

# Bankruptcy

No. 33 of 1966

An Act relating to Bankruptcy.

[Assented to 1 June, 1966]

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

## PART I.—PRELIMINARY.

1. This Act may be cited as the *Bankruptcy Act* 1966. Short title.
2. This Act shall come into operation on a date to be fixed by Proclamation. Commence-  
ment.
3. This Act is divided into Parts as follows:— Parts.
  - Part I.—Preliminary (Sections 1–9).
  - Part II.—Administration (Sections 10–20).
  - Part III.—Courts.
    - Division 1.—The Federal Court of Bankruptcy (Sections 21–26).
    - Division 2.—Jurisdiction and Powers of Courts in Bankruptcy (Sections 27–39).
  - Part IV.—Proceedings in Connexion with Bankruptcy.
    - Division 1.—Acts of Bankruptcy (Sections 40–42).
    - Division 2.—Creditors' Petitions (Sections 43–54).
    - Division 3.—Debtors' Petitions (Sections 55–57).
    - Division 4.—Effect of Bankruptcy on Property and Proceedings (Sections 58–63).
    - Division 5.—First Meeting of Creditors, Public Examination and Committee of Inspection (Sections 64–72).
    - Division 6.—Composition or Arrangement with Creditors (Sections 73–76).
  - Part V.—Control over Person and Property of Debtors and Bankrupts (Sections 77–81).

NOTE.—References in the marginal notes to sections or sub-sections preceded by the letters "C.B.A." are references to sections or sub-sections of the Commonwealth *Bankruptcy Act* 1924–1965 and references to sections or sub-sections preceded by the letters "E.B.A." are references to sections or sub-sections of the English Bankruptcy Act, 1914. In each case the reference included is to the corresponding, or most nearly corresponding, provision of the Commonwealth Act or the English Act. References in the marginal notes preceded by the letters "C.B.R." are references to provisions of the Bankruptcy Rules made under the *Bankruptcy Act* 1924–1965.

**Part VI.—Administration of Property.**

Division 1.—Proof of Debts (Sections 82–107).

Division 2.—Order of Payment of Debts (Sections 108–114).

Division 3.—Property available for Payment of Debts (Sections 115–128).

Division 4.—Realization of Property (Sections 129–139).

Division 5.—Distribution of Property (Sections 140–148).

**Part VII.—Discharge of Bankrupts (Sections 149–154).****Part VIII.—Trustees.**

Division 1.—Appointment and Official Name (Sections 155–161).

Division 2.—Remuneration and Costs (Sections 162–167).

Division 3.—Accounts and Audits (Sections 168–176).

Division 4.—Control over Trustees (Sections 177–179).

Division 5.—Vacation of Office (Sections 180–184).

**Part IX.—Small Bankruptcies (Sections 185–186).****Part X.—Arrangements with Creditors without Sequestration.**

Division 1.—Interpretation (Section 187).

Division 2.—Meeting of Creditors and Control of Debtor's Property (Sections 188–212).

Division 3.—General Provisions (Sections 213–227).

Division 4.—Special Provisions applicable to Deeds of Assignment (Sections 228–232).

Division 5.—Special Provisions applicable to Deeds of Arrangement (Sections 233–237).

Division 6.—Special Provisions applicable to Compositions (Sections 238–243).

**Part XI.—Administration of Estates of Deceased Persons in Bankruptcy (Sections 244–253).****Part XII.—Unclaimed Dividends or Moneys (Section 254).****Part XIII.—Evidence (Sections 255–262).****Part XIV.—Offences (Sections 263–277).****Part XV.—Transitional Provisions (Sections 278–300).****Part XVI.—Miscellaneous (Sections 301–315).**

**Repeal.**

**4.—(1.) The Acts specified in the First Schedule to this Act are repealed.**

(2.) Notwithstanding the repeal of the *Bankruptcy Act* 1958 or the *Bankruptcy Act* 1959 effected by the last preceding subsection—

- (a) the provisions of section 7 of the *Bankruptcy Act* 1958, as amended by the *Bankruptcy Act* 1959, continue to apply to a purported extension of time or a purported fixing of a time to which those provisions applied immediately before the commencement of this Act; and
- (b) the provisions of section 5 of the *Bankruptcy Act* 1959 continue to apply to a seal or stamp to which those provisions applied immediately before the commencement of this Act,

as if those Acts had not been repealed.

5.—(1.) In this Act, unless the contrary intention appears—

Interpretation.  
C.B.A. s. 4.  
E.B.A. s. 167.

“affidavit” includes affirmation and statutory declaration;

“available act of bankruptcy”, in relation to a debtor, means an act of bankruptcy available for a petition against the debtor at the date of the presentation of the petition on which, or by virtue of the presentation of which, the debtor becomes a bankrupt;

“bankrupt” means a person—

(a) against whose estate a sequestration order has been made; or

(b) who has become a bankrupt by virtue of the presentation of a debtor’s petition;

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

“constable” means a Commonwealth Police Officer or a member of the Police Force of a State or Territory;

“corporation” includes a company;

“court of summary jurisdiction” includes a court of a Territory sitting as a court for the making of summary orders or the summary punishment of offences under the law of the Territory;

“creditor’s petition” means a petition presented by a creditor or by two or more creditors jointly;

“debt” includes liability;

“debtor’s petition” means a petition presented by a debtor against himself and includes a petition presented against a partnership in pursuance of section 56 of this Act;

- “Deputy Registrar” means Deputy Registrar in Bankruptcy, and includes a person appointed under sub-section (1.) of section 17 of this Act to act in place of an ill or absent holder of an office of Deputy Registrar or to act in a vacant office of Deputy Registrar;
- “District” means a part of Australia declared to be a Bankruptcy District for the purposes of this Act;
- “goods” includes all chattels personal;
- “oath” includes affirmation and statutory declaration;
- “officer” means an officer of the Court or of the Commonwealth;
- “official receiver” includes—
- (a) a person directed under sub-section (4.) of section 15 of this Act to exercise and perform the powers and functions of an official receiver; and
  - (b) a person appointed under sub-section (1.) of section 17 of this Act to act in place of an ill or absent holder of an office of official receiver or to act in a vacant office of official receiver;
- “petition” means a petition under this Act;
- “policy for pure endowment” means a policy under which an amount is payable at a specified date if the person to whom the policy relates survives to that date, but a lesser amount is payable if that person dies before that date, being an amount not exceeding the sum of the premiums that have been paid and any interest payable on those premiums;
- “prescribed” means prescribed by this Act or by rules under this Act;
- “proceeding” means proceeding under this Act;
- “property” means real or personal property of every description, whether situate in Australia or elsewhere, and includes any estate, interest or profit, whether present or future, vested or contingent, arising out of or incident to any such real or personal property;
- “provable debt” means a debt or liability that is, under this Act, provable in bankruptcy;
- “public examination” means an examination under section 69 of this Act;
- “registered trustee” means a person who is registered under this Act as qualified to act as a trustee;
- “Registrar” means Registrar in Bankruptcy, and includes a person appointed under sub-section (1.) of section 17 of this Act to act in place of an ill or absent holder of an office of Registrar or to act in a vacant office of Registrar;

- “resolution” means a resolution passed by a majority in value of the creditors present personally, by attorney or by proxy at a meeting of creditors and voting on the resolution;
- “secured creditor”, in relation to a debtor, means a person holding a mortgage, charge or lien on property of the debtor as a security for a debt due to him from the debtor;
- “sheriff” includes any person charged with the execution of a writ or other process;
- “special resolution” means a resolution passed by a majority in number and at least three-fourths in value of the creditors present personally, by attorney or by proxy at a meeting of creditors and voting on the resolution;
- “State Court” means a State Court having jurisdiction under this Act;
- “Territory”, except in the expression “Territory of the Commonwealth”, means the Australian Capital Territory or the Northern Territory of Australia;
- “the commencement of the bankruptcy”, in relation to a bankrupt, means the time at which his bankruptcy is, by virtue of section 115 of this Act, to be deemed to have commenced;
- “the Court” means a Court having jurisdiction in bankruptcy under this Act;
- “the date of the bankruptcy”, in relation to a bankrupt, means the date on which a sequestration order was made against his estate or, if he became a bankrupt by virtue of the presentation of a debtor’s petition, the date on which he became a bankrupt by force of section 55 of this Act;
- “the first meeting of creditors”, in relation to a bankrupt, means the meeting of his creditors held in pursuance of section 64 of this Act;
- “the Inspector-General” means the Inspector-General in Bankruptcy, and includes a person appointed under sub-section (1.) of section 17 of this Act to act in place of an ill or absent holder of the office of Inspector-General or to act in the vacant office of Inspector-General;
- “the property of the bankrupt”, in relation to a bankrupt, means the property divisible amongst the creditors of the bankrupt and includes any rights and powers in relation to that property that would have been exercisable by the bankrupt if he had not become a bankrupt;
- “the repealed Act” means the *Bankruptcy Act* 1924 or that Act as amended as in force at any time;

“ the rules ” means the rules made under this Act;

“ the trustee ” means—

- (a) in relation to a bankruptcy—the trustee of the estate of the bankrupt;
- (b) in relation to a composition or scheme of arrangement under Division 6 of Part IV.—the trustee of the composition or scheme of arrangement;
- (c) in relation to a deed of assignment, a deed of arrangement or a composition under Part X.—the trustee of the deed or the composition; or
- (d) in relation to the estate of a deceased person in respect of which an order has been made under Part XI.—the trustee of the estate;

“ this Act ” includes the rules and the regulations.

(2.) A reference in this Act, in relation to a bankrupt or the estate of a bankrupt, to the official receiver shall, unless the contrary intention appears, be read as a reference to—

- (a) the official receiver for the District in which the sequestration order was made against the estate of the bankrupt; or
- (b) if the bankrupt became a bankrupt by virtue of the presentation of a debtor's petition, the official receiver for the District in which the petition was presented.

(3.) A reference in this Act to “ the Registrar ” shall, unless the contrary intention appears, be read as a reference to any Registrar in Bankruptcy.

(4.) A reference in this Act to the trustee of the estate of a bankrupt or to the trustee of a deed of assignment, a deed of arrangement or a composition under Part X. shall, unless the contrary intention appears—

- (a) be read as including a reference to an official receiver who is the trustee of the estate of the bankrupt by force of section 160 of this Act or is acting as trustee of the deed or composition in pursuance of section 220 of this Act; and
- (b) in relation to an estate or a deed or composition in respect of which there are two or more trustees, be read as a reference to both or all of the trustees, as the case requires.

Meaning of  
intent to  
defraud  
creditors.

6. A reference in this Act to an intent to defraud the creditors of a person or to defeat or delay the creditors of a person shall be read as including an intent to defraud, or to defeat or delay, any one or more of those creditors.

7.—(1.) This Act extends to debtors being married women, infants, persons who are not Australian citizens and persons who have privilege of Parliament.

Application  
of Act.  
C.B.A. s. 3.  
E.B.A. ss. 125-  
128.

(2.) A sequestration order shall not be made against, or a debtor's petition presented by—

(a) a corporation; or

(b) a partnership, association or company registered under a law of the Commonwealth or of a State or Territory which provides for the winding-up of such a partnership, association or company.

(3.) Subject to such modifications and adaptations, if any, as are prescribed by the rules, the provisions of this Act apply to and in relation to limited partnerships as if they were ordinary partnerships and, upon all the general partners of a limited partnership becoming bankrupt, the assets of the limited partnership shall vest in the trustee.

(4.) In this section, “modification” includes the addition or omission of a provision or the substitution of a provision for another provision.

8. This Act binds the Crown in right of the Commonwealth or of a State.

Act to  
bind the Crown.  
C.B.A. s. 5 (3.).  
E.B.A. s. 151.

9.—(1.) This Act does not affect a law of a State or Territory relating to matters not dealt with expressly or by necessary implication in this Act.

Proceedings  
under State  
Acts, &c.  
C.B.A. ss. 6, 19.

(2.) Any proceedings instituted after the commencement of the *Bankruptcy Act* 1924 but before the commencement of this Act in relation to any proceedings pending under a State Bankruptcy or Insolvency Act at the commencement of the *Bankruptcy Act* 1924 may be continued and completed as if this Act had not been enacted.

(3.) Any proceedings in relation to proceedings pending under a State Bankruptcy or Insolvency Act at the commencement of the *Bankruptcy Act* 1924 or in relation to any bankruptcy or insolvency that took place under such a State Act may, after the commencement of this Act, be instituted in a court having jurisdiction under this Act.

(4.) Subject to the rules, proceedings instituted under the last preceding sub-section shall be dealt with by the Court in accordance with the law that would have been applicable to the proceedings if neither this Act nor the repealed Act had been enacted.

## PART II.—ADMINISTRATION.

10.—(1.) The Attorney-General may, either generally or otherwise as provided by the instrument of delegation, by writing under his hand, delegate any of his powers and functions under this Act except this power of delegation.

Delegation  
by Attorney-  
General.  
C.B.A. s. 10.

(2.) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3.) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Attorney-General.

**Inspector-General in Bankruptcy**  
C.B.A. s. 11.

**11.—**(1.) For the purposes of this Act, there shall be an Inspector-General in Bankruptcy.

(2.) The Inspector-General has such powers and functions as are conferred or imposed on him by this Act.

**Functions of Inspector-General in Bankruptcy.**

**12.—**(1.) The Inspector-General shall—

- (a) make such inquiries and investigations as the Attorney-General directs; and
- (b) from time to time obtain from Registrars, official receivers and other officers reports as to the operation of this Act.

(2.) For the purposes of discharging his functions under this Act, the Inspector-General may—

- (a) require the production of any books or accounts kept by a Registrar, Deputy Registrar or official receiver or by a trustee;
- (b) require a trustee to answer an inquiry made to him in relation to a bankruptcy, an administration under Part XI. or a deed of assignment, deed of arrangement, scheme of arrangement or composition in which the trustee is, or has been, engaged; and
- (c) at any time investigate the books and vouchers of a trustee.

**Bankruptcy Districts.**  
C.B.A. s. 11.

**13.** The Governor-General may, by Proclamation, declare any part of Australia to be a Bankruptcy District for the purposes of this Act.

**Registrars and Deputy Registrars.**  
C.B.A. ss. 12, 12A.  
E.B.A. s. 102.

**14.—**(1.) There shall be for each District—

- (a) a Registrar in Bankruptcy; and
- (b) so many Deputy Registrars in Bankruptcy as are necessary.

(2.) Each Registrar and Deputy Registrar has such powers and functions as are conferred or imposed on a Registrar by this Act.

(3.) A Registrar or a Deputy Registrar may exercise such of the powers and functions of an administrative nature exercisable by the Court as the Court directs or authorizes him to exercise.



(4.) A Registrar or a Deputy Registrar may—

- (a) take evidence in proceedings before him under this Act either orally or otherwise; and
- (b) administer such oaths as are necessary in proceedings before him under this Act.

(5.) An order or direction made or given, or an act done, by a Registrar or a Deputy Registrar under this Act is subject to review on summary application to the Court.

15.—(1.) There shall be for each District an official receiver and such officers to assist the official receiver in the performance of his functions under this Act as are necessary.

Official  
receivers.  
C.B.A. ss. 12  
(2.), 13, 14.  
E.B.A. ss.  
70-72.

(2.) The official receivers shall be under the control of the Court.

(3.) Each official receiver has such powers and functions as are conferred or imposed on an official receiver by this Act.

(4.) The Inspector-General may, from time to time, by writing under his hand, direct an officer to exercise and perform the powers and functions of an official receiver during such period as the Inspector-General considers necessary.

16. The Inspector-General, each Registrar and Deputy Registrar and each official receiver shall be appointed by the Governor-General.

Appointment  
of Inspector-  
General,  
Registrars, &c.

17.—(1.) Subject to the next succeeding sub-section, the Attorney-General may—

- (a) appoint a person to act in place of an ill or absent holder of the office of Inspector-General in Bankruptcy or of an office of Registrar, Deputy Registrar or official receiver; or
- (b) where there is a vacancy in the office of Inspector-General in Bankruptcy or in an office of Registrar, Deputy Registrar or official receiver, appoint a person to act in the vacant office,

Appointment  
of acting  
Inspector-  
General, acting  
Registrars, &c.

and a person so appointed has all the powers and functions of the Inspector-General or of the Registrar, Deputy Registrar or official receiver, as the case may be.

(2.) Such an appointment may be made for the whole or part of the period of the illness or absence of the holder of the office or of the period of the vacancy, but a person appointed to act in a vacant office shall not continue in office after the expiration of twelve months from the occurrence of the vacancy in the office.

(3.) The Attorney-General may, at any time, terminate the appointment of a person appointed under this section.

Incorporation  
of official  
receivers.

18.—(1.) The official receivers together constitute a body corporate which—

- (a) shall be known as “The Official Receiver in Bankruptcy”;
- (b) shall have perpetual succession; and
- (c) is capable, under its corporate name, of acquiring, holding or disposing of real and personal property and of suing and being sued.

(2.) The Official Receiver in Bankruptcy shall have such seals as the Attorney-General directs.

(3.) All courts, judges and persons acting judicially shall take judicial notice of such a seal affixed to any document and shall presume that it was duly affixed.

(4.) Any official receiver may—

- (a) do any act or thing on behalf of The Official Receiver in Bankruptcy; and
- (b) affix a seal of The Official Receiver in Bankruptcy to any document.

(5.) A reference in a law of the Commonwealth or of a Territory to the official receiver of the estate of a bankrupt shall, in relation to the vesting, holding or disposal of property, be read as including a reference to The Official Receiver in Bankruptcy.

Duties, &c.,  
of official  
receiver.  
C.B.A. ss. 14–  
16.  
B.B.A. ss.  
72–74.

19.—(1.) Where a person becomes a bankrupt, it is the duty of the official receiver—

- (a) to notify, as prescribed, the fact of the bankruptcy;
- (b) to ascertain the assets and liabilities of the bankrupt;
- (c) to investigate—

- (i) the conduct, dealings and transactions of the bankrupt;
- (ii) the cause of bankruptcy; and
- (iii) the books, accounts and records kept by the bankrupt,

and to file with the Registrar, within sixty days after the making of the sequestration order or, in the case of a debtor's petition, after presentation of the petition, or within such further time as the Registrar allows, a report showing the result of his investigations;

- (d) to summon the first meeting of creditors and to attend that meeting or arrange for an officer to attend on his behalf;
- (e) to advertise, as prescribed, the date, time and place on and at which the public examination of the bankrupt is to be held;
- (f) to take such part as he thinks fit in the public examination of the bankrupt; and

(g) to file from time to time such supplementary reports in relation to the matters specified in paragraph (c) of this sub-section as he considers necessary.

(2.) Where a person who became a bankrupt on a creditor's petition is unable to prepare a proper statement of affairs, the official receiver may employ, at the expense of the estate, a qualified person to assist in the preparation of the statement.

20. The Registrars and official receivers shall keep such books of account and records and make such returns as the Inspector-General from time to time directs.

Records and returns.  
C.B.A. s. 17 (1.).  
E.B.A. s. 136.

### PART III.—COURTS.

#### *Division 1.—The Federal Court of Bankruptcy.*

21.—(1.) The Federal Court of Bankruptcy in existence immediately before the commencement of this Act shall, subject to this Act, continue in existence as the Federal Court of Bankruptcy.

Continuance of existing Federal Court of Bankruptcy.  
C.B.A. s. 18a.

(2.) The Federal Court of Bankruptcy as so continued in existence is a superior court of record and shall consist of a Judge or two Judges appointed by Commission.

(3.) A person holding office as a Judge of the Federal Court of Bankruptcy immediately before the commencement of this Act shall continue, without further appointment, to be a Judge of that Court as so continued in existence.

22. The jurisdiction of the Federal Court of Bankruptcy may be exercised by one Judge.

Exercise of jurisdiction of Federal Court of Bankruptcy.  
C.B.A. s. 18 (1a.).

23. A person is not eligible to be appointed to be a Judge of the Federal Court of Bankruptcy unless—

Qualification for appointment as Judge.

(a) he is, or has been, a Judge of a federal court or of the Supreme Court of a State; or

C.B.A. s. 18a.

(b) he is, or has been, a practising barrister or solicitor of the High Court or of the Supreme Court of a State or of a Territory of not less than five years' standing.

24. A Judge of the Federal Court of Bankruptcy, other than a Judge to whom sub-section (3.) of section 21 of this Act applies, shall, before proceeding to discharge the duties of his office, take before a Justice of the High Court or a Judge of the Supreme Court of a State an oath or affirmation in accordance with the form in the Second Schedule to this Act.

Oath of allegiance and office.  
C.B.A. s. 18ba.

*Salaries and  
travelling  
expenses of  
Judges.  
C.B.A. ss. 188B,  
189.*

25.—(1.) A Judge of the Federal Court of Bankruptcy shall receive salary at the rate of Seventeen thousand dollars a year and that salary shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

(2.) The salary of a Judge grows due from day to day, but is payable monthly.

(3.) A Judge of the Federal Court of Bankruptcy shall be paid, on account of his expenses in travelling to discharge the duties of his office, such sums as are considered reasonable by the Attorney-General.

*Seal of Federal  
Court of  
Bankruptcy.  
C.B.A. s. 49.*

26.—(1.) The Federal Court of Bankruptcy shall have a seal, the design of which shall be determined by the Attorney-General.

(2.) The design so determined shall include—

- (a) the Coat of Arms of the Commonwealth, that is to say, the armorial ensigns and supporters granted to the Commonwealth by Royal Warrant dated the nineteenth day of September, One thousand nine hundred and twelve; and
- (b) the words “The Federal Court of Bankruptcy”.

(3.) The seal of the Federal Court of Bankruptcy shall be kept at such place, and in the custody of such person, as the Judge of the Court or, if the Court consists of two Judges, the senior Judge of the Court directs.

(4.) The Registrar for each District shall have in his custody a stamp, the design of which shall, as nearly as practicable, be the same as the design of the seal of the Federal Court of Bankruptcy, with the addition of the name of the particular District.

(5.) A document or a copy of a document marked with a stamp referred to in the last preceding sub-section is as valid and effectual as if it had been sealed with the seal of the Federal Court of Bankruptcy.

(6.) All courts (whether exercising federal jurisdiction or not) and all persons acting judicially shall take judicial notice of the mark of a stamp referred to in sub-section (4.) of this section affixed on a document or a copy of a document and, in the absence of proof to the contrary, shall presume that it was affixed by proper authority.

