed.

Application  
of Part XII.

64. Section two hundred and seven of the Principal Act is repealed.

Unclaimed and  
undistributed  
dividends or  
moneys.

65. Section two hundred and eight of the Principal Act is amended—

(a) by omitting sub-section (6.) and inserting in its stead the following sub-section :—

“(6.) The Attorney-General may cause any moneys paid to the prescribed account pursuant to this section to be invested in such manner as he directs and the interest arising from such investment shall be paid to the credit of a fund to be called the “Bankruptcy Suitors’ Fund” which shall be a trust account within the meaning of section sixty-two A of the *Audit Act* 1901–1926.”; and

(b) by omitting from sub-section (7.) the word “Court” (wherever occurring) and inserting in its stead the word “Attorney-General”.

Offences.

66. Section two hundred and nine of the Principal Act is amended—

(a) by omitting from paragraph (e) the word “or” (last occurring); and

(b) by inserting, after paragraph (f), the following paragraph :—  
“; or (g) being a bankrupt, has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position during any period within the five years immediately preceding the date of his bankruptcy”.

Order by Court  
for prosecution  
on report of  
trustee.

67. Section two hundred and sixteen of the Principal Act is amended—

(a) by inserting, after the word “convicted”, the words “and that the circumstances render a prosecution desirable,”; and

(b) by inserting at the end thereof the following sub-section :—

“(2.) When, in pursuance of the last preceding sub-section, the Court orders that a bankrupt be prosecuted, the Attorney-General shall institute and carry on the prosecution.”.

68. Section two hundred and twenty of the Principal Act is amended—

Preferential payment to creditor an offence.

- (a) by omitting the words “unless the deed authorizes him to do so, or”; and
- (b) by omitting the words “are either made to a creditor entitled to enforce his claim by distress or”.

69. After section two hundred and twenty-two of the Principal Act the following sections are inserted in Part XV.:—

“222A. Any notice required by this Act to be inserted in the *Gazette* may, in relation to the Bankruptcy District of the Northern Territory, be inserted in the *Gazette* of the Northern Territory or in the *Commonwealth Gazette*.

*Gazette* notices in Bankruptcy District of the Northern Territory.

“222B. Any policy of life assurance or endowment in respect of the debtor’s own life, assigned, without the express consent of the debtor, for the benefit of creditors under a deed of assignment executed under Part XI. of this Act or under a deed of arrangement registered under Part XII. of this Act, prior to the commencement of this section, and which policy has not been surrendered to, and terminated by, the insurer or realized by the trustee, and, where any such policy has been realized by the trustee, any undistributed moneys arising therefrom in the hands of the trustee at the date of the commencement of this section, shall be deemed to be property not divisible amongst the creditors and shall, subject to any order of the Court, re-vest in the debtor.”.

Re-vesting of certain life assurance policies in debtor.