*Division 2.—Jurisdiction and Powers of Courts in Bankruptcy.*

27.—(1.) The Courts having jurisdiction in bankruptcy are—

- (a) the Federal Court of Bankruptcy;
- (b) the Supreme Court of the State of New South Wales;
- (c) the Court of Insolvency in and for the State of Victoria;
- (d) the Supreme Court of the State of Queensland;
- (e) the Court of Insolvency of the State of South Australia;
- (f) the Supreme Court of the State of Western Australia;
- (g) the Supreme Court of the State of Tasmania; and
- (h) the Supreme Court of the Northern Territory of Australia.

Bankruptcy  
courts,  
C.B.A. s. 18,  
E.B.A. s. 96.

(2.) The State Courts specified in the last preceding sub-section are invested with federal jurisdiction in bankruptcy and jurisdiction in bankruptcy is conferred on the Supreme Court of the Northern Territory of Australia.

(3.) The jurisdiction with which State Courts are invested by this section is subject to the conditions and restrictions specified in sub-section (2.) of section 39 of the *Judiciary Act* 1903–1965 so far as they are applicable and the jurisdiction conferred on the Supreme Court of the Northern Territory of Australia is subject to the restrictions specified in the next succeeding section.

28.—(1.) The Federal Court of Bankruptcy and each State Court invested with jurisdiction in bankruptcy by the last preceding section have jurisdiction in bankruptcy throughout Australia.

Jurisdiction  
and powers of  
courts in  
bankruptcy.  
C.B.A. ss. 18,  
20 (1.),  
E.B.A. ss. 96,  
100.

(2.) The Supreme Court of the Northern Territory of Australia shall not—

- (a) exercise any powers in relation to a creditor's petition, or make a sequestration order against the estate of a debtor on a creditor's petition, unless, at the time of the presentation of the petition or, in the case of proceedings, or a motion or application, transferred to that Supreme Court under section 35 of this Act, at the time of the transfer of the proceedings, or of the motion or application, the debtor was—
  - (i) personally present, or ordinarily resident, in that Territory;
  - (ii) carrying on business in that Territory either personally or by means of an agent or manager; or
  - (iii) a member of a firm or partnership carrying on business in that Territory;
- (b) exercise any powers in relation to a bankrupt, unless the bankrupt is personally present, or ordinarily resident, in that Territory or became a bankrupt in that Territory;

- (c) exercise any powers under Part X. in relation to a debtor, unless the debtor is, or was at the time when he signed an authority under section 188 of this Act—
  - (i) personally present, or ordinarily resident, in that Territory;
  - (ii) carrying on business in that Territory either personally or by means of an agent or manager; or
  - (iii) a member of a firm or partnership carrying on business in that Territory; or
- (d) exercise any powers under Part XI. in relation to a deceased person, unless the deceased person was, at the time of his death—
  - (i) personally present, or ordinarily resident, in that Territory;
  - (ii) carrying on business in that Territory either personally or by means of an agent or manager; or
  - (iii) a member of a firm or partnership carrying on business in that Territory.

(3.) An order of the Supreme Court of the Northern Territory of Australia made in exercise of jurisdiction conferred on it by this Act has force and effect throughout Australia.

(4.) The Federal Court of Bankruptcy and the Supreme Court of the Northern Territory of Australia each has, in relation to the jurisdiction conferred on it by this Act, the same power to punish contempts of its power and authority as is possessed by the High Court in respect of contempts of the High Court.

Courts to act  
in aid of  
each other.  
C.B.A. s. 22 (1.).  
B.B.A. s. 122.

29.—(1.) All Courts having jurisdiction under this Act, the Judges of those Courts and the officers of or under the control of those Courts shall severally act in aid of and be auxiliary to each other in all matters of bankruptcy.

(2.) Nothing in this Act shall be taken to affect the operation of section 122 of the Imperial Act known as the Bankruptcy Act, 1914.

General powers  
of Courts in  
bankruptcy.  
C.B.A. s. 25.  
B.B.A. s. 105.

30.—(1.) The Court—

- (a) has full power to decide all questions, whether of law or of fact, in any case of bankruptcy or any matter under Part X. or Part XI. coming within the cognizance of the Court; and
- (b) may make such orders (including declaratory orders and orders granting injunctions or other equitable remedies) as the Court considers necessary for the purposes of carrying out or giving effect to this Act in any such case or matter.

(2.) The Court may direct such inquiries to be made and accounts to be taken for the purposes of any proceeding before the Court as the Court considers necessary and may, when directing an account to be taken, or subsequently, give special directions as to the manner in which the account is to be taken or vouched.

(3.) If in a proceeding before the Court under this Act a question of fact arises that a party desires to have tried before a jury, the Court may, if it thinks fit, direct the trial of that question to be had before a jury, and the trial may be had accordingly in the same manner as if it were the trial of an issue of fact in an action.

(4.) The provisions of section 15 of the *High Court Procedure Act* 1903–1950 apply in relation to the trial of questions of fact before a jury in a proceeding before the Federal Court of Bankruptcy as if the references in that section to the High Court were references to the Federal Court of Bankruptcy and the reference in sub-section (2.) of that section to the Principal Registrar or a District Registrar of the High Court were a reference to a Registrar in Bankruptcy.

(5.) Where—

- (a) a bankrupt, a debtor or any other person has failed to comply with an order or direction of a Registrar, or with a direction of an official receiver or trustee, under this Act; or
- (b) a trustee has failed to comply with an order or direction of a Registrar, or with a requirement of the Inspector-General, under this Act,

the Court may, on the application of the Registrar, official receiver, trustee or Inspector-General, as the case requires—

- (c) order the person who has failed to comply with the order, direction or requirement to comply with it; or
- (d) if it thinks fit, make an immediate order for the committal to prison of that person.

(6.) The power conferred on the Court by the last preceding sub-section is in addition to, and not in substitution for, any other right or remedy in respect of the failure to comply with the order, direction or requirement.

31.—(1.) In exercising jurisdiction under this Act, the Court shall hear and determine the following matters in open Court:—

- (a) creditors' petitions;
- (b) examinations under this Act;
- (c) applications for an order of discharge or annulment of a bankruptcy;

*Exercise of  
jurisdiction.  
C.B.A. s. 21.  
E.B.A. s. 10.*

- (d) applications to approve a composition or scheme of arrangement under Division 6 of Part IV.;
- (e) applications to set aside or avoid a settlement, disposition, conveyance, transfer, security or payment;
- (f) applications to declare for or against the title of the trustee to any property;
- (g) applications for the committal of a person to prison or for the release from prison of a person committed to prison;
- (h) appeals against the rejection of a proof of debt, or applications to expunge or reduce a proof of debt, where the amount involved in the proof exceeds Two hundred dollars;
- (i) applications for the trial of questions of fact with a jury and the trial of those questions;
- (j) applications under Part X.—
  - (i) for an order declaring a deed of assignment or a deed of arrangement or a composition to be void;
  - (ii) for an order declaring a deed of assignment or a deed of arrangement or a composition to be void or otherwise;
  - (iii) for an order terminating a deed of arrangement or a composition or setting aside a composition; or
  - (iv) for a sequestration order against the estate of a debtor; and
- (k) summary trials under Part XIV.

(2.) All other matters under this Act may, in the discretion of the Court, be heard in open Court or in Chambers.

**Costs.**

C.B.A. s. 27(1.),  
E.B.A. s. 109.

32. The Court may, in any proceeding before it, including a proceeding dismissed for want of jurisdiction, make such orders as to costs as it thinks fit.

**Adjournment,  
amendment of  
process, &c.**  
C.B.A. s. 27(2.),  
E.B.A. s. 109.

33.—(1.) The Court may—

- (a) upon such terms as it thinks fit, at any time adjourn any proceeding before it, either to a fixed date or generally;
- (b) at any time allow the amendment of any written process, proceeding or notice under this Act; or
- (c) extend before its expiration or, if this Act does not expressly provide to the contrary, after its expiration, any time limited by this Act for doing an act or thing or abridge any such time.



(2.) The Registrar may—

- (a) upon such terms as he thinks fit, at any time adjourn any proceeding before him either to a fixed date or generally;
- (b) at any time allow the amendment of any written process, proceeding or notice under this Act; or
- (c) extend before its expiration or, if this Act does not expressly provide to the contrary, after its expiration, any time limited by this Act for doing an act or thing or abridge any such time.

34. The Court may, for the purposes of any proceeding before it—

- (a) order the examination upon oath of a person before an officer of the Court or other person, at any place within Australia; or
- (b) order that a commission issue to a person either within or beyond Australia authorizing him to take the testimony of a person upon oath,

*Orders and commissions for examination of witnesses.*  
C.B.A. s. 25a.

and may—

- (c) by the same or a subsequent order, give any necessary directions concerning the time, place and manner of the examination; and
- (d) admit in evidence, saving all just exceptions, the testimony obtained at the examination or in pursuance of the commission.

35.—(1.) Proceedings under this Act in a court having jurisdiction under this Act or any motion or application in any such proceedings may, upon the application of an official receiver or of any other person interested, be transferred by that court to another court having jurisdiction under this Act.

*Transferring of proceedings.*  
C.B.A. s. 20(2).  
E.B.A. s. 100.

(2.) Where proceedings are so transferred, or any motion or application is so transferred—

- (a) all documents in respect of the proceedings, or the motion or application, as the case may be, filed of record in the court by which the proceedings are, or the motion or application is, transferred shall be transmitted by the Registrar or other appropriate officer of or under the control of that court to the Registrar or other appropriate officer of or under the control of the court to which the proceedings are, or the motion or application is, transferred; and
- (b) the last-mentioned court shall proceed—
  - (i) in the case where proceedings are transferred— as if the same proceedings had been taken in that court as were taken in the court by which they are transferred; and

- (ii) in the case where a motion or application in any proceedings is transferred—as if the same proceedings had been taken in that court as were taken in the court by which the motion or application is transferred and the motion or application had been made in that court.

Enforcement  
of orders, &c.  
C.B.A. s. 20 (4.).

36.—(1.) An order of the Court made, or a warrant issued, under this Act may be enforced throughout Australia by a constable.

(2.) A warrant for the arrest or detention of a person for the purpose of giving effect to an order of committal or a sentence of imprisonment made or imposed by the Court under this Act may be issued under the hand of the Registrar and the seal of the Court.

C.B.A. s. 41.  
E.B.A. s. 124.

(3.) Where the Court commits a person to prison under this Act, the committal may be to such prison as the Court thinks fit.

Power of Court  
to rescind, &c.,  
orders.  
C.B.A. s. 26 (1.).

37. The Court may rescind, vary or discharge an order made by it under this Act or suspend the operation of such an order.

Case stated.  
C.B.A. s. 20 (3.).

38.—(1.) Where, in any proceeding before the Court—

- (a) a question of law arises which the Court desires to have determined by the High Court before the proceeding is further dealt with by it; or
- (b) a question of law arises which a party to the proceeding desires to have so determined and the Court consents to its being so determined,

the Court—

- (c) shall state the facts in the form of a special case for the opinion of the High Court; and
- (d) shall transmit to the High Court the special case and the documents in the proceeding, or such of them as are required for the purposes of the determination,

and a Full Court of the High Court shall hear and determine the question.

(2.) The High Court may draw from the facts and the documents any inference that could have been drawn from them by the Court by which the case was stated.

Appeals to  
High Court.  
C.B.A. s. 26 (2).  
E.B.A. s. 108.

39.—(1.) Notwithstanding anything contained in any other Act, but subject to the next succeeding sub-section, an appeal does not lie to the High Court from a judgment, order or sentence of the Court given, made or pronounced under this Act except by leave of the Court or of the High Court.

(2.) An appeal lies to the High Court—

- (a) from a sequestration order made by the Court;
- (b) from a judgment or order of the Court involving directly or indirectly a claim, demand or question to or respecting any property or any civil right amounting to or of the value of Three thousand dollars;

- (c) from an order of the Court convicting a person of an offence against this Act, being an order that imposes a sentence of imprisonment for a period exceeding six months; or
- (d) on a question of law, from any order of the Court convicting a person of an offence against this Act.

(3.) Notice of an appeal or application for leave to appeal shall be filed in the office of the Registrar for the District in which the judgment, order or sentence was given, made or pronounced within seven days after notice of the appeal or application for leave to appeal has been filed in the High Court or other Court.

PART IV.—PROCEEDINGS IN CONNEXION WITH BANKRUPTCY.

*Division 1.—Acts of Bankruptcy.*

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

Acts of  
bankruptcy.  
C.B.A. s. 52.  
E.B.A. s. 1.

- (a) if in Australia or elsewhere he makes a conveyance or assignment of his property for the benefit of his creditors generally;
- (b) if in Australia or elsewhere—
  - (i) he makes a conveyance, transfer, settlement or other disposition of his property or of any part of his property;
  - (ii) he creates a charge on his property or on any part of his property;
  - (iii) he makes a payment; or
  - (iv) he incurs an obligation,  
that would, if he became a bankrupt, be void as against the trustee;
- (c) if, with intent to defeat or delay his creditors—
  - (i) he departs or remains out of Australia;
  - (ii) he departs from his dwelling-house or usual place of business;
  - (iii) he otherwise absents himself; or
  - (iv) he begins to keep house;
- (d) if—
  - (i) execution has been issued against him under process of a court and any of his property has, in consequence, either been sold by the sheriff or held by the sheriff for twenty-one days; or
  - (ii) execution has been issued against him under process of a court and has been returned unsatisfied;
- (e) if, at a meeting of any of his creditors—
  - (i) he consents to present a debtor's petition under this Act and does not, within seven days from the date on which he so consented, present the petition; or

- (ii) he consents to sign an authority under section 188 of this Act and does not, within seven days from the date on which he so consented, sign such an authority and inform the chairman of the meeting, in writing, of the name of the person in whose favour the authority has been signed;
- (f) if, at a meeting of any of his creditors, he admits that he is in insolvent circumstances and, having been requested by a resolution of a majority of the creditors present at the meeting either in person or by attorney to bring his affairs under the provisions of this Act, he does not, within seven days from the date of the meeting, either—
  - (i) present a debtor's petition; or
  - (ii) sign an authority under section 188 of this Act and inform the chairman of the meeting, in writing, of the name of the person in whose favour the authority has been signed;
- (g) if a creditor who has obtained against the debtor a final judgment or final order, being a judgment or order the execution of which has not been stayed, has served on the debtor in Australia or, by leave of the Court, elsewhere, a bankruptcy notice under this Act and the debtor does not—
  - (i) where the notice was served in Australia—within the time fixed by the Registrar by whom the notice was issued; or
  - (ii) where the notice was served elsewhere—within the time fixed for the purpose by the order giving leave to effect the service, comply with the requirements of the notice or satisfy the Court that he has a counter-claim, set-off or cross demand equal to or exceeding the amount of the judgment debt or sum payable under the final order, as the case may be, being a counter-claim, set-off or cross demand that he could not have set up in the action or proceeding in which the judgment or order was obtained;
- (h) if he 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 signs an authority under section 188 of this Act;
- (j) if a meeting of his creditors is called in pursuance of such an authority;
- (k) if, without sufficient cause, he fails to attend a meeting of his creditors called in pursuance of such an authority or to submit to such a meeting the statement referred to in section 195 of this Act;

- (l) if, having been required by a special resolution of a meeting of his creditors so called to execute a deed of assignment or a deed of arrangement or to present a debtor's petition, he fails, without sufficient cause—
  - (i) to comply with the requirements of this Act as to the execution of the deed by him; or
  - (ii) to present a debtor's petition within the time specified in the resolution,as the case may be;
- (m) if a deed of assignment or a deed of arrangement executed by him under Part X. or a composition accepted by a meeting of his creditors under that Part is declared to be void by the Court or is terminated by the Court or the creditors under that Part or such a composition is set aside by the Court under that Part; or
- (n) if a composition or scheme of arrangement accepted by the debtor's creditors under Division 6 of Part IV. is annulled by the Court and, before the annulment, the debtor's bankruptcy has been annulled.

(2.) In calculating for the purposes of sub-paragraph (i) of paragraph (d) of the last preceding sub-section the period for which property has been held by the sheriff, any time between the date on which an interpleader summons in respect of the property is taken out and the date on which the proceedings on the summons are finally disposed of, settled or discontinued shall not be taken into account.

(3.) For the purposes of paragraph (g) of sub-section (1.) of this section—

- (a) where leave is given by a court to enforce an award made on a submission to arbitration, being an award under which money is payable by a debtor to another person—
  - (i) the award shall be deemed to be a final order obtained by that person against the debtor; and
  - (ii) the arbitration proceedings shall be deemed to be the proceeding in which that final order was obtained;
- (b) a judgment or order that is enforceable as, or in the same manner as, a final judgment obtained in an action shall be deemed to be a final judgment so obtained and the proceedings in which, or in consequence of which, the judgment or order was obtained shall be deemed to be the action in which it was obtained;

- (c) a judgment or order against a married woman that is otherwise final shall be deemed to be a final judgment or final order notwithstanding that it may not be enforceable at law by execution; and
- (d) a person who is for the time being entitled to enforce a final judgment or final order for the payment of money shall be deemed to be a creditor who has obtained a final judgment or final order.

(4.) The act of bankruptcy specified in paragraph (j) of sub-section (1.) of this section shall be deemed to be committed on the day on which the notices calling the meeting are delivered or sent by post to the creditors in accordance with section 194 of this Act or, if they are not all delivered or sent on the one day, on the day on which the last of the notices is so delivered or sent.

(5.) The act of bankruptcy specified in paragraph (l) of sub-section (1.) of this section shall be deemed to be committed on the day after the day on which the period within which the deed is required to be executed by the debtor or the period within which the petition is required to be presented, as the case may be, expires.

(6.) The act of bankruptcy specified in paragraph (m) of sub-section (1.) of this section shall be deemed to be committed on the day on which the deed or composition is declared void or terminated or the composition is set aside, as the case may be.

(7.) The act of bankruptcy specified in paragraph (n) of sub-section (1.) of this section shall be deemed to be committed on the day on which the composition or scheme of arrangement is annulled.

(8.) This section applies, so far as it is capable of application, in relation to acts and things done or occurring, and omissions and failures to do acts or things occurring, before, or partly before and partly after, the commencement of this Act, as well as to acts and things done or occurring, and omissions and failures to do acts and things occurring, after the commencement of this Act.

**Bankruptcy  
notice.  
C.B.A. s. 53.  
B.B.A. s. 2.**

**41.—(1.) A bankruptcy notice—**

- (a) shall be in accordance with the prescribed form; and
- (b) shall be issued by the Registrar.

**(2.) The prescribed form of bankruptcy notice shall be such that the notice—**

- (a) requires the debtor named in it, within a specified time (being the time referred to in sub-paragraph (i) or (ii) of paragraph (g) of sub-section (1.) of the last preceding section, whichever is appropriate) to—
  - (i) pay the judgment debt or sum ordered to be paid in accordance with the judgment or order; or

- (ii) secure the payment of the debt or sum to the satisfaction of the Court or the creditor or his agent, if any, specified in the notice or compound the debt or sum to the satisfaction of the creditor or his agent, if any, specified in the notice; and
  - (b) states the consequences of non-compliance with the requirements of the notice.
- (3.) A bankruptcy notice shall not be issued in relation to a debtor—
- (a) except on the application of a creditor who has obtained against the debtor a final judgment or final order within the meaning of paragraph (g) of sub-section (1.) of the last preceding section or a person who, by virtue of paragraph (d) of sub-section (3.) of that section, is to be deemed to be such a creditor; or
  - (b) if, at the time of the application for its issue, execution of the judgment or order to which it relates has been stayed.
- (4.) Service of a bankruptcy notice shall be effected as prescribed.
- (5.) A bankruptcy notice is not invalidated by reason only that the sum specified in the notice as the amount due to the creditor exceeds the amount in fact due, unless the debtor, within the time allowed for payment, gives notice to the creditor that he disputes the validity of the notice on the ground of the misstatement.
- (6.) Where the amount specified in a bankruptcy notice exceeds the amount in fact due and the debtor does not give notice to the creditor in accordance with the last preceding sub-section, he shall be deemed to have complied with the notice if, within the time allowed for payment, he takes such action as would have constituted compliance with the notice if the amount due had been correctly specified in it.
- (7.) Where, before the expiration of the time fixed for compliance with the requirements of a bankruptcy notice, the debtor has filed with the Registrar an affidavit to the effect that he has such a counter-claim, set-off or cross demand as is referred to in paragraph (g) of sub-section (1.) of the last preceding section, and the Court has not, before the expiration of that time, determined whether it is satisfied that the debtor has such a counter-claim, set-off or cross demand, that time shall be deemed to have been extended, immediately before its expiration, until and including the day on which the Court determines whether it is so satisfied.

(8.) Where a bankruptcy notice is issued in respect of a judgment or order that is expressed in the currency provided for by the *Coinage Act* 1909–1947, the amount of the judgment debt or sum ordered to be paid shall be expressed in the bankruptcy notice in the currency provided for by the *Currency Act* 1965 and, for that purpose, the amount shall, subject to the next succeeding sub-section, be ascertained by reference to the equivalents specified in sub-section (4.) of section 8 of that Act.

(9.) For the purposes of the last preceding sub-section, where the amount referred to in the last preceding sub-section in the currency provided for by the *Coinage Act* 1909–1947 is an amount of pounds, shillings and pence or pounds and pence, the corresponding amount in the currency provided for by the *Currency Act* 1965 shall be calculated on the basis that an amount of pence specified in the first column in the table set out in sub-section (3.) of section 11 of the *Currency Act* 1965 corresponds to the amount of cents specified in the second column of that table opposite to that amount of pence.

Payment &c.,  
of debt to  
Commonwealth  
or State  
after service  
of bankruptcy  
notice.  
C.B.A. s. 53.

42.—(1.) Where a bankruptcy notice under this Act is served on a debtor by the Commonwealth or a State, it is a sufficient compliance with the notice if, within the time allowed by the notice, the debtor pays the amount required to be paid by the notice to, or secures it or compounds it to the satisfaction of—

- (a) the Crown Solicitor of the Commonwealth or of the State; or
- (b) if an agent of the Commonwealth or of the State is specified in the notice for the purpose, the agent so specified.

(2.) A statement that the debtor may comply with the notice in the manner referred to in the last preceding sub-section may be included in a bankruptcy notice issued on the application of the Commonwealth or a State.

#### *Division 2.—Creditors' Petitions.*

Jurisdiction  
to make  
sequestration  
orders.  
C.B.A. s. 54.  
E.B.A. s. 3.

43.—(1.) Subject to this Act, where—

- (a) a debtor has committed an act of bankruptcy; and
- (b) at the time when the act of bankruptcy was committed, the debtor—
  - (i) was personally present or ordinarily resident in Australia;
  - (ii) had a dwelling-house or place of business in Australia;
  - (iii) was carrying on business in Australia, either personally or by means of an agent or manager; or



(iv) was a member of a firm or partnership carrying on business in Australia by means of a partner or partners or of an agent or manager, the Court may, on a petition presented by a creditor, make a sequestration order against the estate of the debtor.

(2.) Upon the making of a sequestration order against the estate of a debtor, the debtor becomes a bankrupt, and continues to be a bankrupt until—

- (a) he is discharged by force of section 149 of this Act;
- (b) he is discharged by order of the Court; or
- (c) the sequestration order is annulled.

**44.—**(1.) A creditor's petition shall not be presented against a debtor unless—

- (a) there is owing by the debtor to the petitioning creditor a debt that amounts to Five hundred dollars or two or more debts that amount in the aggregate to Five hundred dollars, or, where two or more creditors join in the petition, there is owing by the debtor to the several petitioning creditors debts that amount in the aggregate to Five hundred dollars;
- (b) that debt, or each of those debts, as the case may be—
  - (i) is a liquidated sum due at law or in equity or partly at law and partly in equity; and
  - (ii) is payable either immediately or at a certain future time; and
- (c) the act of bankruptcy on which the petition is founded was committed within six months before the presentation of the petition.

Conditions  
on which  
creditor  
may petition.  
C.B.A. s. 55.  
B.B.A. s. 4.

(2.) Subject to the next succeeding sub-section, a secured creditor shall, for the purposes of paragraph (a) of the last preceding sub-section, be deemed to be a creditor only to the extent, if any, by which the amount of the debt owing to him exceeds the value of his security.

(3.) A secured creditor may present, or join in presenting, a creditor's petition as if he were an unsecured creditor if he includes in the petition a statement that he is willing to surrender his security for the benefit of creditors generally in the event of a sequestration order being made against the debtor.

(4.) Where a petitioning creditor is a secured creditor, he shall set out in the petition particulars of his security.

(5.) Where a secured creditor has presented, or joined in presenting, a creditor's petition as if he were an unsecured creditor, he shall, upon request in writing by the trustee within the prescribed time after the making of a sequestration order, surrender his security to the trustee for the benefit of the creditors generally.

(6.) A secured creditor to whom the last preceding sub-section applies who fails to surrender his security when requested to do so by the trustee in accordance with that sub-section is guilty of contempt of court.

**Creditor's  
petition  
against  
partnership.**  
C.B.A. ss. 28,  
30.  
E.B.A. s. 114.

**45.—(1.)** A creditor of a partnership may present a petition against the partnership if he is entitled to present a petition against any one of the members of the partnership in respect of a partnership debt.

(2.) A creditor who is entitled to present a petition against a partnership may present a petition against any of the members of the partnership without including the others.

**Petition against  
two or more  
joint debtors.**  
C.B.A. s. 38.  
E.B.A. s. 115.

**46.—(1.)** A creditor's petition may be presented against two or more joint debtors, whether partners or not.

(2.) Where there are two or more respondents to a creditor's petition, the Court may make a sequestration order against one or more of them and dismiss the petition in so far as it relates to the other or others.

**Requirements  
as to creditor's  
petition.**  
C.B.A. ss. 56,  
59.  
E.B.A. s. 5.

**47.—(1.)** A creditor's petition—

- (a) shall be in accordance with the prescribed form;
- (b) shall be verified by the affidavit of a person who has knowledge of the facts; and
- (c) shall be served as prescribed.

(2.) Except with the leave of the Court, a creditor's petition shall not be withdrawn after presentation.

**Petitioning  
creditor to  
lodge deposit  
to cover  
advertising  
expenses, &c.**

**48.—(1.)** A petitioning creditor shall, at the time of presenting the petition, lodge with the Registrar such amount as is prescribed for the purpose of meeting the expenses of publishing notice of the making of any sequestration order made on the petition and of calling the first meeting of creditors.

(2.) If a sequestration order is not made on the petition, the amount so lodged shall be refunded to the petitioning creditor.

(3.) Where a sequestration order is made on the petition but the expenses referred to in sub-section (1.) of this section are less than the amount so lodged, the balance shall be refunded to the petitioning creditor.

**Change of  
petitioners.**  
C.B.A. s. 35.  
E.B.A. s. 111.

**49.** Where a creditor's petition is not prosecuted with due diligence or where for any other reason the Court considers it proper to do so, the Court may permit to be substituted as petitioner or petitioners another creditor or other creditors to whom the debtor is indebted in the amount required by this Act in the case of a petitioning creditor, and the petition may be proceeded with as if the substituted creditor or creditors had been the petitioning creditor.

**50.** If, on application by a creditor, it is shown to be necessary in the interests of the creditors, the Court may, at any time after the presentation of a creditor's petition and before sequestration, direct an official receiver to take control of the property of the debtor and may make such orders in relation to that property as the Court considers just.

Court may direct official receiver to take control of property before sequestration.  
C.B.A. s. 62.  
E.B.A. s. 8.

**51.** Subject to section 109 of this Act, the prosecution of a creditor's petition to and including the making of a sequestration order on the petition shall be at the expense of the creditor.

Costs of prosecuting creditor's petition.  
C.B.A. s. 58.

**52.—(1.)** At the hearing of a creditor's petition, the Court shall require proof of—

Proceedings and order on creditor's petition.  
C.B.A. s. 56.  
E.B.A. s. 5.

(a) the matters stated in the petition (for which purpose the Court may accept the affidavit verifying the petition as sufficient);

(b) service of the petition; and

(c) the fact that the debt or debts on which the petitioning creditor relies is or are still owing,

and, if it is satisfied with the proof of those matters, may make a sequestration order against the estate of the debtor.

(2.) If the Court is not satisfied with the proof of any of those matters, or is satisfied by the debtor—

(a) that he is able to pay his debts; or

(b) that for other sufficient cause a sequestration order ought not to be made,

it may dismiss the petition.

(3.) The Court may, if it thinks fit, upon such terms and conditions as it thinks proper, stay all proceedings under a sequestration order for a period not exceeding twenty-one days.

(4.) Unless, within twelve months from the presentation of a creditor's petition, a sequestration order is made on the petition or the petition is dismissed or withdrawn, the petition lapses at the expiration of that period.

**53.** Where sequestration orders have been made against two or more members of a partnership or two or more joint debtors, the Court may consolidate the proceedings upon such terms as it thinks fit.

Consolidation of proceedings.  
C.B.A. s. 31.  
E.B.A. s. 116.

**54.—(1.)** Where a sequestration order is made, the person against whose estate it is made shall—

Bankrupt's statement of affairs.

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

C.B.A. s. 66.  
E.B.A. s. 14.

(b) furnish a copy of the statement to the official receiver for the District in which the sequestration order was made.

(2.) The statement shall be filed within fourteen days from the date of the sequestration order.

(3.) A bankrupt who fails to file a statement of his affairs in accordance with this section is guilty of contempt of court.

(4.) A person who states in writing that he is a creditor of the bankrupt may, without fee, and any other person may, on payment of the prescribed fee, inspect, personally or by an agent, the bankrupt's statement of affairs and may make a copy of it.

*Division 3.—Debtors' Petitions.*

Debtor's  
petition,  
C.B.A. s. 57.  
E.B.A. s. 6.

55.—(1.) Subject to this section, a debtor may present to the Registrar a petition against himself accompanied by a statement of his affairs verified by affidavit.

(2.) The petition and statement of affairs shall each be in accordance with the prescribed form.

(3.) If the petition and the statement of affairs each appears to the Registrar to be in accordance with the prescribed form or the Court, in pursuance of the next succeeding sub-section, directs the Registrar to accept the petition and statement—

(a) they shall be accepted by the Registrar, who shall endorse the petition accordingly; and

(b) thereupon, by force of this section, the debtor becomes a bankrupt by virtue of the presentation of the petition.

(4.) If either the petition or the statement of affairs appears to the Registrar not to be in accordance with the prescribed form, neither shall be accepted by the Registrar unless the Court, upon reference by the Registrar, directs him to accept them.

(5.) Where a debtor becomes a bankrupt by force of this section, the Registrar shall forthwith give notice of the bankruptcy to the official receiver.

(6.) A debtor who has executed a deed of assignment or deed of arrangement under Part X. or whose creditors have accepted a composition under that Part is not, except with the leave of the Court, entitled to present a petition against himself unless—

(a) the deed of assignment has been declared void or the final dividend has been paid under it;

(b) the deed of arrangement has been declared void or has been terminated; or

(c) the composition has been set aside or terminated or the final payment under it has been made.

(7.) Where a petition is presented by a debtor against himself in contravention of the last preceding sub-section, the debtor does not become a bankrupt by virtue of its presentation.

(8.) A person who becomes a bankrupt by force of this section continues to be a bankrupt until—

- (a) he is discharged by force of section 149 of this Act;
- (b) he is discharged by order of the Court; or
- (c) his bankruptcy is annulled.

56.—(1.) Subject to this section, the provisions of the last preceding section apply in relation to a petition against a partnership.

Debtor's  
petition  
against  
partnership.  
C.B.A. s. 29.

(2.) A debtor's petition against a partnership—

- (a) may be presented to the Registrar by a majority of those members of the partnership who are resident in Australia at the time of the presentation of the petition; and
- (b) shall be accompanied by—
  - (i) a statement of affairs of each member of the partnership by whom the petition is presented; and
  - (ii) a statement of the partnership affairs, verified by affidavit.

(3.) Where a debtor's petition is presented against a partnership by partners not comprising all the members of the partnership, the Registrar shall not accept the petition or the statements of affairs accompanying it but shall refer them to the Court.

(4.) Upon such a reference, the Court may order that the petition and the statements of affairs be accepted by the Registrar or may dismiss the petition.

(5.) In the application of the last preceding section in relation to a debtor's petition against a partnership—

- (a) the references in sub-sections (2.) and (3.) to the statement of affairs shall be read as references to the statements of affairs;
- (b) the reference in sub-section (3.) to the debtor shall be read as a reference to each of the members of the partnership; and
- (c) the reference in sub-section (4.) to the statement of affairs shall be read as a reference to any of the statements of affairs.

(6.) Where a debtor's petition presented against a partnership is accepted by the Registrar in pursuance of an order of the Court under sub-section (4.) of this section, each partner resident in Australia, not being a partner by whom the petition was presented, shall, within fourteen days after the date on which

the petition is accepted by the Registrar, make out and file in the office of the Registrar a statement of his affairs in accordance with the prescribed form and verified by affidavit.

(7.) If a person required by the last preceding sub-section to make out and file a statement of his affairs fails to file that statement in accordance with that sub-section he is guilty of contempt of court.

Creditor, &c.,  
may inspect  
statement  
of affairs.

C.B.A. s. 66 (3).  
E.B.A. s. 14 (4).

57. A person who states in writing that he is a creditor of a person who has become a bankrupt under this Division or of a partnership in respect of which a debtor's petition has been accepted by the Registrar may, without fee, and any other person may, on payment of the prescribed fee, inspect, personally or by an agent, any statement of affairs accompanying, or filed in relation to, the petition, as the case may be, and may make a copy of it.

*Division 4.—Effect of Bankruptcy on Property and Proceedings.*

Vesting of  
property  
upon  
bankruptcy.

C.B.A. s. 60.  
E.B.A. ss. 7, 18.

58.—(1.) Subject to this Act, where a debtor becomes a bankrupt—

- (a) the property of the bankrupt, not being after-acquired property, vests forthwith in The Official Receiver in Bankruptcy; and
- (b) after-acquired property of the bankrupt vests, as soon as it is acquired by, or devolves on, the bankrupt, in The Official Receiver in Bankruptcy or, if a person other than an official receiver is trustee of the property of the bankrupt, in that trustee.

(2.) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered and enables The Official Receiver in Bankruptcy or the trustee to be registered as the owner of any such property that is part of the property of the bankrupt, that property, notwithstanding that it vests in equity in The Official Receiver in Bankruptcy or the trustee, as the case may be, by virtue of this section, does not so vest at law until the requirements of that law have been complied with.

(3.) Except as provided by this Act, after a debtor has become a bankrupt, it is not competent for a creditor—

- (a) to enforce any remedy against the person or the property of the bankrupt in respect of a provable debt; or
- (b) except with the leave of the Court and on such terms as the Court thinks fit, to commence any legal proceeding in respect of a provable debt or take any fresh step in such a proceeding.

C.B.A. s. 88.  
E.B.A. s. 35.

(4.) After a debtor has become a bankrupt, distress for rent shall not be levied or proceeded with against the property of the bankrupt, whether or not the bankrupt is a tenant of the landlord by whom the distress is sought to be levied.

(5.) Nothing in this section affects the right of a secured creditor to realize or otherwise deal with his security.

(6.) In this section, “ after-acquired property ”, in relation to a bankrupt, means property that is acquired by, or devolves on, the bankrupt after the date of the bankruptcy, being property that is divisible amongst the creditors of the bankrupt.

59.—(1.) Subject to the provisions of this Act other than the last preceding section, where a person who is a bankrupt again becomes a bankrupt—

Second or  
subsequent  
bankruptcy.  
C.B.A. s. 61.  
E.B.A. s. 39.

- (a) property that has, by virtue of the last preceding section, vested in The Official Receiver in Bankruptcy or the trustee in relation to the earlier bankruptcy does not vest in The Official Receiver in Bankruptcy or the trustee in relation to the later bankruptcy;
- (b) property that is acquired by, or devolves on, the bankrupt after the date of the later bankruptcy, being property divisible amongst his creditors, vests in The Official Receiver in Bankruptcy or the trustee in relation to the later bankruptcy as soon as it is acquired by, or devolves on, the bankrupt; and
- (c) the trustee in the earlier bankruptcy shall be deemed to be a creditor in the later bankruptcy in respect of any unsatisfied balance of debts provable in the earlier bankruptcy, but is not entitled to a dividend as such a creditor until the other creditors in the later bankruptcy have been paid in full.

(2.) The provisions of sub-section (2.) of the last preceding section apply in relation to the vesting of property at law in The Official Receiver in Bankruptcy or the trustee by virtue of the last preceding sub-section.

60.—(1.) The Court may, at any time after the presentation of a petition, upon such conditions as it thinks fit, discharge an order made against the property or person of the debtor under any law relating to the imprisonment of fraudulent debtors and stay any action, execution or other civil legal process against the property or person of the debtor and discharge him out of custody.

Stay of  
legal  
proceedings.  
C.B.A. s. 63.  
E.B.A. s. 9.

(2.) An action commenced by a person who subsequently becomes a bankrupt is, upon his becoming a bankrupt, stayed until the trustee makes election, in writing, to prosecute or discontinue the action.

(3.) If the trustee does not make such an election within twenty-eight days after notice of the action is served upon him by a defendant or other party to the action, he shall be deemed to have abandoned the action.

(4.) Notwithstanding anything contained in this section, a bankrupt may continue, in his own name, an action commenced by him before he became a bankrupt in respect of—

- (a) any personal injury or wrong done to the bankrupt, his spouse or a member of his family; or
- (b) the death of his spouse or of a member of his family.

(5.) In this section, “action” means any civil proceeding, whether at law or in equity.

**Actions by  
bankrupt  
partner's  
trustee.**  
C.B.A. s. 32.  
E.B.A. s. 117.

61.—(1.) Where a member of a partnership becomes a bankrupt, the Court may, upon the application of the trustee, authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner or partners.

(2.) Notice of the application for authority to commence the action shall be given to the bankrupt's partner or partners, who, or any of whom, may show cause against it.

(3.) Upon application by such a partner, the Court may, if it thinks fit, direct that that partner shall receive the share of the proceeds of the action to which he is entitled as a partner.

(4.) If a partner does not claim any benefit from the action, the Court may order that he be indemnified against costs in respect of the action.

(5.) Unless the Court otherwise orders, a release by a partner of the debt or demand to which the action relates made after notice has been given to him under this section is void as against the trustee.

(6.) This section applies to and in relation to joint debtors who are not partners as if they were partners.

**Actions on  
joint contracts.**  
C.B.A. s. 39.  
E.B.A. s. 118.

62. Where a bankrupt is a contractor in respect of a contract jointly with another person or other persons, that person or those persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

**Death of  
bankrupt.**  
C.B.A. s. 36.  
E.B.A. s. 112.

63. Where a bankrupt dies before he is discharged from the bankruptcy, the proceedings in bankruptcy shall, unless the Court otherwise directs, be continued, so far as they are capable of being continued, as if he were alive.

#### *Division 5.—First Meeting of Creditors, Public Examination and Committee of Inspection.*

**First meeting  
of creditors.**  
C.B.A. s. 67.  
E.B.A. s. 13.

64. Within twenty-eight days from the date upon which a debtor becomes a bankrupt, or within such extended time as the Registrar, on the application of an official receiver, allows, a meeting of the creditors of the bankrupt shall be held for the purpose of considering and deciding upon any matters relating to the bankruptcy.



65. The majority in number of the creditors present at the first meeting of creditors in person, by attorney or by proxy shall elect a chairman to preside at the meeting.

Election of chairman.  
C.B.R. r. 299.

66.—(1.) Subject to this section, each creditor who is entitled to prove a debt in the bankruptcy is entitled to vote at the first meeting of creditors.

Entitlement to vote at first meeting of creditors.  
C.B.R. rr. 304–307.

(2.) A creditor is not entitled to vote at the first meeting of creditors (otherwise than in respect of the election of a chairman of the meeting) unless he has made known to the chairman particulars of his debt.

(3.) Except as provided by the next succeeding sub-section, a secured creditor is not entitled to vote in respect of a secured debt unless he surrenders his security.

(4.) A secured creditor may, if he has furnished to the chairman, in writing, particulars of his security and of the value at which he estimates it, vote in respect of the balance (if any) of the secured debt after deducting the value at which he has estimated the security.

(5.) The spouse of the bankrupt is not entitled to vote at the first meeting of creditors.

67.—(1.) A creditor may vote at the first meeting of creditors either in person or by his attorney or by a proxy appointed in writing by the creditor or his attorney.

Manner of voting.  
C.B.R. rr. 312–316.

(2.) A proxy may be appointed to vote on all matters arising at the meeting or on particular matters specified in the instrument of appointment.

(3.) A person claiming to be the proxy of a creditor is not entitled to vote as proxy (otherwise than in respect of the election of a chairman of the meeting) unless the instrument by which he is appointed has been lodged with the chairman.

(4.) A person claiming to be the attorney of a creditor is not entitled to vote as attorney (otherwise than in respect of the election of a chairman of the meeting) unless—

- (a) the instrument by which he is appointed has been produced to the chairman; or
- (b) the chairman is otherwise satisfied that he is the duly authorized attorney of the creditor.

68. Any question as to the persons entitled to vote at the first meeting of creditors of a bankrupt, or as to the amount of the debt in respect of which a creditor is entitled to vote at the meeting, shall be determined by the chairman, who may, if he thinks it necessary to do so, adjourn the meeting for a period, not exceeding fourteen days, to enable him to investigate the matter.

Admission and rejection of claim to vote.  
C.B.R. r. 311.

Public  
examination  
of bankrupt.  
C.B.A. s. 68.  
E.B.A. s. 15.

69.—(1.) Subject to this section, a bankrupt shall be examined on oath as to his conduct, trade dealings, property and affairs at a time and place appointed by the Registrar.

(2.) Subject to the next succeeding sub-section, the examination of a bankrupt under this section shall be held in public before the Registrar as soon as conveniently may be after the filing of the bankrupt's statement of affairs or, where the bankrupt became a bankrupt on a creditor's petition and the Registrar so directs, before the filing of the statement of affairs.

(3.) The Registrar may at any time adjourn the examination for further hearing before the Court.

(4.) Where the examination is so adjourned, the Court may—

- (a) continue the examination;
- (b) at any time direct that the examination be continued before the Registrar; or
- (c) make such other order as it thinks proper in the circumstances.

(5.) A creditor of the bankrupt or his agent authorized in writing for the purpose may take part in the examination.

(6.) If a trustee has been appointed by the creditors before the conclusion of the examination he may take part in the examination.

(7.) The Court or the Registrar may put to the bankrupt, or allow to be put to the bankrupt, such questions as the Court or the Registrar thinks proper.

C.B.A. s. 70.

(8.) The bankrupt shall answer all questions that the Court or the Registrar puts or allows to be put to him and, unless the Court or the Registrar otherwise directs, is not excused from answering any such question by reason only of the fact that the answer to it may render him liable to punishment.

(9.) Where the Registrar is satisfied that the bankrupt suffers from a mental or physical disability that makes him unfit or unable to attend for examination as provided by the preceding provisions of this section, the Registrar may—

- (a) direct that his examination be dispensed with; or
- (b) direct that he be examined in such manner, at such time and at such place as the Registrar thinks fit.

(10.) The Court may direct that an examination of a bankrupt under this section shall not be held or that the commencement of an examination shall be postponed.

(11.) In deciding whether so to direct, the Court shall take into account the report of the official receiver under paragraph (c) of sub-section (1.) of section 19 of this Act and any resolution of the creditors on the matter.

(12.) The Court or the Registrar may cause such notes of the examination of a bankrupt under this section to be taken down in writing as the Court or the Registrar thinks proper and the bankrupt shall sign the notes.

(13.) The power conferred on the Court or the Registrar by the last preceding sub-section is in addition to the powers of the Court or the Registrar under section 255 of this Act.

(14.) Notes taken and signed in pursuance of sub-section (12.) of this section, or a transcript of evidence given at an examination under this section, being a transcript certified, or sealed or signed, in pursuance of sub-section (4.) of section 255 of this Act—

- (a) may be used in evidence in any proceedings under this Act against the bankrupt; and
- (b) shall be open, at all reasonable times, to inspection by the trustee, the bankrupt or a creditor of the bankrupt or an agent of any such person without fee and by any other person on payment of the prescribed fee.

70.—(1.) The creditors who are qualified to vote may, at the first meeting of creditors or at a subsequent meeting, by resolution appoint a committee of inspection for the purpose of advising and superintending the trustee.

Committee of inspection.  
C.B.A. s. 74  
(1.)-(5).  
E.B.A. s. 20  
(1)-(4).

(2.) The committee of inspection shall consist of not more than five and not less than three persons.

(3.) A person is not eligible for appointment as a member of a committee of inspection unless—

- (a) he is a creditor or a person authorized by a creditor to act for the creditor in relation to the bankruptcy; or
- (b) he is a person whom a creditor intends to authorize to act for him in relation to the bankruptcy.

(4.) A creditor or other person referred to in paragraph (a) of the last preceding sub-section is not qualified to act as a member of the committee of inspection until, in the case of a creditor, his proof of debt or, in the case of another person, the creditor's proof of debt, has been admitted and a person referred to in paragraph (b) of that sub-section is not qualified so to act until the creditor has authorized him to act for the creditor in relation to the bankruptcy and the creditor's proof of debt has been admitted.

(5.) Subject to the next succeeding sub-section, the committee of inspection shall meet at such times as the committee appoints from time to time.

(6.) The trustee or a member of the committee may call a meeting of the committee at any time.

(7.) The committee may act by a majority of its members present at a meeting but, except as provided by the next succeeding section, shall not act unless a majority of its members is present at the meeting.

Vacation of  
office, &c.  
C.B.A. s. 74  
(6)-(11).  
E.B.A. s. 20  
(5)-(9).

71.—(1.) A member of a committee of inspection may resign his office by notice in writing signed by him and delivered to, or sent by post to, the trustee.

(2.) The office of a member of such a committee becomes vacant if—

- (a) he becomes a bankrupt;
- (b) he executes a deed of assignment or a deed of arrangement under Part X. or makes a composition with his creditors under that Part;
- (c) he is absent from five consecutive meetings of the committee; or
- (d) in the case of a member who is not a creditor, he ceases to be a person authorized by a creditor to act for him in relation to the bankruptcy.

(3.) A member of such a committee may be removed from office by resolution at a meeting of creditors of which seven days' notice, stating the object of the meeting, has been given.

(4.) Where—

- (a) a vacancy has occurred in the membership of such a committee; and
- (b) there are two or more continuing members,

the continuing members may act notwithstanding the vacancy and may appoint an eligible person to fill the vacancy.

(5.) Where the number of members of such a committee is at any time less than two, a creditor may request the trustee to convene a meeting of creditors for the purpose of filling the vacancy or all or any of the vacancies and the trustee shall convene a meeting accordingly.

Member of  
committee not  
to purchase  
part of estate.  
C.B.A. s. 75.

72.—(1.) A member of the committee of inspection shall not, while acting as such a member, except by leave of the Court, either directly or indirectly, become purchaser of any part of the property of the bankrupt.

(2.) Where a member of the committee of inspection is a person authorized by a creditor to act for the creditor in relation to the bankruptcy, the creditor shall not, while that person is acting as a member of the committee, except by leave of the Court, either directly or indirectly, become purchaser of any part of the property of the bankrupt.

(3.) A purchase made in contravention of this section may be set aside by the Court on the application of a creditor.

*Division 6.—Composition or Arrangement with Creditors.*

73.—(1.) Where a bankrupt desires to make a proposal to his creditors for—

Composition  
or arrangement.  
C.B.A. s. 71  
(1)–(4).  
E.B.A. s. 16.

(a) a composition in satisfaction of his debts; or

(b) a scheme of arrangement of his affairs,

he may lodge with the trustee a proposal in writing signed by him setting out the terms of the proposed composition or scheme of arrangement and particulars of any sureties or securities forming part of the proposal.

(2.) The trustee shall call a meeting of creditors and shall send to each creditor before the meeting a copy of the proposal accompanied by a report on it.

(3.) The bankrupt may, at the meeting, amend the terms of his proposal.

(4.) The creditors may, by special resolution, accept the proposal.

(5.) A creditor who has proved his debt may assent to or dissent from the proposal by written notice to that effect delivered to the trustee before the meeting or sent by post to the trustee and received by him before the meeting, and in that case the creditor shall, for the purposes of this Division, be deemed to have been present at the meeting and to have voted according to his assent or dissent.

74.—(1.) If a bankrupt's proposal for a composition or a scheme of arrangement is accepted by his creditors in accordance with the last preceding section, the bankrupt or the trustee may apply to the Court for approval of the composition or scheme of arrangement.

Approval  
by Court.  
C.B.A. s. 71  
(5)–(11).  
E.B.A. ss. 16,  
21.

(2.) The trustee shall give notice of the time appointed for hearing the application to each creditor who did not assent to the proposal.

(3.) The Court shall, upon the hearing of the application, hear—

(a) a report by the trustee as to the terms of the composition or scheme of arrangement, and as to the conduct, trade dealings, property and affairs of the bankrupt: and

(b) any objections to the composition or scheme of arrangement made by or on behalf of a creditor.

(4.) The Court may approve, or refuse to approve, the composition or scheme of arrangement.

(5.) Where the Court approves a composition or scheme of arrangement under this section, it may make an order annulling the bankruptcy.

Effect of  
composition  
or scheme of  
arrangement.  
C.B.A. s. 71  
(12)-(18),  
E.B.A. ss. 16,  
21.

75.—(1.) Subject to this section, a composition or scheme of arrangement accepted and approved in accordance with this Division is binding on all the creditors of the bankrupt so far as relates to provable debts due to them from the bankrupt.

(2.) The acceptance and approval of a composition or scheme of arrangement does not—

(a) except with the consent of the creditor to whom the debt is due, release the bankrupt from a provable debt that would not be released by his discharge from bankruptcy; or

(b) release any other person from any liability from which he would not be released by the discharge of the bankrupt.

(3.) The provisions of a composition or scheme of arrangement that has been accepted and approved in accordance with this Division may be enforced by the Court on application by a person interested, and disobedience of an order of the Court made on the application is a contempt of the Court and is punishable accordingly.

(4.) If—

(a) default is made in any respect under such a composition or scheme of arrangement; or

(b) it is made to appear to the Court that—

(i) the composition or scheme of arrangement cannot be proceeded with without injustice or undue delay to the creditors or to the bankrupt; or

(ii) the approval of the Court was obtained by fraud,

the Court may, if it thinks fit, on application by the trustee or a creditor, annul the composition or scheme of arrangement.

(5.) The annulment of a composition or scheme of arrangement does not affect the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme of arrangement before the annulment.

(6.) The trustee or a creditor may include in an application under sub-section (4.) of this section an application for a sequestration order against the estate of the debtor and, if the Court

makes an order on the first-mentioned application annulling the composition or scheme of arrangement, it may, if it thinks fit, forthwith make the sequestration order sought.

(7.) The Court may, if it thinks fit, dispense with the service on the debtor of notice of an application under sub-section (4.) of this section, either unconditionally or subject to conditions.

(8.) The making of an application for a sequestration order under this section shall, for the purposes of this Act, be deemed to be equivalent to the presentation of a creditor's petition against the debtor, but the provisions of sub-section (1.) of section 43, sections 44 and 47 and sub-sections (1.) and (2.) of section 52 of this Act do not apply in relation to such an application.

76.—(1.) The provisions of Part VIII. apply subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to the trustee of a composition or scheme of arrangement under this Division as if the debtor were a bankrupt and the trustee were the trustee in his bankruptcy.

Application of Part VIII. to trustee of composition or scheme of arrangement.  
C.B.A. s. 72.  
E.B.A. s. 16 (18).

(2.) If, after taking into account the modifications and adaptations made by the rules, a provision of Part VIII. is incapable of application to or in relation to the trustee of a composition or scheme of arrangement, or is inconsistent with this Division, that provision does not so have application.

(3.) In this section, "modification" includes the addition or omission of a provision or the substitution of a provision for another provision.

#### PART V.—CONTROL OVER PERSON AND PROPERTY OF DEBTORS AND BANKRUPTS.

77. A bankrupt shall, unless excused by the trustee or prevented by illness or other sufficient cause—

- (a) forthwith after he becomes a bankrupt, deliver to the trustee all the books, documents, papers and writings in his possession relating to his trade dealings, property or affairs and, if he has a passport, his passport;
- (b) wait at such times on the trustee as the trustee reasonably requires and give such information concerning his conduct, trade dealings, property and affairs as the trustee requires;
- (c) attend the first meeting of his creditors and, if so required by the trustee, attend any subsequent meeting of creditors;
- (d) at each meeting of his creditors at which he is present, give such information concerning his conduct, trade dealings, property and affairs as the meeting requires;

Duties of bankrupt as to discovery, &c., of property.  
C.B.A. s. 76.  
E.B.A. s. 22.

- (e) execute such instruments and generally do all such acts and things in relation to his property and its realization as are required by this Act or by the trustee or as are ordered by the Court upon the application of the trustee;
- (f) disclose to the trustee, as soon as practicable, property that is acquired by him, or devolves on him, before his discharge, being property divisible amongst his creditors; and
- (g) aid to the utmost of his power in the administration of his estate.

Arrest of  
debtor or  
bankrupt.  
C.B.A. s. 77.  
B.B.A. s. 23.

78.—(1.) Where it is made to appear to the Court—

- (a) that a debtor against whom a bankruptcy notice has been issued or a petition has been presented has absconded, or is about to abscond, with a view to avoiding payment of his debts or to preventing or delaying proceedings against him under this Act;
- (b) that a debtor against whom a bankruptcy notice has been issued or a petition has been presented has concealed or removed, or is about to conceal or remove, any of his property with a view to preventing or delaying possession of it being taken under this Act in the event of his becoming a bankrupt;
- (c) that a debtor against whom a bankruptcy notice has been issued or a petition has been presented has destroyed, concealed or removed, or is about to destroy, conceal or remove, any of his books, documents, papers or writings relating to his trade dealings, property or affairs;
- (d) that a bankrupt has concealed, or, without the permission of the trustee, has removed, any of his property;
- (e) that a bankrupt has, without good cause shown, failed to attend before the Registrar or the Court, as the case may be, for examination under section 69 of this Act; or
- (f) that a bankrupt has, without good cause shown, neglected or failed to comply with an order of the Court or with any other obligation under this Act.

the Court may issue a warrant for the arrest of the debtor or bankrupt, as the case may be, and his committal to such gaol as the Court appoints until the Court otherwise orders and may, by the same warrant, order that any property, books, documents,



papers and writings in the possession of the debtor or bankrupt be seized and delivered into the custody of such person as the Court appoints.

(2.) Any property, books, documents, papers and writings delivered into the custody of a person in pursuance of an order under the last preceding sub-section shall be retained by him until the Court makes an order as to their disposal.

(3.) Paragraphs (a), (b) and (c) of sub-section (1.) of this section apply in relation to a debtor whether or not he has become a bankrupt and whether, in the case of a debtor against whom a petition has been presented, the petition was a creditor's petition or a debtor's petition.

79. The Registrar may, on the application of the trustee, from time to time direct that postal articles and telegrams addressed to a bankrupt at any place or places mentioned in the direction shall, for such period, not exceeding six months, as the Registrar specifies, be re-directed, sent or delivered by the Postmaster-General to the trustee, and the postal articles and telegrams shall be re-directed, sent or delivered accordingly.

Re-direction  
of postal  
articles.  
C.B.A. s. 78.  
E.B.A. s. 24.

80.—(1.) A bankrupt shall forthwith notify the Registrar and the trustee in writing of any change in his name or address that occurs during his bankruptcy.

Notification of  
change in  
name or  
address, &c.  
C.B.A. s. 79.

Penalty: One hundred dollars or imprisonment for six months.

(2.) For the purposes of the last preceding sub-section, a change in the name of a bankrupt shall be deemed to occur if the bankrupt in fact assumes the use of a different name or an additional name.

(3.) A bankrupt shall, at such times (if any) as are prescribed and at such times as he is required to do so by the Registrar or the trustee, notify the trustee in writing of the nature of the employment, occupation, business or profession in which he is engaged.

Penalty: One hundred dollars or imprisonment for six months.

(4.) In this section, "the Registrar" means the Registrar for the District in which the sequestration order was made or the debtor's petition was presented, as the case may be.

Discovery of  
bankrupt's  
property.

C.B.A. s. 80.  
E.B.A. s. 25.

81.—(1.) The Court or the Registrar may, on the application of the trustee or of a creditor who has proved his debt, and on such terms as to costs as the Court or the Registrar thinks fit to impose, at any time summon—

- (a) the bankrupt or the spouse of the bankrupt; or
- (b) a person known or suspected to have in his possession any property of the bankrupt, or who is supposed to be indebted to the bankrupt or to be able to give information respecting the bankrupt or his trade dealings, property or affairs,

to attend before the Court or before the Registrar or, if the Court or the Registrar thinks fit, before a magistrate, to give evidence and produce any documents in his custody or power relating to the bankrupt or his trade dealings, property or affairs.

(2.) If a person so summoned to attend before the Court, the Registrar or a magistrate, after having been tendered a reasonable sum for expenses, refuses or fails so to attend at the time appointed, and has no lawful excuse made known to the Court, the Registrar or the magistrate at the time of sitting and allowed, the Court, the Registrar or the magistrate may, by warrant, cause him to be apprehended and brought up for examination before the Court, the Registrar or the magistrate, as the case may be, and may order him to pay the costs of the apprehension and examination.

(3.) A person summoned to attend before the Court, the Registrar or a magistrate under this section may be examined on oath concerning the bankrupt or his trade dealings, property or affairs by the Court, the Registrar or the magistrate, or by the trustee or a creditor.

(4.) A person summoned to attend before the Court, the Registrar or a magistrate under this section is entitled to be represented, on his examination, by counsel or a solicitor, who may re-examine him after his examination.

(5.) If a person admits on examination before the Court, the Registrar or a magistrate that he is indebted to the bankrupt, the Court, the Registrar or the magistrate may, on the application of the trustee or a creditor who has proved his debt, order that person to pay to the trustee, at such time and in such manner as the Court, the Registrar or the magistrate thinks fit, the whole or a part of the amount in which he admits he is indebted to the bankrupt.

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

(7.) The Court, the Registrar or a magistrate may cause such notes of the examination to be taken down in writing as the Court, the Registrar or the magistrate thinks proper and the person examined shall sign the notes.

(8.) The power conferred on the Court or the Registrar by the last preceding sub-section is in addition to the powers of the Court or the Registrar under section 255 of this Act.

(9.) Notes taken and signed in pursuance of sub-section (7.) of this section, or a transcript of evidence given at an examination under this section, being a transcript certified, or sealed or signed, in pursuance of sub-section (4.) of section 255 of this Act—

(a) may be used in evidence in any proceedings under this Act against the person examined; and

(b) shall be open, at all reasonable times, to inspection by the trustee, the bankrupt or a creditor of the bankrupt or an agent of any such person without fee and by any other person on payment of the prescribed fee.

(10.) If a person being examined under this section before the Registrar or a magistrate is, in the opinion of the Registrar or the magistrate, guilty of prevarication or evasion or refuses or fails, without lawful excuse, to produce a document that he is required to produce in pursuance of sub-section (1.) of this section, the Registrar or the magistrate may adjourn the examination and direct that it be continued before the Court.

(11.) Where the Registrar or a magistrate so adjourns an examination, he may submit to the Court such report with respect to the examination as he thinks fit.

(12.) In this section, “magistrate” means a Stipendiary, Police or Special Magistrate of a State or Territory.

## PART VI.—ADMINISTRATION OF PROPERTY.

### *Division 1.—Proof of Debts.*

82.—(1.) Subject to this Division, all debts and liabilities, present or future, certain or contingent, to which a bankrupt was subject at the date of the bankruptcy, or to which he may become subject before his discharge by reason of an obligation incurred before the date of the bankruptcy, are provable in his bankruptcy.

Debts  
provable in  
bankruptcy.  
C.B.A. s. 81.  
E.B.A. s. 30.

(2.) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust are not provable in bankruptcy.

(3.) Penalties or fines imposed by a court in respect of an offence against a law, whether a law of the Commonwealth or not, are not provable in bankruptcy.

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

(5.) A person aggrieved by an estimate so made may appeal to the Court.

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

(7.) If the Court finds that the value of the debt or liability can be fairly estimated, the Court shall assess the value in such manner as it thinks proper.

(8.) In this section, "liability" includes—

- (a) compensation for work or labour done;
- (b) an obligation or possible obligation to pay money or money's worth on the breach of an express or implied covenant, contract, agreement or undertaking, whether or not the breach occurs, is likely to occur or is capable of occurring, before the discharge of the bankrupt; and
- (c) an express or implied engagement, agreement or undertaking, to pay, or capable of resulting in the payment of, money or money's worth, whether the payment is—
  - (i) in respect of amount—fixed or unliquidated;
  - (ii) in respect of time—present or future, or certain or dependent on a contingency; or
  - (iii) in respect of the manner of valuation—capable of being ascertained by fixed rules or only as matter of opinion.

Debt not to be considered proved until admitted.

**83.** For the purposes of this Act, a creditor shall be taken not to have proved a debt until a proof of debt lodged by him in respect of that debt has been admitted.

Manner of proving debts.  
C.B.R. r. 226.

**84.—(1.)** Subject to this Division, a creditor who desires to prove a debt in a bankruptcy shall lodge, or cause to be lodged, with the trustee a proof of debt in accordance with this section.

(2.) A proof of debt—

- (a) shall be in the form of an affidavit, specifying particulars of the debt;
- (b) shall be in accordance with the prescribed form;
- (c) shall specify the vouchers, if any, by which the debt can be substantiated; and
- (d) shall state whether or not the creditor is a secured creditor.

(3.) An affidavit constituting a proof of debt may be made by the creditor to whom the debt is owing or by a prescribed person on his behalf.

(4.) A proof of debt sent to the trustee by prepaid post as a letter shall be deemed to have been lodged with the trustee and to have been so lodged at the time at which the letter would have been delivered in the ordinary course of post unless it is shown that he did not receive it at that time.

85.—(1.) Where it appears from the bankrupt's statement of affairs that he is indebted to numerous persons employed by him for wages or salary, the debts may be proved by one of those persons on behalf of all of those persons.

Proof by  
employees.  
C.B.R. r. 228.

(2.) The proof of debt in respect of the several debts shall be in accordance with the prescribed form.

(3.) A proof of debt lodged in pursuance of this section has the same effect as if separate proofs of debt had been lodged by each of the creditors to whom it relates.

86.—(1.) Subject to this section, where there have been mutual credits, mutual debts or other mutual dealings between a person who has become a bankrupt and a person claiming to prove a debt in the bankruptcy—

Mutual credit  
and set-off.  
C.B.A. s. 82.

- (a) an account shall be taken of what is due from the one party to the other in respect of those mutual dealings;
- (b) the sum due from the one party shall be set off against any sum due from the other party; and
- (c) only the balance of the account may be claimed in the bankruptcy, or is payable to the trustee in the bankruptcy, as the case may be.

(2.) A person is not entitled under this section to claim the benefit of a set-off if, at the time of giving credit to the person who has become a bankrupt or at the time of receiving credit from that person, he had notice of an available act of bankruptcy committed by that person.

87. In proving a debt, a creditor shall make an allowance for all discounts for which an allowance would have been made if the debtor had not become a bankrupt.

Deduction of  
discounts.  
C.B.R. r. 231.

Apportionment  
to principal  
and interest of  
payments made  
before  
bankruptcy.  
C.B.R. r. 233.

88. A payment made by a debtor to a creditor before the debtor became a bankrupt and representing in part principal and in part interest shall, notwithstanding any agreement to the contrary, be deemed, for the purposes of this Act but not otherwise, to have been apportioned in satisfaction of principal and interest in the proportion that the principal bears to the amount payable as interest at the agreed rate.

Apportionment  
where security  
realized before  
or after  
bankruptcy.  
C.B.R. r. 234.

89.—(1.) Where a debt that consisted partly of principal and partly of interest was secured and the security has been realized before the debtor became a bankrupt, the proceeds of the realization shall, for the purposes of this Act but not otherwise, notwithstanding any agreement to the contrary, be deemed to have been apportioned in satisfaction of principal and interest in the proportion that the principal bore, at the time of the realization, to the amount then payable as interest at the agreed rate.

(2.) Where a debt that consists partly of principal and partly of interest is secured and the security is realized after the debtor became a bankrupt or the value of the security is estimated in the creditor's proof of debt, the amount realized or estimated shall, for the purposes of this Act but not otherwise and notwithstanding any agreement to the contrary, be deemed to have been apportioned in satisfaction of principal and interest in the proportion that the principal bears to the amount payable as interest at the agreed rate.

Proof of debt  
by secured  
creditor.  
C.B.R. rr. 235–  
237.

90.—(1.) A secured creditor is entitled to prove the whole or a part of his secured debt in the debtor's bankruptcy in accordance with the succeeding provisions of this Division, and not otherwise.

(2.) A secured creditor who surrenders his security to the trustee for the benefit of creditors generally may prove for the whole of his debt.

(3.) A secured creditor who realizes his security may prove for any balance due to him after deducting the net amount realized, unless the trustee is not satisfied that the realization has been effected in good faith and in a proper manner.

(4.) A secured creditor who has not realized or surrendered his security may—

(a) estimate its value; and

(b) prove for the balance due to him after deducting the value so estimated.

(5.) A secured creditor to whom the last preceding subsection applies shall state particulars of his security, and the value at which he estimates it, in his proof of debt.

91.—(1.) Where a secured creditor has lodged a proof of debt in respect of the balance due after deducting the estimated value of his security, the trustee may at any time redeem the security on payment to the creditor of the value at which it has been estimated by the creditor.

Redemption  
of security  
by trustee, &c.  
C.B.R. r. 238.

(2.) If the trustee is dissatisfied with the value at which a security has been estimated by a creditor, he may require the property comprised in the security to be offered for sale at such times and on such terms and conditions as are agreed on by the creditor and the trustee or, in default of agreement, as the Registrar directs.

(3.) If any such property is offered for sale by public auction, the creditor, or the trustee on behalf of the estate, is entitled to bid for, and purchase, the property.

(4.) The creditor may at any time, by notice in writing, require the trustee to elect whether he will, or will not, exercise his power of redeeming the security or of requiring it to be realized and if the trustee does not, within three months after receiving the notice, notify the creditor, in writing, that he elects to exercise the power—

- (a) he is not entitled to exercise it;
- (b) subject to the next succeeding sub-section, any equity of redemption or other interest in the property comprised in the security that is vested in the trustee vests in the creditor; and
- (c) the amount of the creditor's debt shall, for the purposes of this Division, be deemed to be reduced by the amount at which the creditor has estimated the value of the security.

(5.) The vesting of an equity of redemption or other interest in property by virtue of paragraph (b) of the last preceding sub-section is subject to compliance with any law of the Commonwealth or of a State or Territory of the Commonwealth requiring the transmission of such interests in property to be registered.

92.—(1.) Where a secured creditor has lodged a proof of debt in respect of the balance due after deducting the estimated value of his security, he may, at any time, apply to the trustee or the Court for permission to amend the proof of debt by altering the estimated value.

Amendment of  
valuation.  
C.B.R. r. 239.

(2.) If the trustee or the Court is satisfied—

- (a) that the estimate of the value of the security was made in good faith on a mistaken basis; or
- (b) that the value of the security has changed since the estimate was made,

the trustee or the Court may permit the creditor to amend his proof of debt accordingly.

(3.) Where the Court permits a creditor to amend his proof of debt, it may do so on such terms as it thinks just and equitable.

**Repayment  
of excess.  
C.B.R. r. 240.**

93.—(1.) Where a creditor who has amended a proof of debt under the last preceding section has received, by way of dividend, any amount in excess of the amount to which he would have been entitled under the amended proof of debt, he shall forthwith repay the amount of the excess to the trustee.

(2.) Where a creditor who has so amended a proof of debt has received, by way of dividend, less than the amount to which he would have been entitled under the amended proof of debt, he is entitled to be paid, out of moneys for the time being available for distribution as dividend, the amount of the deficiency before those moneys are applied in the payment of future dividends, but is not entitled to affect the distribution of a dividend declared before the amendment of the proof of debt.

**Subsequent  
realization of  
security.  
C.B.R. r. 241.**

94. Where a secured creditor who has lodged a proof of debt in respect of the balance due after deducting the estimated value of his security subsequently realizes his security, or it is realized under section 91 of this Act, the net amount realized shall be substituted for the estimated value of the security and the last preceding section applies as if the proof of debt had been amended accordingly by the creditor under section 92 of this Act.

**Proof in  
respect of  
distinct  
contracts.  
C.B.R. r. 244.**

95. Where a person was, at the time when he became a bankrupt, 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 fact that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also a member of the firm, does not prevent proof in respect of the contracts against the estates respectively liable on the contracts.

**Proof in  
respect of  
proportionate  
part of  
periodical  
payment.  
C.B.R. r. 245.**

96. Where a person who is liable to make any periodical payments (including rent) becomes a bankrupt on a day other than a day on which such a payment becomes due, the person entitled to the payments may prove in the bankruptcy for a proportionate part of a payment in respect of the period from the date when the last payment became due to the date of the bankruptcy, as if the payment accrued due from day to day.

**Production of  
bills of  
exchange and  
promissory  
notes.  
C.B.R. r. 247.**

97. Where a creditor seeks to prove a debt in respect of a bill of exchange, promissory note or other negotiable instrument or security on which the bankrupt is liable, the proof of debt shall not, subject to any order of the Court to the contrary, be admitted, unless the bill, note, instrument or security is produced to the trustee.



98.—(1.) A creditor may, with the consent of the trustee, amend a proof of debt lodged by him.

Amendment of  
proof of debt.  
C.B.R. r. 257.

(2.) This section does not authorize the amendment of the proof of debt of a secured creditor by altering the estimated value of his security.

99.—(1.) Where the trustee, a creditor or the bankrupt considers that a proof of debt has been wrongly admitted, he may apply to the Court for an order that the proof be expunged or that the amount of the admitted debt be reduced, and the Court may make an order accordingly.

Proofs wrongly  
admitted.  
C.B.R. r. 257.

(2.) Notice of an application under the last preceding sub-section shall be given, in accordance with the rules, to the creditor by whom the proof of debt was lodged.

(3.) The costs in relation to an application under sub-section (1.) of this section are in the discretion of the Court.

(4.) Where the Court makes an order under this section that a proof of debt be expunged or that the amount of an admitted debt be reduced, the person who proved the debt shall forthwith repay to the trustee any amount received by way of dividend in respect of the expunged proof of debt or any amount received by way of dividend in excess of the amount that he would have been entitled to receive if his debt had been originally admitted for the reduced amount, as the case requires.

100.—(1.) A creditor shall, unless the Court in the particular case otherwise orders, bear his own costs of proving a debt.

Costs of  
proving debts  
&c.  
C.B.R. r. 229.

(2.) The costs in relation to the amendment of a proof of debt under section 92 or 98 of this Act shall be borne by the creditor.

101. A creditor who has lodged a proof of debt is entitled to examine the proofs of debt of other creditors before the first meeting of creditors and at all reasonable times.

Inspection of  
proofs by  
creditor.  
C.B.R. r. 230.

102.—(1.) The trustee shall examine each proof of debt and the grounds of the debt sought to be proved and, subject to the power of the Court to extend the time, shall, not later than fourteen days from the date specified in the notice of intention to declare a dividend as the latest date on which creditors may lodge their proofs of debt, either—

Admission or  
rejection  
of proofs.  
C.B.R. rr. 233,  
254, 256.

(a) admit the proof of debt in whole;

(b) admit it in part and reject it in part;

- (c) reject it in whole; or
- (d) require further evidence in support of it.

(2.) Where the trustee rejects a proof of debt in whole or in part, he shall inform the creditor by whom it was lodged, in writing, of the grounds of the rejection.

Debts to be  
admitted to  
nearest dollar.

**103.—**(1.) A proof of debt shall be admitted to the nearest dollar.

(2.) For the purposes of the last preceding sub-section, where the amount of a debt sought to be proved is Fifty cents or a number of dollars and Fifty cents, the nearest dollar shall be deemed to be that ascertained by adding to the amount of the debt the sum of Fifty cents.

Appeal against  
decision of  
trustee.  
C.B.R. r. 258,  
260.

**104.—**(1.) A creditor who is dissatisfied with a decision of the trustee in respect of a proof of debt may apply to the Court to review the decision.

(2.) The Court may, upon the application, confirm, reverse or vary the decision of the trustee.

(3.) Subject to the power of the Court to extend the time, an application under this section to review a decision shall not be heard by the Court unless it was made within twenty-one days from the date on which the decision was made.

Costs of  
appeal.  
C.B.R. r. 261.

**105.—**(1.) A trustee being an official receiver is not personally liable for costs in relation to an application to review a decision by him rejecting a proof of debt in whole or in part.

(2.) A trustee not being an official receiver is not personally liable for such costs unless the Court is of opinion that there are special circumstances that justify an order that the trustee be personally liable.

Trustee may  
administer  
oaths, &c.  
C.B.R. r. 262.

**106.** A trustee may, for the purpose of carrying out his duties under this Division, administer oaths and take affirmations and affidavits, but is not entitled to charge a fee in respect of such an oath, affirmation or affidavit unless he is authorized to do so as a Commissioner for Affidavits.

Creditor not  
to receive  
more than  
the amount of  
his debt and  
interest.  
C.B.R. r. 243.

**107.** Subject to the operation of the provisions of section 91 of this Act, a creditor is not entitled to receive, in respect of a provable debt, more than the amount of the debt and any interest payable to him under this Act.

*Division 2.—Order of Payment of Debts.*

**108.** Except as otherwise provided by this Act, all debts proved in a bankruptcy rank equally and, if the proceeds of the property of the bankrupt are insufficient to meet them in full, they shall be paid proportionately.

Debts proved  
to rank equally  
except as  
otherwise  
provided.  
C.B.A. s. 89.  
E.B.A. s. 33 (7).

**109.**—(1.) Subject to this Act and to sections 221P and 221YU of the *Income Tax Assessment Act* 1936–1965, the trustee shall, before applying the proceeds of the property of the bankrupt in making any other payments, apply those proceeds in the following order:—

Priority  
payments.  
C.B.A. s. 84.  
E.B.A. ss. 33,  
130 (6).

- (a) first, in payment of an amount to the petitioning creditor equal to so much of the amount lodged by the creditor under section 48 of this Act as has been used for meeting the expenses referred to in that section;
- (b) second, in the order prescribed by the rules, in payment of the taxed costs of the petitioning creditor and the costs, charges and expenses of the administration of the bankruptcy, including the remuneration and expenses of the trustee;
- (c) third, in payment of liabilities incurred in good faith before the date of the bankruptcy by a controlling trustee in exercise of the powers conferred on him by Part X. and any remuneration due to that controlling trustee;
- (d) fourth, in payment of liabilities, commitments, expenses or remuneration referred to in section 114 of this Act;
- (e) fifth, in the case of the estate of a deceased debtor whose estate is being administered under Part XI., in payment of proper funeral and testamentary expenses;
- (f) sixth, in payment of amounts (including amounts payable by way of allowance or reimbursement under a contract of employment or under an award or agreement regulating conditions of employment, but not including amounts in respect of long service leave, annual leave, recreation leave or sick leave), not exceeding in the case of any one employee the sum of Six hundred dollars, due to or in respect of any employee of the bankrupt, whether remunerated by salary, wages, commission or otherwise, in respect of services rendered to or for the bankrupt before the date of the bankruptcy;
- (g) seventh, in payment of amounts, not exceeding in any individual case Two thousand dollars, in respect of compensation, being compensation the liability for which accrued before the date of the bankruptcy, under any Act or State Act or Ordinance of a Territory

of the Commonwealth providing for compensation for personal injury arising out of, or in the course of, employment;

- (h) eighth, all amounts due to or in respect of any employee of the bankrupt, whether remunerated by salary, wages, commission or otherwise, in respect of long service leave, annual leave, recreation leave or sick leave in respect of a period before the date of the bankruptcy;
- (i) ninth, in payment of any sum payable under section 113 of this Act;
- (j) tenth, in payment of assessed income tax or income tax and social services contribution, being tax or tax and contribution assessed under any Act or State Act or Ordinance of a Territory of the Commonwealth before the date of the bankruptcy, not exceeding in the whole one year's assessment; and
- (k) eleventh, in payment of—
  - (i) such preferences, priorities or advantages in favour of any creditor or group of creditors as regards any other creditor or group of creditors; and
  - (ii) such costs, charges and expenses incurred in the interests of creditors before the date of the bankruptcy,as a general meeting of creditors, by special resolution, resolves.

(2.) Paragraph (g) of the last preceding sub-section does not apply to the extent to which the bankrupt is indemnified under a contract of insurance against the liability referred to in that paragraph.

(3.) A special resolution shall not be deemed to have been duly passed for the purposes of paragraph (k) of sub-section (1.) of this section unless the notice convening the meeting at which it was passed contained a copy of the proposed resolution.

(4.) A payment shall not be made under paragraph (k) of sub-section (1.) of this section until twenty-eight days after—

- (a) a certificate that the notice convening the meeting was duly forwarded to the bankrupt and to each person shown as a creditor in the statement of affairs; and
- (b) a copy of the special resolution,

have been filed in the Court.

(5.) The bankrupt or a creditor may, before the expiration of the period referred to in the last preceding sub-section, apply to the Court to reverse or vary the decision of the creditors and the Court may, upon the application, make such order as it thinks proper.

(6.) Where property has been recovered or preserved by means of an indemnity for costs of litigation given by any creditor or creditors, the Court may, upon the application of the trustee or a creditor, make such order as it thinks just and equitable with respect to the distribution of the proceeds of that property with a view to giving the indemnifying creditor or creditors an advantage over other creditors in consideration of the risk run by him or them in giving the indemnity.

(7.) Except as provided in paragraph (b) of sub-section (1.) of this section, the debts in each of the classes specified in that sub-section rank equally between themselves and shall be paid in full unless the proceeds of the property of the bankrupt are insufficient to meet them, in which case they shall be paid proportionately.

(8.) In the last preceding sub-section, "debts" includes liabilities, remuneration, commitments and expenses specified in sub-section (1.) of this section.

**110.—**(1.) In the case of joint debtors, whether partners or not, the joint estate shall be applied in the first instance in payment of their joint debts, and the separate estate of each joint debtor shall be applied in the first instance in payment of his separate debts.

Application  
of estates  
of joint  
debtors.

C.B.A. s. 84 (4).  
E.B.A. s. 33 (6).

(2.) If there is a surplus in the case of any of the separate estates, it shall be dealt with as part of the joint estate and if there is a surplus in the case 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 joint debtor in the joint estate.

**111.** Any money or other property of the spouse of a bankrupt lent or made available by the spouse to the bankrupt shall be treated as assets of the bankrupt's estate, and the spouse is not entitled to any dividend as a creditor in respect of that money or other property until all claims of the other creditors for valuable consideration in money or money's worth (other than claims in respect of excess interest under the next succeeding section and claims for interest on interest-bearing debts in respect of a period after the date of the bankruptcy) have been satisfied.

Postponement  
of spouse's  
claims.

C.B.A. s. 85.  
E.B.A. s. 36.

**112.—**(1.) Where a creditor has proved a debt that is for, or includes, interest, or is founded on a claim that is for, or includes, interest, the interest or claim shall, for the purposes of dividend, be allowed at a rate not exceeding eight per centum per annum.

Interest  
on debts.

C.B.A. s. 84 (5).  
E.B.A. s. 66 (1).

(2.) The last preceding sub-section does not prevent the creditor from receiving a higher rate of interest than eight per centum per annum after all claims of the other creditors for valuable consideration in money or money's worth (including any claim by the spouse of the bankrupt under the last preceding section) have been satisfied.

(3.) In this section, "interest" includes a pecuniary consideration in lieu of interest.

Apprenticeship, &c.,  
claims.  
C.B.A. s. 87.  
E.B.A. s. 34.

113.—(1.) Where, at the time of the presentation of a petition on which, or by virtue of the presentation of which, a person became a bankrupt, a person was apprenticed, or was an articulated clerk, to the bankrupt, the sequestration order or, in the case of a debtor's petition, the presentation of the petition is, if the apprentice or clerk or a person acting on his behalf gives notice in writing to the trustee that the apprentice or clerk elects that the indenture of apprenticeship or articles of agreement be discharged, a complete discharge of that indenture or those articles.

(2.) Where such an indenture or such articles are so discharged and any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on application by or on behalf of the apprentice or clerk, pay out of the property of the bankrupt, to or for the use of the apprentice or clerk, such sum as the trustee thinks reasonable, having regard to the amount paid by or on behalf of the apprentice or clerk and to the time during which he has served with the bankrupt under the indenture or articles and to the other circumstances of the case.

(3.) The trustee shall, on the application of an apprentice or articulated clerk to the bankrupt, or of a person acting on his behalf, execute a transfer of the indenture of apprenticeship or articles of agreement to some other person.

Payment of  
liabilities, &c.,  
incurred  
under  
terminated  
deed, &c.  
C.B.A. s. 88A.

114.—(1.) Where a debtor becomes a bankrupt after a deed of assignment or a deed of arrangement executed by him, or a composition or scheme of arrangement accepted by his creditors, has, whether before or after the commencement of this Act, been declared to be void or been annulled, set aside or terminated—

- (a) any unpaid liabilities incurred in good faith, and any unpaid commitments entered into in good faith, under the terminated deed, composition or scheme of arrangement by the trustee or the debtor;
  - (b) any expenses reasonably incurred in good faith under the terminated deed, composition or scheme of arrangement by the trustee, being expenses for which he has not been reimbursed; and
  - (c) such proportionate part of the unpaid remuneration of the trustee as the creditors in relation to the terminated deed, composition or scheme of arrangement determine by resolution,
- are debts provable in the bankruptcy.

(2.) In this section—

"composition" includes a composition under Division 5 of Part IV. of the repealed Act or under Part XI. of the repealed Act;

- “deed of arrangement” includes a deed of arrangement under Part XII. of the repealed Act;
- “deed of assignment” includes a deed of assignment under Part XI. of the repealed Act;
- “scheme of arrangement” includes a scheme of arrangement under Division 5 of Part IV. of the repealed Act or under Part XI. of the repealed Act;
- “the terminated deed, composition or scheme of arrangement” means the deed, composition or scheme of arrangement that has been declared to be void or has been annulled, set aside or terminated.

*Division 3.—Property Available for Payment of Debts.*

**115.—(1.)** The bankruptcy of a person who becomes a bankrupt on a creditor's petition or by virtue of a sequestration order made under Division 6 of Part IV. or under Part X. shall be deemed to have relation back to, and to have commenced at, the time of the commission of the earliest act of bankruptcy committed by that person within the period of six months immediately preceding the date on which the creditor's petition was presented or the application for the making of the sequestration order was made, as the case may be.

Commencement of bankruptcy.  
C.B.A. s. 90.  
E.B.A. s. 37.

**(2.)** The bankruptcy of a person who becomes a bankrupt by virtue of the presentation of a debtor's petition shall—

- (a)** if he has committed any act or acts of bankruptcy within the period of six months immediately preceding the date on which the petition was presented—be deemed to have relation back to, and to have commenced at, the time of the commission of that act, or the first of those acts, as the case may be; or
- (b)** if he has not committed any such act of bankruptcy—be deemed to have commenced at the time of the presentation of the petition.

**(3.)** A creditor's petition or a sequestration order made on a creditor's petition is not invalid by reason of the commission of an act of bankruptcy before the time when the debt on which the petition was based was incurred.

**116.—(1.)** Subject to this Act—

- (a)** all property that belonged to, or was vested in, a bankrupt at the commencement of the bankruptcy, or has been acquired or is acquired by him, or has devolved or devolves on him, after the commencement of the bankruptcy and before his discharge; and
- (b)** the capacity to exercise, and to take proceedings for exercising, all such powers in, over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of the bankruptcy or at any time after the commencement of the bankruptcy and before his discharge,

Property divisible amongst creditors.  
C.B.A. s. 91.  
E.B.A. ss. 38, 43.

is property divisible amongst the creditors of the bankrupt.

(2.) The last preceding sub-section does not extend to the following property:—

- (a) property held by the bankrupt in trust for another person;
- (b) necessary wearing apparel, necessary household property of the bankrupt (including any sewing machine used for domestic purposes) and such other household property of the bankrupt, if any, as the creditors by resolution determine;
- (c) ordinary tools of trade, plant and equipment, professional instruments and reference books of the bankrupt not exceeding in the aggregate Five hundred dollars in value, and such other tools of trade, plant and equipment, professional instruments and reference books of the bankrupt, if any, as the creditors by resolution determine or as the Court, on the application of the bankrupt, determines;
- (d) policies of life assurance or endowment assurance, not being policies for pure endowment, in respect of the life of the bankrupt or of the spouse of the bankrupt that have been in force for at least two years before the date of the bankruptcy, and the proceeds of such policies received on or after the date of the bankruptcy;
- (e) policies for pure endowment, being policies that have been in force for at least five years before the date of the bankruptcy, and the proceeds of such policies received on or after the date of the bankruptcy;
- (f) policies for annuities, being policies that have been in force for at least five years before the date of the bankruptcy, to the extent to which they provide for payment of an annuity not exceeding One thousand two hundred dollars in the aggregate, and the payments made on or after the date of the bankruptcy under such policies to the extent to which those payments do not exceed One thousand two hundred dollars per annum in the aggregate;
- (g) any right of the bankrupt to recover damages or compensation—
  - (i) for personal injury or wrong done to the bankrupt, the spouse of the bankrupt or a member of the family of the bankrupt; or
  - (ii) in respect of the death of the spouse of the bankrupt or a member of the family of the bankrupt,

and any damages or compensation recovered by the bankrupt (whether before or after he became a bankrupt) in respect of such an injury or wrong or the death of such a person; and



- (h) subject to section 131 of this Act, the separate property of a married woman the income of which is subject to a restraint on anticipation.

117.—(1.) Where—

- (a) a bankrupt is or was insured under a contract of insurance against liabilities to third parties; and  
 (b) a liability against which he is or was so insured has been incurred (whether before or after he became a bankrupt),

Policies of insurance against liabilities to third parties.  
 C.B.A. s. 84 (1A).

the right of the bankrupt to indemnity under the policy vests in the trustee and any amount received by the trustee from the insurer under the policy in respect of the liability shall, if the liability has not already been satisfied, be paid in full forthwith to the third party to whom it has been incurred.

(2.) The last preceding sub-section does not limit the rights of the third party in respect of any balance due to him after the payment referred to in that sub-section has been made.

(3.) This section applies notwithstanding any agreement to the contrary, whether entered into before or after the commencement of this Act.

118.—(1.) Where—

- (a) a creditor has issued execution against property of a debtor or instituted proceedings to attach a debt due to a debtor or to enforce a charge, or a charging order, against property of a debtor—  
     (i) within six months before the presentation of a petition against the debtor; or  
     (ii) after the presentation of a petition against the debtor; and

Executions, attachments, &c., before bankruptcy.  
 C.B.A. s. 92.  
 F.B.A. s. 40.

- (b) the debtor subsequently becomes a bankrupt on, or by virtue of the presentation of, the petition,

the creditor shall pay to the trustee in the bankruptcy an amount equal to the amount, if any, received by the creditor as a result of the execution, attachment or enforcement of the charge or the charging order, less the taxed costs of the execution, attachment or enforcement of the charge or the charging order.

(2.) Where the creditor has paid to the trustee an amount in accordance with the last preceding sub-section, he may prove in the bankruptcy for his debt as an unsecured creditor as if the execution or attachment or the enforcement of the charge or the charging order, as the case may be, had not taken place.

(3.) Subject to the next succeeding sub-section, where notice in writing of the presentation of a creditor's petition against a person is given to a creditor, the creditor shall not take any action, or any further action, as the case may be, to attach a debt due to that person or to enforce a charge or a charging order against property of that person unless and until the petition is withdrawn or dismissed or has lapsed.

(4.) The last preceding sub-section does not prevent a creditor from performing a binding contract for the sale of property entered into before he received the notice referred to in that sub-section.

(5.) A creditor who contravenes sub-section (3.) of this section is guilty of contempt of court.

(6.) Notwithstanding anything contained in this Act, a person who purchases property in good faith—

(a) under a sale by the sheriff in consequence of the issue of execution against property of a person who, after the sale, becomes a bankrupt; or

(b) under a sale in consequence of the enforcement by a creditor of a charge or a charging order against property of a person who, after the sale, becomes a bankrupt,

acquires a good title to it as against the trustee in the bankruptcy.

(7.) In this section—

“charge” means a charge created by a law of the Commonwealth or of a State or Territory of the Commonwealth upon registration of a judgment in any registry;

“charging order” means a charging order made by a court in respect of a judgment.

Duties of  
sheriff, &c.,  
after receiving  
notice of  
presentation of  
petition, &c.  
C.B.A. s. 93.  
E.B.A. s. 42.

119.—(1.) Subject to this section, where notice in writing of the presentation of a creditor's petition against a person (in this sub-section referred to as “the debtor”) is given to a sheriff, the sheriff—

(a) shall refrain from taking any action to sell property of the debtor in pursuance of any process of execution issued by or on behalf of a creditor; and

(b) shall not pay to the creditor by whom or on whose behalf the process of execution was issued or any person on his behalf the proceeds of the sale of

property of the debtor that has been sold in pursuance of any such process or any moneys seized, or paid to avoid seizure or sale of property of the debtor, under any such process,

unless and until the petition is withdrawn or dismissed or has lapsed.

(2.) Subject to this section, where notice in writing of the presentation of a creditor's petition against a person is given to the registrar or other appropriate officer of any court to which proceeds of the sale of property of that person or other moneys have been paid by a sheriff in pursuance of a process of execution issued by or on behalf of a creditor, any of those proceeds or moneys not paid out of court shall not be paid to the creditor or any person on his behalf unless and until the petition is withdrawn or dismissed or has lapsed.

(3.) Where a person has become a bankrupt (whether on a creditor's petition or otherwise), the trustee may serve notice in writing of that fact on a sheriff or the registrar or other appropriate officer of a court and thereupon—

(a) the sheriff shall deliver or pay to the trustee—

(i) any property of the bankrupt in his possession under a process of execution issued by or on behalf of a creditor; and

(ii) any proceeds of the sale of property of the bankrupt or other moneys in his possession, being proceeds of the sale of property sold, whether before or after the person became a bankrupt, in pursuance of any such process or moneys seized, or paid to avoid seizure or sale of property of the bankrupt, whether before or after he became a bankrupt, under any such process; or

(b) the registrar or other officer of the court shall pay to the trustee any proceeds of the sale of property of the bankrupt or other moneys in court, being proceeds of sale or other moneys paid into court, whether before or after the person became a bankrupt, by a sheriff in pursuance of a process of execution issued by or on behalf of a creditor, requires.

(4.) Where—

(a) property is, or proceeds of the sale of property or other moneys are, required by the last preceding sub-section to be delivered or paid to a trustee; or

(b) a sheriff has, in pursuance of sub-section (1.) of this section, refrained from taking action to sell property

of a person, being real property, and that person becomes a bankrupt on the petition referred to in that sub-section,

the costs of the execution are a first charge on that property or those proceeds of sale or other moneys.

(5.) For the purpose of giving effect to the charge referred to in the last preceding sub-section, the sheriff, registrar or other officer may retain, on behalf of the creditor entitled to the benefit of the charge, such amount from the proceeds of sale or other moneys referred to in that sub-section as he thinks necessary for the purpose.

Avoidance of  
voluntary and  
marriage  
settlements.  
C.B.A. s. 94,  
E.B.A. s. 42.

120.—(1.) A settlement of property, whether made before or after the commencement of this Act, not being—

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

(b) a settlement made on or for the spouse or children of the settlor of property that has accrued to the settlor after marriage in right of the spouse of the settlor, is, if the settlor becomes a bankrupt within two years after the date of the settlement, void as against the trustee in the bankruptcy.

(2.) A settlement of property, whether made before or after the commencement of this Act, not being a settlement referred to in paragraph (a) or (b) of the last preceding sub-section or a settlement that is void as against the trustee by reason of the operation of that sub-section, is, if the settlor becomes a bankrupt within five years after the date of the settlement, void as against the trustee in the bankruptcy, unless the parties claiming under the settlement prove—

(a) 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

(b) that the settlor's interest in the property passed to the trustee of the settlement or to the donee under the settlement on its execution.

(3.) A covenant or contract made, whether before or after the commencement of this Act, in consideration of marriage either—

(a) for the future payment of money to the settlor's spouse or children; or

(b) for the future settlement of property on or for the settlor's spouse or children,

being money or property in which the settlor did not, at the date of the marriage, have any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of, or in right of, the settlor's spouse, is, if the settlor becomes a bankrupt before the covenant or contract has been executed, void as against the trustee in the bankruptcy.

(4.) The persons entitled under the covenant or contract may claim for dividend in the settlor's bankruptcy under the covenant or contract, but such a claim shall be postponed until all claims of the other creditors for valuable consideration in money or money's worth (including claims under section 111 of this Act and claims for interest on interest-bearing debts in respect of a period after the date of the bankruptcy) have been satisfied.

(5.) A payment of money or transfer of property made by the settlor in pursuance of such a covenant or contract, whether before or after the commencement of this Act, is void as against the trustee in the settlor's bankruptcy, unless the persons to whom the payment or transfer was made prove—

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

(6.) Where any such payment of money or transfer of property is void as against the trustee in the settlor's bankruptcy by virtue of the last preceding sub-section, the persons to whom the payment was made or the property was transferred are entitled to claim for dividend under the covenant or contract as if it had not been executed at the commencement of the bankruptcy.

(7.) Nothing in this section shall be taken to affect or prejudice the title or interest of a person who has, in good faith and for valuable consideration, purchased or acquired from the persons entitled to the benefit of the settlement, covenant or contract or from the trustee of the settlement the money or property the subject of the settlement, covenant or contract or an interest in that money or property.

(8.) In this section, "settlement of property" includes any disposition of property.

Fraudulent  
dispositions.  
Cf. 13 Eliz. c. 5.

**121.**—(1.) Subject to this section, a disposition of property, whether made before or after the commencement of this Act, with intent to defraud creditors, not being a disposition for valuable consideration in favour of a person who acted in good faith, is, if the person making the disposition subsequently becomes a bankrupt, void as against the trustee in the bankruptcy.

(2.) Nothing in this section shall be taken to affect or prejudice the title or interest of a person who has, in good faith and for valuable consideration, purchased or acquired the property the subject of the disposition or any interest in that property.

(3.) In this section, “disposition of property” includes a mortgage of property or a charge on or in respect of property.

Avoidance of  
preferences.  
C.B.A. s. 95.  
E.B.A. s. 44.

**122.**—(1.) A conveyance or transfer of property, a charge on property, a payment made or an obligation incurred by a person who is unable to pay his debts as they become due from his own money (in this section referred to as “the debtor”), in favour of a creditor, having the effect of giving that creditor a preference, priority or advantage over other creditors, being a conveyance, transfer, charge, payment or obligation executed, made or incurred—

- (a) within six months before the presentation of a petition on which, or by virtue of the presentation of which, the debtor becomes a bankrupt; or
- (b) after the presentation of a petition on which the debtor becomes a bankrupt and before the debtor becomes a bankrupt,

is void as against the trustee in the bankruptcy.

(2.) Nothing in this section affects—

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

(3.) The burden of proving the matters referred to in the last preceding sub-section lies upon the person claiming to have the benefit of that sub-section.

(4.) For the purposes of this section—

- (a) a conveyance, transfer, charge, payment or obligation shall be deemed to have been executed, made or

incurred in favour of a creditor if it is executed, made or incurred in favour of a person in trust for that creditor;

- (b) a payment of tax or municipal or other local rates under an Act or State Act or Ordinance of a Territory of the Commonwealth shall be deemed to be a payment made for valuable consideration and in the ordinary course of business; and
- (c) a creditor shall be deemed not to be a purchaser, payee or encumbrancer in good faith if the conveyance, transfer, charge, payment or obligation was executed, made or incurred under such circumstances as to lead to the inference that the creditor knew, or had reason to suspect—
  - (i) that the debtor was unable to pay his debts as they became due from his own money; and
  - (ii) that the effect of the conveyance, transfer, charge, payment or obligation would be to give him a preference, priority or advantage over other creditors.

(5.) Where—

- (a) a conveyance, transfer or charge is set aside, or a payment is recovered, by the trustee in a bankruptcy in consequence of the operation of this section; or
- (b) an obligation is void as against the trustee in a bankruptcy by force of this section,

the creditor in whose favour the conveyance, transfer, charge, payment or obligation was executed, made or incurred may prove in the bankruptcy as if the conveyance, transfer, charge, payment or obligation had not been executed, made or incurred.

(6.) This section extends to conveyances, transfers, charges, payments and obligations executed, made or incurred before the commencement of this Act.

(7.) In this section, “tax” includes any amount payable as provisional tax and contribution, or as provisional tax, in accordance with Division 3 of Part VI. of the *Income Tax Assessment Act 1936–1944*, or of that Act as amended.

**123.—(1.)** Subject to sections 118 to 122 (inclusive) of this Act, nothing in this Act invalidates, in any case where a debtor becomes a bankrupt—

- (a) a payment by the debtor to any of his creditors;
- (b) a conveyance, transfer or assignment by the debtor for valuable consideration;
- (c) a contract, dealing or other transaction by or with the debtor for valuable consideration; or
- (d) any transaction to the extent of a present advance made by an existing creditor,

Protection  
of certain  
transactions  
against relation  
back, &c.  
C.B.A. s. 96.  
E.B.A. s. 43.

if—

- (e) the transaction took place on or before the date on which the debtor became a bankrupt;
- (f) the person, other than the debtor, with whom it took place, did not, at the time of the transaction, have notice of the presentation of a petition against the debtor; and
- (g) the transaction was in good faith and in the ordinary course of business.

(2.) The burden of proving the matters referred to in paragraphs (e), (f) and (g) of the last preceding sub-section in relation to a transaction lies upon the person who relies on the validity of the transaction.

(3.) For the purposes of sub-section (1.) of this section, a transaction shall not be deemed not to have been in good faith and in the ordinary course of business by reason only that, at the time of the transaction, the person, other than the debtor, with whom it took place had notice of the commission of an act of bankruptcy by the debtor.

(4.) Nothing in this Act invalidates a payment by a debtor, on or before the date on which he became a bankrupt, of, or in respect of, a penalty or fine imposed on him by a court in respect of an offence against a law, whether a law of the Commonwealth or not.

(5.) Nothing in this Act invalidates, in any case where a debtor, being—

- (a) a person required by Division 2 of Part VI. of the *Income Tax Assessment Act 1936–1940*, or of that Act as amended, to make a deduction from the salary or wages of an employee; or
- (b) a person required by Division 4 of Part VI. of the *Income Tax and Social Services Contribution Assessment Act 1936–1959*, or of that Act as amended, to make a deduction from a dividend,

becomes a bankrupt, a payment to the Commissioner of Taxation (including a payment by means of the purchase of tax stamps) by the debtor, on or before the date on which he became a bankrupt, of an amount that he was required so to pay in respect of deductions so made.

(6.) Nothing in this Act invalidates—

- (a) a payment by a debtor, on or before the date on which he became a bankrupt, of additional tax or penal tax under a law of the Commonwealth or of a State or Territory of the Commonwealth, not being additional tax or penal tax imposed by a court; or



- (b) a payment by a person who becomes a bankrupt, being a payment made on or before the date on which he became a bankrupt, under section 218 of the *Income Tax Assessment Act 1936–1965* or under any similar provision of a law of the Commonwealth or of a State or Territory of the Commonwealth.

(7.) In this section—

- “payment” includes the drawing, making or indorsing of a bill of exchange, cheque or promissory note;  
 “transaction” includes payment, delivery, conveyance, transfer, assignment, contract or dealing.

**124.—(1.)** Notwithstanding anything contained in this Act, a payment of money or delivery of property (including a security or a negotiable instrument) to, or in accordance with the order or direction of, a person who becomes, or has become, a bankrupt or a person claiming by assignment from him is a good discharge to the person paying the money or delivering the property—

Protection of certain payments, &c., to bankrupt.  
 C.B.A. ss. 96A, 97.  
 E.B.A. s. 46.

- (a) if, in the case of a payment or delivery made on or before the first-mentioned person becomes a bankrupt—it is made in good faith and in the ordinary course of business; or  
 (b) if, in the case of a payment or delivery made after the first-mentioned person became a bankrupt—it is made in good faith, in the ordinary course of business and without negligence.

(2.) The burden of proving the matters referred to in the last preceding sub-section lies upon the person who relies on the validity of the payment or delivery of property.

(3.) For the purposes of this section, a payment or delivery of property shall not be deemed not to have been made in good faith and in the ordinary course of business by reason only that, at the time of the payment or delivery, the person by whom it was made—

- (a) knew or had reason to suspect that the person to whom, or in accordance with whose order or direction, it was made was unable to pay his debts as they became due from his own money; or  
 (b) had notice of the commission of an act of bankruptcy by that person or of the presentation of a creditor's petition against that person.

**125.—(1.)** Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, he shall forthwith inform the trustee, in writing, of the

Bank accounts of undischarged bankrupt.  
 C.B.A. s. 98 (8.).  
 E.B.A. s. 47.

existence of the account and, subject to the next succeeding sub-section, shall not make any further payments out of the account, except under an order of the Court of which a copy has been served on him or in accordance with written instructions from the trustee.

(2.) If, within one month from the date on which the banker informed the trustee of the existence of the account, a copy of an order of the Court in respect of the account has not been served on the banker and he has not received written instructions from the trustee within that period in respect of the account, the banker is entitled to act without regard to any claim or right the trustee may have in respect of the account.

Dealings with  
undischarged  
bankrupt in  
respect of  
after-acquired  
property.  
C.B.A. s. 98 (1.),  
(2.).  
E.B.A. s. 47.

126.—(1.) A transaction by a bankrupt with a person dealing with him in good faith and for valuable consideration in respect of property acquired by the bankrupt after he became a bankrupt is, if completed before any intervention by the trustee, valid against the trustee, and any estate or interest in that property which, by virtue of this Act, is vested in the trustee or in The Official Receiver in Bankruptcy shall determine and pass in such manner and to such extent as is necessary for giving effect to the transaction.

(2.) For the purposes of the last preceding sub-section, the receipt of any money, security or negotiable instrument from, or in accordance with the order or direction of, a bankrupt by his banker, and any payment of money or delivery of a security or negotiable instrument made to, or in accordance with the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with that banker dealing with him for valuable consideration.

(3.) The lodging by the trustee of a caveat having the effect of forbidding the registration of an instrument affecting any land, or an estate or interest in any land, shall be deemed to be a sufficient intervention for the purposes of this section in relation to a transaction in respect of that land or that estate or interest in land.

No claim to be  
made by  
trustee to  
property after  
twenty years.  
C.B.A. s. 98 (3.).

127. After the expiration of twenty years from the date on which a person became a bankrupt, a claim shall not be made by the trustee in the bankruptcy to any property of the bankrupt, and that property shall, subject to the rights, if any, of a person other than the trustee in respect of the property, be deemed to be vested in the bankrupt, or a person claiming through or under him, as the case may be.

Notice to  
trustee where  
identity of  
vendor, &c.,  
with bankrupt  
in doubt.  
C.B.A. s. 98  
(4.) (7.).

128.—(1.) Where a doubt arises as to the identity with a bankrupt of a person appearing in the title to any property, an intending or actual vendor, mortgagor or lessor of the property or applicant to bring land under the provisions of any Act, State

Act or Ordinance relating to title to land, or a resuming or constructing authority under any Act, State Act or Ordinance may give to the trustee in the bankruptcy a notice containing particulars of the property in question and of the person whose identity with the bankrupt is in question, and a statement of his intention to sell, mortgage or lease, or complete a sale, mortgage or lease of, the property or to bring the property under the provisions of an Act, State Act or Ordinance relating to title to land, or to pay compensation in respect of the resumption of the property, as the case may be.

(2.) The trustee may, within three months after the notice was given, file with the Registrar of Titles or Registrar-General or other appropriate officer of the Commonwealth, or of the State or Territory concerned, a memorandum claiming the property in respect of which the notice was given.

(3.) If the trustee does not file a memorandum claiming the property in accordance with the last preceding sub-section, he is not entitled at a future time to assert his title to that property or to make any claim in respect of that property as against the vendor, mortgagor, lessor, applicant or the resuming or constructing authority, as the case may be, or a person claiming under or through the vendor, mortgagor, lessor or applicant.

(4.) The trustee may, at any time before the expiration of the period of three months referred to in sub-section (2.) of this section, withdraw a memorandum filed under that sub-section.

#### *Division 4.—Realization of Property.*

**129.—**(1.) The trustee shall forthwith take possession of all the property of the bankrupt capable of manual delivery, including all deeds, books and documents of the bankrupt.

Trustee to take possession of property of the bankrupt.  
C.B.A. s. 99.  
E.B.A. s. 48.

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

(3.) A person is not entitled, as against the trustee, to withhold possession of the books of account or any papers or documents of the bankrupt relating to the accounts or to the trade dealings or affairs of the bankrupt or to claim any lien on any such papers or documents.

(4.) If a person has in his possession or power any money or security that he is not by law entitled to retain as against the bankrupt or the trustee, he shall pay or deliver it to the trustee.

(5.) A person who does not pay or deliver to the trustee any money or security that he is required by the last preceding sub-section so to pay or deliver is guilty of contempt of court.

(6.) If the person so failing to pay or deliver any money or security is a corporation, both the corporation and each officer of the corporation who is responsible for the non-compliance are guilty of contempt of court.

Seizure of  
property of  
bankrupt.  
C.B.A. s. 100.  
E.B.A. s. 49.

130. A person acting under warrant of the Court may search for and seize property of a bankrupt in the custody or possession of the bankrupt or of any other person, and, for that purpose, may break open any house, building, room or receptacle of the bankrupt or any other person where the bankrupt or any of his property is or is supposed to be.

Income of  
bankrupt.  
C.B.A. ss. 101,  
102.  
E.B.A. ss. 51,  
52.

131.—(1.) Subject to this section, a bankrupt who is in receipt of income is entitled to retain it for his own benefit.

(2.) The Court may, upon the application of the trustee, order that all, or such part as the Court thinks fit, of the income of the bankrupt shall be paid by the bankrupt to the trustee for the benefit of the bankrupt's creditors.

(3.) For the purposes of the last preceding sub-section, "income" includes income of a married woman that is subject to a restraint on anticipation, but does not include pension or payments in the nature of pension that, by a law of the Commonwealth or of a State or Territory of the Commonwealth, is exempted from attachment or made incapable of being assigned or charged.

(4.) In exercising its powers under this section in respect of income of a married woman that is subject to a restraint on anticipation, the Court shall have regard, amongst other things, to the means of subsistence available for the woman and her children.

Vesting and  
transfer of  
property.  
C.B.A. s. 103.  
E.B.A. s. 53.

132.—(1.) Subject to this section, where a trustee is appointed by the creditors, the property of the bankrupt passes to and vests in the trustee so appointed on the day on which the appointment takes effect.

(2.) Subject to this section, the property of the bankrupt passes from trustee to trustee and vests in the trustee for the time being during his continuance in office, without any conveyance, assignment or transfer.

(3.) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered, and enables the trustee to be registered as the owner of any such property that is part of the property of the bankrupt, that property, notwithstanding that it vests in equity in the trustee by virtue of this section, does not vest in the trustee at law until the requirements of that law have been complied with.

(4.) In the last two preceding sub-sections, a reference to the trustee shall be deemed to include a reference to The Official Receiver in Bankruptcy where an official receiver becomes the trustee.

Disclaimer of  
onerous  
property.  
C.B.A. s. 104.  
E.B.A. s. 54.

133.—(1.) Subject to this section, where any part of the property of the bankrupt consists of—

(a) land of any tenure burdened with onerous covenants;

(b) property (including land) that is unsaleable or is not readily saleable; or

(c) unprofitable contracts,

the trustee may, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation to it and notwithstanding, in the case of property the transfer of which is required by a law of the Commonwealth or of a State or Territory of the Commonwealth to be registered, that he has not become the registered owner of that property, by writing signed by him, at any time disclaim the property.

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

(3.) Where a disclaimer in respect of any property is filed with the Registrar, being property the transmission of which is required by a law of the Commonwealth or of a State or Territory of the Commonwealth to be registered, the Registrar shall, as soon as practicable, give notice of the disclaimer to the registrar or other officer who has the function under that law of registering the transmission of that property.

(4.) A trustee is not entitled to disclaim a lease without the leave of the Court unless—

(a) he has, in accordance with the rules, given to the lessor and, if the bankrupt has sub-let the whole or any part of the leased property or has mortgaged the lease, to each sub-lessee or mortgagee, twenty-eight days' notice in writing of his intention to disclaim the lease; and

(b) no person to whom the trustee has given such notice has, within twenty-eight days after it was given to him, required the trustee, in accordance with the rules, to apply to the Court for leave to disclaim the lease.

(5.) The Court may, in relation to an application for leave to disclaim a lease under this section—

(a) impose such terms as a condition of granting the leave; and

(b) make such orders with respect to fixtures, improvements and other matters arising out of the lease,

as the Court considers just and equitable.

(6.) Where—

(a) an application in writing has been made to the trustee by a person interested in property requiring him to

decide whether he will disclaim the property or not; and

- (b) the trustee has, for a period of twenty-eight days after the receipt of the application, or such extended period as is allowed by the Court, declined or neglected to disclaim the property,

the trustee is not entitled to disclaim the property under this section and, in the case of a contract, he shall be deemed to have adopted it.

(7.) The Court may, on the application of a person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as the Court considers just and equitable.

(8.) Damages so payable may be proved as a debt in the bankruptcy.

(9.) The Court may, on application by a person either claiming an interest in, or being under a liability not discharged by this Act in respect of, disclaimed property, and after hearing such persons as it thinks fit, make an order, on such terms as the Court considers just and equitable, for the vesting of the property in, or delivery of the property to, a person entitled to it or a person in whom, or to whom, it seems to the Court to be just and equitable that it should be vested or delivered, or a trustee for that person.

(10.) Subject to the next succeeding sub-section, where an order vesting property in a person is made under the last preceding sub-section, the property to which it relates vests forthwith in the person named in the order for that purpose without any conveyance, transfer or assignment.

(11.) Where—

- (a) the property to which such an order relates is property the transfer of which is required by a law of the Commonwealth or of a State or Territory of the Commonwealth to be registered; and
- (b) that law enables the registration of such an order, the property, notwithstanding that it vests in equity in the person named in the order, does not vest in that person at law until the requirements of that law have been complied with.

(12.) A person aggrieved by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of any loss he has suffered by reason of the disclaimer and may prove the loss as a debt in the bankruptcy.

(13.) In this section—

“mortgage” includes charge;

“mortgagee” includes the person entitled to the benefit of a charge.

**134.**—(1.) Subject to this Act, the trustee may do all or any of the following things:—

Power of trustee to deal with property.  
C.B.A. s. 103.  
E.B.A. s. 55.

- (a) sell all or any part of the property of the bankrupt;
- (b) carry on a business of the bankrupt so far as may be necessary for its beneficial disposal or winding-up;
- (c) postpone the winding-up of the estate;
- (d) prove in respect of any debt due to the bankrupt;
- (e) compromise any debt not exceeding Ten thousand dollars claimed to be due to the bankrupt or any claim not exceeding Ten thousand dollars by the bankrupt;
- (f) make a compromise with a creditor or a person claiming to be a creditor in respect of a debt provable, or claimed to be provable, in the bankruptcy and not claimed to exceed Ten thousand dollars;
- (g) make a compromise in respect of any claim not exceeding Ten thousand dollars arising out of the administration of the estate of the bankrupt, whether the claim is made by or against the trustee;
- (h) deal with property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt could deal with it if he were not a bankrupt;
- (i) obtain such advice or assistance as he considers desirable relating to the administration of the estate or to the conduct or affairs of the bankrupt;
- (j) bring, institute or defend any action or other legal proceeding relating to the administration of the estate; and
- (k) execute powers of attorney, deeds or other instruments for the purpose of carrying the provisions of this Act into effect.

(2.) Paragraph (a) of the last preceding sub-section does not authorize the trustee to sell by private contract any property having a value exceeding Ten thousand dollars.

(3.) Subject to this Act, the trustee may use his own discretion in the administration of the estate.

(4.) The trustee may at any time apply to the Court for directions in respect of a matter arising in connexion with the administration of the estate.

**135.**—(1.) The trustee may, with the permission of the creditors granted by resolution passed at a general meeting or of the committee of inspection or with the leave of the Court, do all or any of the following things:—

Powers exercisable by trustee with permission.  
C.B.A. ss. 107, 108.  
E.B.A. ss. 56-58.

- (a) sell, by private contract, any property of the bankrupt having a value exceeding Ten thousand dollars;

- (b) accept, without terms or conditions, or subject to terms and conditions, a sum of money payable at a future time as the consideration or part of the consideration for the sale of any property of the bankrupt;
- (c) lease any property of the bankrupt;
- (d) mortgage or charge all or any part of the property of the bankrupt for the purpose of raising money for the payment of the debts provable in the bankruptcy;
- (e) refer any dispute to arbitration;
- (f) make a compromise in respect of any debt exceeding Ten thousand dollars claimed to be due to the bankrupt, or any claim exceeding Ten thousand dollars by the bankrupt;
- (g) make a compromise with a creditor or a person claiming to be a creditor in respect of a debt provable, or claimed to be provable, in the bankruptcy and claimed to exceed Ten thousand dollars;
- (h) make a compromise in respect of any claim exceeding Ten thousand dollars arising out of the administration of the estate of the bankrupt, whether the claim is made by or against the trustee;
- (i) divide amongst the creditors, in its existing form and according to its estimated value, property that, by reason of its peculiar nature or other special circumstances, cannot readily or advantageously be sold;
- (j) make such allowance out of the estate as he thinks just to the bankrupt, the spouse of the bankrupt or the family of the bankrupt; and
- (k) employ the bankrupt himself—
  - (i) to superintend the management of his property or of part of his property;
  - (ii) to carry on his trade or business for the benefit of his creditors; or
  - (iii) to aid in any other respect in administering his property,and make such allowance out of the estate to the bankrupt in consideration of his services as the trustee thinks reasonable.

(2.) An allowance made to the bankrupt in pursuance of paragraph (k) of the last preceding sub-section may be reduced by the Court upon the application of an interested person.

(3.) Permission or leave given for the purposes of sub-section (1.) of this section shall not be general permission or leave to do all or any of the things referred to in that sub-section, but shall be permission or leave to do only the particular things for which permission or leave is sought in a specified case.



(4.) The failure by a trustee to obtain the permission or leave required by sub-section (1.) of this section in relation to a transaction by the trustee does not affect the validity of the transaction if—

- (a) the transaction was for valuable consideration; and
- (b) the person with whom it took place acted in good faith and without notice of the failure to obtain the permission or leave.

136.—(1.) Where any property of the bankrupt is subject to a mortgage, the trustee may, upon giving six months' notice in writing to the mortgagee of his intention to do so or upon paying six months' interest in lieu of notice, require the mortgagee to discharge the mortgage notwithstanding that the due time for payment of the moneys owing under the mortgage has not arrived and, upon tender of the moneys secured by the mortgage and, if appropriate, interest in lieu of notice, the mortgagee is bound to execute such documents as are necessary in consequence of the payment.

Right to pay off mortgages.  
C.B.A. s. 106.

(2.) The rights conferred on the trustee by the last preceding sub-section are in addition to any rights to pay off the whole or part of the moneys secured by the mortgage before the due time conferred on the mortgagor by the mortgage instrument or by a law of a State or Territory of the Commonwealth.

137.—(1.) Where goods of a bankrupt are held by a person by way of security, the trustee may, after giving notice in writing of his intention to do so, inspect the goods.

Right of trustee to inspect goods held as security.

(2.) Where notice has been given under the last preceding sub-section, the person holding the goods is not entitled to realize his security until he has given the trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so.

C.B.A. s. 109.  
E.B.A. s. 59.

(3.) Nothing in this section affects the rights or title of a bona fide purchaser for value who purchased, or entered into an agreement to purchase, goods held by way of security without notice of the fact that the person from whom the goods were purchased or with whom the agreement to purchase the goods was made had received a notice under this section.

138.—(1.) Where—

- (a) the property of a bankrupt includes rights in respect of industrial property; and
- (b) the bankrupt is liable to pay royalties or a share of profits to a person in respect of those rights,

Limitation of trustee's power in respect of copyright, patents, &c.  
C.B.A. s. 110.  
E.B.A. s. 60.

the trustee is not entitled—

- (c) to exercise those rights except upon condition that he pays to that person such sums by way of royalty or

share of profits as would have been payable by the bankrupt; or

- (d) without the consent of that person or of the Court, to assign or transfer, or grant any licence or permission in respect of, those rights, except upon terms that will secure to that person payments by way of royalty or share of profits at a rate not less than that at which the bankrupt was liable to pay.

(2.) In this section—

“industrial property” means—

- (a) the copyright in any work;
- (b) a patent in respect of an invention;
- (c) a registered trade mark; or
- (d) the copyright in a registered design;

“registered design” means a design registered under a law of the Commonwealth relating to industrial designs;

“registered trade mark” means a trade mark registered under a law of the Commonwealth relating to trade marks.

Protection of  
trustees from  
personal  
liability in  
certain cases.  
C.B.A. s. 111.  
E.B.A. s. 61.

139.—(1.) Where—

- (a) the trustee has seized or disposed of any goods in the possession or on the premises of a bankrupt without notice of any claim by any person in respect of those goods; and
- (b) the goods were not, at the date of the bankruptcy, the property of the bankrupt,

the trustee is not personally liable for any loss or damage arising from the seizure or disposal sustained by a person claiming the goods, or for the costs of proceedings taken to establish a claim to the goods, unless the court in which the claim is made is of the opinion that the trustee has been guilty of negligence in respect of the seizure or disposal.

(2.) The trustee is not personally liable for any rates, land tax or municipal or other statutory charges imposed by or under a law of the Commonwealth or of a State or Territory of the Commonwealth upon or in respect of property forming part of the estate of the bankrupt, being rates, land tax or municipal or other statutory charges that fall due on or after the date of the bankruptcy, except to the extent, if any, of the rents and profits received by the trustee in respect of that property on or after the date of the bankruptcy.

(3.) Where a trustee of the estate of a bankrupt carries on a business previously carried on by the bankrupt, he is not personally liable for any payment in respect of long service leave for which the bankrupt was liable or for any payment in respect of long service leave to which a person employed by him in his capacity as

trustee of the estate of the bankrupt, or the legal personal representative of such a person, becomes entitled after the date of the bankruptcy.

(4.) This section does not affect any liability of the trustee of the estate of a bankrupt other than personal liability.

*Division 5.—Distribution of Property.*

**140.**—(1.) The trustee of the estate of a bankrupt shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

Declaration and distribution of dividends.  
C.B.A. ss. 112, 114 (2.).  
E.B.A. ss. 62, 64.

(2.) Subject to the retention of such sums as are necessary to meet the costs of administration or to give effect to the provisions of this Act, the trustee shall distribute as dividend all moneys in hand.

(3.) The trustee shall, before declaring a dividend (being a dividend of not less than Five cents in the dollar)—

(a) cause notice of his intention to do so to be published in the prescribed manner; and

(b) send reasonable notice of his intention to declare the dividend to each creditor known to him who has not lodged a proof of his debt and whose address is known to the trustee.

(4.) The trustee shall specify in the notice of intention to declare a dividend published under the last preceding sub-section the latest date on which creditors may lodge their proofs of debt.

(5.) When the trustee has declared a dividend, he shall, subject to the next succeeding sub-section, send to each creditor who has proved his debt a cheque for the amount due to him and a statement in the prescribed form as to the realization and distribution of the estate.

(6.) The trustee shall not pay to a creditor a dividend that is less than Fifty cents.

**141.** Where one partner of a firm becomes bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm or any of them shall not receive a 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,  
C.B.A. s. 113 (1).  
E.B.A. s. 63 (1).

**142.** Where joint and separate estates are being administered, the expenses of and incidental to the administration of the estates shall be fairly apportioned by the trustee between the joint and separate estates, having regard to the work done for, and the benefit received by, each estate.

Apportionment of expenses of administration of joint and separate estates.  
C.B.A. s. 113 (2).  
E.B.A. s. 63 2).

**143.** In the calculation and distribution of a dividend, the trustee shall make provision for—

(a) debts provable in bankruptcy appearing from the bankrupt's statement of affairs or otherwise to be due to persons resident in places so distant from the place

Provision to be made for creditors residing at a distance, &c.  
C.B.A. s. 114.  
E.B.A. s. 64.

where the trustee is acting that in the ordinary course of communication those persons would not have had sufficient time to lodge their proofs of debt; and

- (b) debts provable in bankruptcy in respect of which proofs of debt have been lodged but have not been admitted.

Right of  
creditor who  
has not proved  
debt before  
declaration of  
dividend.  
C.B.A. s. 113.  
E.B.A. s. 65.

**144.** A creditor who has not proved his debt before the declaration of a dividend is entitled to be paid, out of any available money for the time being in the hands of the trustee, dividends that he has failed to receive before that money is applied to the payment of a future dividend, but he is not entitled to disturb the distribution of a dividend declared before he proved his debt.

Final  
dividend.  
C.B.A. s. 116.  
E.B.A. s. 67.

**145.**—(1.) When the trustee has realized all the property of the bankrupt, or so much of it as can, in his opinion, be realized without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice, in the prescribed manner, to any persons who have claimed to be creditors of the bankrupt but have not proved their debts that, if they do not prove their debts within a time limited by the notice, he will proceed to declare a final dividend without regard to their claims.

(2.) After the expiration of the time so limited or, if the Court on application by a person claiming to be a creditor grants him further time for proving his debt, after the expiration of that further time, all moneys realized and not distributed by the trustee shall be distributed by the trustee in accordance with this Act without regard to any debt that has not been proved.

Distribution of  
dividends where  
bankrupt fails  
to file statement  
of affairs.  
C.B.A. s. 117A.

**146.** Where a bankrupt has failed to file a statement of his affairs as required by this Act, the Court may, on the application of the trustee, upon such terms as it thinks fit, order that distribution of dividends amongst the creditors who have proved their debts shall proceed in accordance with this Division as if the bankrupt had filed a statement of his affairs and those creditors had been stated to be creditors in it.

No action  
for dividend.  
C.B.A. s. 117.  
E.B.A. s. 68.

**147.** An action for a dividend does not lie against a trustee in bankruptcy but, if a trustee neglects or refuses to pay a dividend to a creditor, the Court, on the application of the creditor, may, if it thinks fit, order him to pay it and may also order that he pay, out of his own money, interest on it for the time that it is withheld and the costs of the application.

Right of  
bankrupt to  
surplus.  
C.B.A. s. 118.  
E.B.A. s. 69.

**148.** A bankrupt is entitled to any surplus remaining after payment in full of—

- (a) the costs, charges and expenses of the administration of the bankruptcy;

- (b) all debts that have been proved in the bankruptcy; and
- (c) interest on interest-bearing debts that have been proved in the bankruptcy.

#### PART VII.—DISCHARGE OF BANKRUPTS.

149.—(1.) Subject to this section, a person who becomes a bankrupt after the commencement of this Act is, by force of this section, unless sooner discharged in accordance with the next succeeding section, discharged from bankruptcy upon the expiration of five years from the date of the bankruptcy.

Discharge of bankrupt by operation of law.

(2.) Subject to this section, a person who was an undischarged bankrupt immediately before the commencement of this Act, whether he became a bankrupt under a law of the Commonwealth or of a State or Territory, is, by force of this section, unless sooner discharged in accordance with the next succeeding section, discharged from bankruptcy upon the expiration of three years from the commencement of this Act or five years from the date on which the sequestration order was made against his estate or he otherwise became a bankrupt, whichever is the later.

(3.) This section does not operate to discharge a bankrupt from a bankruptcy if—

- (a) at the time when he would have been so discharged but for this sub-section, he is still undischarged from an earlier bankruptcy; or
- (b) the Registrar, the trustee or a creditor has entered an objection, in the prescribed manner, to the discharge of the bankrupt by force of this section and the objection has not been withdrawn before the time when the bankrupt would have been so discharged but for this sub-section.

(4.) An objection entered under the last preceding sub-section may be withdrawn in the prescribed manner.

(5.) Where—

- (a) such an objection is withdrawn after the time referred to in paragraph (b) of sub-section (3.) of this section;
- (b) there is no other objection to the bankrupt's discharge that has not been withdrawn; and
- (c) the bankrupt's discharge is not prevented by paragraph (a) of sub-section (3.) of this section,

the bankrupt is, by force of this section, unless sooner discharged in accordance with the next succeeding section, discharged from bankruptcy upon the withdrawal of the objection.

(6.) In sub-sections (2.), (3.) and (5.) of this section—

- “bankrupt” includes an insolvent;
- “bankruptcy” includes insolvency.

Discharge by  
the Court.  
C.B.A. s. 119.  
E.B.A. s. 26.

150.—(1.) A person who becomes a bankrupt after the commencement of this Act may apply to the Court for an order of discharge at any time after—

- (a) his public examination has been concluded; or
- (b) the Court has directed that a public examination shall not be held in his case or the Registrar has dispensed with a public examination in his case.

(2.) A person who was an undischarged bankrupt under the repealed Act immediately before the commencement of this Act may apply to the Court for an order of discharge under this Act—

- (a) where his examination under section 68 of the repealed Act was concluded before the commencement of this Act or his examination under that section was dispensed with before the commencement of this Act—  
at any time after the commencement of this Act; or
- (b) in any other case—at any time after his examination under section 68 of the repealed Act or under section 69 of this Act, as the case may be, has been concluded or dispensed with.

(3.) On the hearing of an application under this section, the Court shall take into consideration—

- (a) where the trustee is not an official receiver—
  - (i) a report in writing by the trustee concerning the bankrupt, his conduct, trade dealings, property and affairs in respect of the period since his appointment as trustee; and
  - (ii) a report in writing by an official receiver concerning those matters in respect of both the period before the applicant became a bankrupt and the period from the time when the applicant became a bankrupt until the appointment of the trustee referred to in the last preceding sub-paragraph; or
- (b) where the trustee is an official receiver—a report in writing by the trustee concerning the bankrupt, his conduct, trade dealings, property and affairs both in respect of the period before and the period after the applicant became a bankrupt.

(4.) The Court may, in addition, hear, and put such questions as it thinks fit to, the trustee, an official receiver, a creditor whose debt has been proved or the bankrupt and may receive such other evidence as it thinks fit.

(5.) The Court shall, if any of the matters specified in the next succeeding sub-section is established—

- (a) refuse to make an order of discharge; or

- (b) make an order of discharge but suspend the operation of the order as the Court thinks proper, either unconditionally or subject to conditions.

(6.) The matters upon the establishment of which the Court may exercise the powers specified in the last preceding sub-section are as follows:—

- (a) that the bankrupt has omitted to keep and preserve such books, accounts or records as sufficiently disclose his business transactions and financial position within the period of five years immediately preceding the date on which he became a bankrupt;
- (b) that the bankrupt has, after knowing himself to be insolvent, continued to trade or obtained credit to the amount of One hundred dollars or upwards;
- (c) that the bankrupt has contracted a debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof of which lies on him) of being able to pay it after taking into consideration his other liabilities at the time;
- (d) that the bankrupt has failed to account satisfactorily to the trustee for any loss of, or depreciation of, assets or for a deficiency of assets;
- (e) that the bankrupt has brought on, or contributed to, his bankruptcy by—
  - (i) rash or hazardous speculations;
  - (ii) unjustifiable extravagance in living;
  - (iii) gambling or wagering; or
  - (iv) culpable neglect of his business affairs;
- (f) that the bankrupt has, within the period of six months immediately preceding the presentation of the petition on which, or by virtue of the presentation of which, he became a bankrupt—
  - (i) put any of his creditors to unnecessary expense by a frivolous or vexatious defence to an action brought against him; or
  - (ii) incurred expense by bringing a frivolous or vexatious action;
- (g) that the bankrupt has, within the period of six months immediately preceding the presentation of the petition on which, or by virtue of the presentation of which, he became a bankrupt, when unable to pay his debts as they became due, given an undue preference to any of his creditors;
- (h) that the bankrupt has been guilty of fraud or fraudulent breach of trust; or

- (i) that the bankrupt has been convicted of an offence against this Act or the repealed Act or of any other offence related to his bankruptcy.

(7.) Where none of the matters specified in the last preceding sub-section is established, the Court may make an unconditional order of discharge.

(8.) For the purposes of this section, a report referred to in sub-section (3.) of this section is evidence of the statements contained in it.

Effect of  
fraudulent  
settlements  
on discharge.  
C.B.A. s. 120.  
E.B.A. s. 27.

151. Where a bankrupt has, whether before or after the commencement of this Act, but before he became a bankrupt—

- (a) made a settlement before and in consideration of marriage and, at the time of making the settlement, was unable to pay all his debts without the aid of the property comprised in the settlement; or
- (b) made a covenant or contract in consideration of marriage for the future settlement on or for the settlor's spouse or children of property in which the settlor did not have, at the date of the marriage, any estate or interest, not being property of or in right of the spouse,

the Court may, on an application by the bankrupt for an order of discharge—

- (c) refuse to make an order of discharge; or
- (d) make an order of discharge but suspend the operation of the order as the Court thinks proper, either unconditionally or subject to conditions.

Discharged  
bankrupt to give  
assistance.  
C.B.A. s. 119  
(11.).  
E.B.A. s. 26 (9).

152.—(1.) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee reasonably requires in the realization and distribution of such of his property as is vested in the trustee.

(2.) A discharged bankrupt who fails to comply with the last preceding sub-section is guilty of contempt of court.

(3.) Where a discharged bankrupt fails to comply with sub-section (1.) of this section, the Court may, if it thinks fit, on the application of the Registrar or the trustee in the bankruptcy—

- (a) where the bankrupt was discharged by an order of a court—rescind the order; or
- (b) where the bankrupt was discharged by force of section 149 of this Act—set aside the discharge.

(4.) The rescission of an order of discharge or the setting aside of a discharge under this section does not affect the validity of any sale or disposition of property or payment duly made or



act done after the discharge of the bankrupt and before the rescission of the order of discharge or the setting aside of the discharge.

153.—(1.) Subject to this section, where a bankrupt is discharged from a bankruptcy, the discharge operates to release him from all debts (including secured debts) provable in the bankruptcy, whether or not, in the case of a secured debt, the secured creditor has surrendered his security for the benefit of creditors generally.

Effect of  
order of  
discharge,  
C.B.A. s. 121.  
E.B.A. s. 28.

(2.) The discharge of a bankrupt from a bankruptcy does not—

(a) release the bankrupt from—

(i) a debt on a recognizance; or

(ii) a debt with which the bankrupt is chargeable at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of a person prosecuted for an offence against a law of the Commonwealth or of a State or Territory of the Commonwealth;

(b) release the bankrupt from a debt incurred by means of fraud or a fraudulent breach of trust to which he was a party or a debt of which he has obtained forbearance by fraud; or

(c) release the bankrupt from liability under a maintenance order, except to such extent and subject to such conditions as the Court orders.

(3.) The discharge of a bankrupt from a bankruptcy does not affect the right of a secured creditor, or any person claiming through or under him, to realize or otherwise deal with his security—

(a) if the secured creditor has not proved in the bankruptcy for any part of the secured debt—for the purpose of obtaining payment of the secured debt; or

(b) if the secured creditor has proved in the bankruptcy for part of the secured debt—for the purpose of obtaining payment of the part of the secured debt for which he has not proved in the bankruptcy,

and, for the purposes of enabling the secured creditor or a person claiming through or under him so to realize or deal with his security, but not otherwise, the secured debt, or the part of the secured debt, as the case may be, shall be deemed not to have been released by the discharge of the bankrupt.

(4.) The discharge of a bankrupt from a bankruptcy does not release from any liability a person who, at the date on which the bankrupt became a bankrupt—

- (a) was a partner or a co-trustee with the bankrupt or was jointly bound or had made a joint contract with the bankrupt; or
- (b) was surety or in the nature of a surety for the bankrupt.

(5.) Where a bankrupt has been discharged from a bankruptcy, whether by order of discharge or by force of section 149 of this Act, all proceedings taken in or in respect of the bankruptcy shall be deemed to have been validly taken.

(6.) In this section, “maintenance order” means an order with respect to the maintenance of a person made under a law of the Commonwealth or of a State or Territory of the Commonwealth.

Power to annul  
bankruptcy.  
C.B.A. s. 124.  
E.B.A. s. 29.

**154.—(1.)** Where the Court is satisfied—

- (a) that a sequestration order ought not to have been made or, in the case of a debtor’s petition, that the petition ought not to have been presented or ought not to have been accepted by the Registrar; or
- (b) that the unsecured debts of the bankrupt have been paid in full or the bankrupt has obtained a legal acquittance of his unsecured debts,

the Court may make an order annulling the bankruptcy.

(2.) Where a bankruptcy is annulled under this section or under section 74 of this Act, all sales and dispositions of property and payments duly made, and all acts done, by the trustee or any person acting under the authority of the trustee or by the Court before the annulment shall be deemed to have been validly made or done but, subject to the next succeeding sub-section, the property of the bankrupt still vested in the trustee or in The Official Receiver in Bankruptcy vests in such person as the Court appoints or, in default of such an appointment, reverts to the bankrupt for all his estate or interest in it, on such terms and subject to such conditions, if any, as the Court orders.

(3.) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered, any such property vested in the trustee or in The Official Receiver in Bankruptcy at the time of the annulment of the bankruptcy, notwithstanding that it vests in equity in such person as the Court appoints or in the bankrupt, as the case may be, does not vest in that person or the bankrupt at law until the requirements of that law have been complied with.

(4.) For the purposes of this section, where a debt has been proved by a creditor but the creditor cannot be found or cannot be identified, the debt may be paid to the Registrar and, if so paid, shall, for the purposes of this section, be deemed to have been paid in full to the creditor. C.B.A. s. 125.

(5.) Where money is paid to the Registrar under the last preceding sub-section, the Registrar shall pay that money into the Consolidated Revenue Fund and the provisions of sub-sections (3.) and (4.) of section 254 of this Act apply in relation to that money as if it had been paid into the Consolidated Revenue Fund by a trustee in pursuance of sub-section (2.) of that section.

#### PART VIII.—TRUSTEES.

##### *Division 1.—Appointment and Official Name.*

155.—(1.) Each Registrar shall keep, as prescribed, a register in which shall be entered the names and such other particulars as are prescribed of persons whom the Court directs to be registered under this section as qualified to act as trustees and who have given security in the prescribed amount and manner. Registration of persons as trustees  
C.B.A. s. 126.  
C.B.R. r. 383.

(2.) A person may apply to the Court to be registered as qualified to act as a trustee and, subject to this section, the Court may, if it thinks fit, by order direct that he be so registered upon his entering into a bond in the prescribed amount and manner with such surety or sureties as the Registrar approves.

(3.) A person who is registered under this section is entitled, upon request, and upon payment of the prescribed fee, to be issued with a certificate of his registration.

(4.) Nothing in this section authorizes the registration as a trustee of a company, partnership, corporation or association.

(5.) The Court may, at any time, cancel the registration of a person under this section.

(6.) A person, not being an official receiver or a person registered under this section, who acts as a trustee of the estate or affairs of an insolvent person or a bankrupt is liable, on conviction by the Court or by a court of summary jurisdiction, to a fine not exceeding Twenty dollars for each day on which he has so acted, not being a day on which his acting as a trustee was confined to taking such steps as were necessary for the protection of the property of the insolvent person or bankrupt.

(7.) It is a defence to proceedings brought against a person under the last preceding sub-section in respect of his having acted as a trustee of the estate or affairs of an insolvent person if he proves that his acting as a trustee was confined to taking such steps as were necessary for the protection of the property of the insolvent person pending the taking of proceedings under this Act.

Gazetted of  
registration,  
&c.  
C.B.A. s. 127.

156. Where a person is registered under the last preceding section as qualified to act as a trustee (otherwise than in pursuance of section 281 of this Act) or where the registration of a person under the last preceding section is cancelled or his name is removed from the register, the Registrar shall cause notice of the fact to be published in the *Gazette* as soon as practicable.

Appointment  
of trustee.  
C.B.A. s. 128.  
E.B.A. s. 19.

157.—(1.) Where a debtor becomes a bankrupt, the creditors may, by resolution, at the first or a subsequent meeting of creditors, appoint a registered trustee to the office of trustee of the estate of the bankrupt.

(2.) The official receiver who is the trustee of the estate at the time of the appointment shall, as early as practicable, notify the registered trustee so appointed, in writing, that he has been so appointed.

(3.) If the registered trustee so appointed informs the official receiver in writing, within ten days after he is notified by the official receiver of his appointment, that he accepts the office, the Registrar shall issue to him a certificate of appointment.

(4.) The appointment of a trustee under this section takes effect from and including the date of the certificate of appointment issued by the Registrar.

(5.) If the registered trustee appointed as trustee by the creditors does not so inform the official receiver within ten days after he is notified by the official receiver of his appointment, he shall be deemed to have declined the appointment, and the official receiver shall, unless the resolution of creditors has made provision for the contingency, convene another meeting of creditors as soon as practicable for the purpose of appointing another person to the office of trustee.

(6.) A creditor may lodge with the Court an objection to an appointment of a person under this section on the ground—

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

(7.) Where such an objection is lodged, the Court may, if any of the grounds specified in the last preceding sub-section is established, cancel the appointment and may appoint another registered trustee to be trustee in his place.

158.—(1.) The creditors may, if they think fit, appoint two or more persons jointly, or jointly and severally, to the office of trustee, and in either such case the property of the bankrupt vests in those persons as joint tenants.

Appointment of more than one trustee, &c.  
C.B.A. s. 129.  
E.B.A. s. 77.

(2.) The creditors may, if they think fit, appoint persons to act as trustees in succession in the event of one or more of the persons appointed declining to act or ceasing for any reason to hold the office of trustee.

159.—(1.) The creditors may, at a general meeting, fill any vacancy in the office of trustee.

Vacancy in office of trustee.  
C.B.A. s. 130.  
E.B.A. s. 78.

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

(3.) For the purposes of this section, an office of trustee shall be deemed to be vacant notwithstanding that it is for the time being filled by an official receiver by reason of the operation of the next succeeding section.

(4.) The provisions of the last two preceding sections apply, so far as they are capable of application, to and in relation to the appointment of a new trustee under this section.

160. Until a trustee of the estate of a bankrupt is appointed by the creditors or the Court, or if a trustee is not so appointed or there is, for any other reason, at any time no trustee so appointed, the official receiver for the District in which the sequestration order was made or the debtor's petition was presented, as the case may be, shall, by force of this section, be the trustee of the estate.

Official receiver to be trustee when there is no other trustee.  
C.B.A. s. 131.  
E.B.A. ss. 74 (1), 78 (4).

161.—(1.) The trustee of the estate of a bankrupt may sue and be sued by the prescribed official name and may, by that name, hold, dispose of or acquire property of every description, make contracts, enter into engagements binding on the trustee and his successors in office and do all other acts and things necessary or expedient to be done in the execution of his office.

Trustee may act in official name.  
C.B.A. s. 132.  
E.B.A. s. 76.

(2.) For the purposes of the last preceding sub-section, the prescribed official name is "The Trustee (*or* Trustees) of the Property of (*name of bankrupt*), a Bankrupt".

#### *Division 2.—Remuneration and Costs.*

162.—(1.) The remuneration of the trustee of the estate of a bankrupt may be fixed, from time to time, by resolution of the creditors or, if the creditors so resolve, by the committee of inspection.

Remuneration of trustee.  
C.B.A. s. 133.  
E.B.A. s. 82.

(2.) Where the remuneration of the trustee is to be, in whole or in part, a commission upon moneys received by the trustee, the rate of the commission shall not exceed the prescribed rate.

(3.) Where the trustee carries on a business of the bankrupt, or a business is carried on by the bankrupt under the supervision of the trustee, the trustee may be paid additional remuneration for his services in the form either of a periodical payment based on, or a commission at the prescribed rate on, the moneys received in the ordinary course of carrying on the business.

(4.) If the creditors fail, or the committee of inspection fails, to fix the remuneration of the trustee in accordance with this section, the Registrar may fix the remuneration.

(5.) The Registrar may, on the application of a creditor or the trustee, review the amount of the trustee's remuneration and may confirm, reduce or increase the remuneration.

(6.) Where a trustee receives remuneration for his services, a payment in respect of the performance by another person of the ordinary duties that are required by this Act to be performed by the trustee shall not be allowed in his accounts unless the payment was authorized by resolution of the creditors or by the committee of inspection.

(7.) This section does not apply in relation to a trustee who is an official receiver.

Remuneration  
of official  
receiver.

**163.** A trustee who is an official receiver shall be remunerated as prescribed.

Two or more  
trustees acting  
in succession.

**164.—(1.)** Where two or more trustees, none of whom is an official receiver, act in succession, their remuneration shall, if necessary, be apportioned in such manner as the Registrar directs.

(2.) Where two or more trustees, one of whom is an official receiver, act in succession, the remuneration to be paid to each of them shall be determined in such manner as the Registrar directs.

Trustee not  
to accept  
extra benefit,  
&c.  
C.B.A. s. 134.  
E.B.A. s. 82 (5).

**165.—(1.)** A trustee of the estate of a bankrupt shall not—

(a) make an arrangement for receiving, or accept, from the bankrupt or any other person, in connexion with the bankruptcy, any gift, remuneration or pecuniary or other consideration or benefit beyond the remuneration fixed in accordance with this Act;

(b) make an arrangement for giving up, or give up, a part of his remuneration to the bankrupt or any other person;

- (c) except as provided by this Act, directly or indirectly derive any profit or advantage from a transaction, sale or purchase for or on account of the estate or any gift, profit or advantage from a creditor; or
- (d) except with the leave of the Court, directly or indirectly become the purchaser of any part of the estate.

(2.) A trustee who contravenes the last preceding sub-section is guilty of contempt of court.

**166.** Where the Court is satisfied that any solicitation has been used by or on behalf of, or with the consent of, a trustee in obtaining proxies or in procuring the trusteeship, the Court may—

*Solicitation  
by trustee.  
C.B.A. s. 135.*

- (a) remove the trustee from office and make such order, if any, with respect to his remuneration (including remuneration already paid to him) as the Court thinks proper; or
- (b) without removing the trustee from office, make such order with respect to his remuneration (including remuneration already paid to him) as the Court thinks proper.

**167.—(1.)** Subject to the next succeeding sub-section, all bills of costs of a solicitor and bills of charges of an accountant, auctioneer, manager or other person (not being a trustee or a person exclusively employed by a trustee) rendered in respect of the estate of a bankrupt shall be taxed by the taxing officer in the District in which the trustee resides and no payments in respect of such costs or charges shall be allowed in the trustee's accounts unless they have been so taxed.

*Taxation  
of costs.  
C.B.A. s. 136.  
E.B.A. s. 83.*

(2.) The last preceding sub-section does not require a bill of costs or a bill of charges to be taxed if—

- (a) the bill is for an amount less than One hundred dollars; or
- (b) the creditors have, by special resolution, authorized payment of the bill.

(3.) A person whose bill of costs or bill of charges is required by this section to be taxed may at his option deliver for taxation a bill containing detailed items or a bill for a gross sum.

(4.) Where a bill of costs or a bill of charges for a gross sum is delivered for taxation, the person by whom the bill is delivered shall furnish the taxing officer with such details of the costs or charges covered by the bill as the taxing officer requires.

(5.) The taxing officer shall satisfy himself before passing a bill that the employment of the person in respect of the particular matters out of which the costs or charges arise was duly authorized and was reasonable and necessary.

(6.) Where the trustee proposes to distribute a final dividend, he shall, not later than twenty-eight days before the date on which he proposes to do so, request each person whose bill of costs or bill of charges is required to be taxed to deliver his bill to the taxing officer.

(7.) If a person so requested to deliver his bill fails to do so within twenty-eight days after receipt of the request, the trustee shall declare and distribute the dividend without regard to any claim of that person in respect of the matters as to which the bill was requested and in that case neither the trustee nor the estate of the bankrupt is under any further liability in respect of the claim.

(8.) A person interested may appeal to the Court from a decision of the taxing officer in allowing or disallowing a bill of costs or bill of charges or an item in such a bill.

(9.) In this section, "the taxing officer" means the Registrar or a Deputy Registrar or a person authorized by the Registrar, with the approval of the Court or the Inspector-General, to exercise and perform the powers and functions of a taxing officer.

### *Division 3.—Accounts and Audits.*

Trustee not  
to pay moneys  
into private  
account.  
C.B.A. s. 137.  
E.B.A. s. 88.

168. A trustee of the estate of a bankrupt shall not pay into a private banking account any moneys received by him as trustee.

Penalty: Five hundred dollars.

Trustee to  
pay moneys  
into bank.  
C.B.A. s. 138.  
E.B.A. s. 89.

169.—(1.) A trustee of the estate of a bankrupt shall pay all moneys received by him on account of the estate to the credit of an account opened and kept in the name of the estate at such bank as the trustee selects.

(2.) If a trustee of the estate of a bankrupt keeps in his hands any money exceeding Fifty dollars received on behalf of the estate for a period exceeding five days (excluding any day on which the branch of the bank at which the estate bank account is kept is not open for business), then, unless he satisfies the Court that his reason for retaining the money was sufficient—

(a) he is liable to pay interest at the rate of twenty per centum per annum on the amount by which the amount so retained exceeds Fifty dollars; and

(b) the Court may remove him from his office of trustee.

(3.) Where a trustee is so removed from office, the Court may make such order with respect to his remuneration for his services as a trustee as the Court thinks proper and may further order that he pay expenses incurred by the creditors in consequence of his removal.

(4.) In this section, "trustee" does not include a trustee who is an official receiver.



**170.—(1.)** The trustee of the estate of a bankrupt shall give the official receiver such information, access to and facilities for inspecting the bankrupt's books and documents and generally such assistance as is necessary for enabling the official receiver to perform his duties.

Trustee to give official receiver and bankrupt information, &c.  
C.B.A. s. 139.

**(2.)** The trustee shall, at the request of the bankrupt, furnish to the bankrupt information reasonably required by the bankrupt concerning his property or affairs.

**171.—(1.)** The trustee of the estate of a bankrupt—

- (a) shall make out a receipt in respect of each payment into the estate; and
- (b) shall keep a record of each payment made out of the estate and, wherever practicable, obtain evidence of each such payment.

Trustee to keep record of payments, &c.  
C.B.A. s. 140.

**(2.)** The trustee shall keep a duplicate of each receipt referred to in paragraph (a) of the last preceding sub-section.

**172.—(1.)** Where the balance standing to the credit of an estate account is in excess of the amount that in the opinion of the trustee is required for the time being to meet demands in respect of the estate, the trustee may—

Investment of surplus funds.  
C.B.A. s. 141.  
E.B.A. s. 90.

- (a) place the excess or part of it on fixed deposit in such bank and for such term as the trustee thinks fit;
- (b) deposit the excess or part of it in an account in a savings bank; or
- (c) invest the excess or part of it in any Commonwealth security.

**(2.)** Interest received in respect of moneys so deposited or invested forms part of the estate.

**173.** The trustee of the estate of a bankrupt shall keep such accounts and records as are necessary to exhibit a full and correct account of the administration of the estate and shall permit a creditor of the bankrupt to inspect, at all reasonable times, either personally or by an agent, the accounts and records relating to that estate.

Books to be kept by trustee.  
C.B.A. s. 144.  
E.B.A. s. 86.

**174.** Where the trustee carries on a business previously carried on by the bankrupt, he shall keep such books, accounts and records as are usual and proper in relation to the carrying on of a business of that kind.

Trustee's accounts, &c., when trading.  
C.B.A. s. 145.

**175.—(1.)** The trustee of the estate of a bankrupt shall furnish to the Registrar, at the prescribed times and forthwith after the final dividend has been distributed in respect of the estate—

Trustee's accounts and audit.  
C.B.A. s. 146.  
E.B.A. ss. 87, 92.

- (a) an account in accordance with the prescribed form, signed by the trustee, of his receipts and payments in respect of the estate;

- (b) a report as to the bankrupt's conduct and affairs; and
- (c) if any asset has not been realized, an explanation as to the non-realization.

(2.) The Registrar may cause an account so furnished to be audited by an appropriate person.

(3.) The Registrar may submit the account (whether or not it has been audited under the last preceding sub-section) to the Auditor-General for audit by the Auditor-General.

(4.) Where at any time a creditor or the bankrupt satisfies the Registrar that an audit of a trustee's accounts and records is necessary or the Registrar, without any application by a creditor or the bankrupt, is of opinion that such an audit is necessary, the Registrar shall cause an audit of the trustee's accounts and records to be carried out by an appropriate person.

(5.) For the purposes of an audit under this section, the trustee shall produce to the person carrying out the audit as and when required such books, documents, writings and information as that person requires.

(6.) The cost of an audit under this section, not being an audit carried out by the Auditor-General, shall be borne by the estate.

(7.) This section does not apply in relation to a trustee who is an official receiver.

Court may  
order trustee  
to make good  
loss sustained  
by negligence,  
&c.  
C.B.A. s. 146  
(6.).  
E.B.A. s. 87 (2).

176.—(1.) Where an account furnished to the Registrar under the last preceding section or an audit discloses that a trustee has been guilty of misfeasance, negligence or wilful default in relation to the estate or affairs of the bankrupt, the Registrar may apply to the Court for an order under the next succeeding sub-section.

(2.) The Court may order that the trustee make good any loss that the estate has sustained by reason of the misfeasance, negligence or wilful default of the trustee or may make such other order as the Court considers just and equitable in the circumstances.

#### *Division 4.—Control over Trustees.*

Control of  
creditors  
over trustees.  
C.B.A. s. 147.  
E.B.A. s. 79.

177.—(1.) Subject to this Act, in the administration of the estate of a bankrupt, the trustee shall have regard to any lawful directions given by resolution of the creditors at a general meeting or by the committee of inspection.

(2.) The trustee shall convene general meetings of the creditors at such times as the creditors, by resolution, direct and whenever requested in writing to call such a meeting by not less than one-fourth in value of the creditors.

(3.) The trustee may convene a general meeting of the creditors at any time.

**178.** If the bankrupt, a creditor or any other person is affected by an act, omission or decision of the trustee, he may apply to the Court, and the Court may make such order in the matter as it thinks just and equitable.

Appeal to Court against trustee's decision, &c.  
C.B.A. s. 148.  
E.B.A. s. 80.

**179.—(1.)** The Court may, on the application of the Registrar, a creditor or the bankrupt, inquire into the conduct of a trustee in relation to a bankruptcy and may do one or both of the following:—

Control of trustees by the Court.  
C.B.A. ss. 149, 153 (2).  
E.B.A. ss. 81, 95 (2).

- (a) remove the trustee from office; and
- (b) make such order as it thinks proper.

(2.) The Registrar or a creditor may at any time require a trustee to answer an inquiry in relation to the bankrupt's estate or affairs.

(3.) The Registrar or a creditor may apply to the Court to examine a trustee or any other person in relation to the bankruptcy.

#### *Division 5.—Vacation of Office.*

**180.** The Court may, subject to such terms and conditions as it thinks just, accept the resignation of a trustee from the office of trustee of an estate.

Resignation of trustee.  
C.B.A. s. 150.

**181.** The creditors may, by special resolution, at a meeting of which not less than seven days' notice has been given, remove a trustee appointed by them, and may at the same or a subsequent meeting appoint another registered trustee to be trustee in his place.

Removal of trustee.  
C.B.A. s. 153 (1).  
E.B.A. s. 95(1).

**182.—(1.)** Where a person registered as a trustee under this Act becomes a bankrupt or executes a deed of assignment or a deed of arrangement, or makes a composition with creditors, under Part X., the Registrar may apply to the Court for an order cancelling the registration of that person as qualified to act as a trustee, and the Court may make the order accordingly.

Bankruptcy, &c., of trustee.  
C.B.A. s. 152.  
E.B.A. s. 94.

(2.) The cancellation of the registration of a trustee under this section operates to remove him from any office of trustee held by him under this Act or the repealed Act.

(3.) A person registered as a trustee who becomes a bankrupt or executes a deed of assignment or a deed of arrangement, or makes a composition with creditors, under Part X. of this Act shall forthwith notify, in writing, the Registrar for the District in which he is ordinarily resident of that fact.

**Penalty:** One hundred dollars or imprisonment for six months.

**183.—(1.)** A trustee may apply to the Court for an order of release from the trusteeship of an estate.

Release of trustee by Court.  
C.B.A. s. 151.  
E.B.A. s. 93.

- (2.) Where the Court is satisfied that the trustee—
- (a) has realized all the property of the bankrupt or so much of it as can be realized without unduly protracting the trusteeship or has distributed a final dividend;
  - (b) has ceased to act by reason of the approval of a composition or scheme of arrangement under Division 6 of Part IV.; or
  - (c) has resigned or has been removed from office,
- the Court may make the order sought.
- (3.) Where an application is made by a trustee under this section, the Registrar shall cause a report on his accounts and records to be prepared and the Court shall, on the hearing of the application, take into consideration the report and any objection by the Registrar, a creditor or other interested person to the order sought.
- (4.) An order of release under this section—
- (a) discharges the trustee from all liability in respect of any act done or default made by him in the administration of the estate of the bankrupt; and
  - (b) if the trustee has not already resigned or been removed from office, operates to remove him from office.
- (5.) An order of release under this section may be revoked by the Court on proof that it was obtained by fraud or by suppression or concealment of a material fact.
- (6.) The preceding provisions of this section apply in relation to an official receiver when he is trustee, but where an order of release has been made under this section in relation to an official receiver, it is his duty to continue to act as trustee for any subsequent purposes of the administration of the bankrupt's estate.
- (7.) Where an official receiver acts as trustee after his release, he shall be deemed not to have become personally liable, by reason of his so acting, in respect of an act done, default made or liability incurred before his release, and where an official receiver acts as trustee on the release of a trustee, he shall be deemed not to have become personally liable, by reason of his so acting, in respect of an act done, default made or liability incurred by a prior trustee.
- (8.) Where a trustee has died, his legal personal representative may apply to the Court for an order releasing the trustee's estate from any claims arising out of the trustee's administration of an estate of which he was trustee and, upon such an application, the Court may make such order as it thinks proper in the circumstances.

Release of  
trustee by  
operation of  
law after  
seven years.

- 184.—(1.) Where the trustee of the estate of a bankrupt—
- (a) has furnished to the Registrar the final account required by this Act to be furnished in respect of the estate;

- (b) has furnished or transmitted to the Registrar all other accounts required by this Act or, in relation to a period before the commencement of this Act, by the repealed Act to be so furnished or transmitted in respect of the estate; and
  - (c) has not been released from the trusteeship of the estate by an order under the last preceding section,
- he is, by force of this section, released from the trusteeship upon the expiration of seven years from the date on which he furnished the final account in respect of the estate.

(2.) Where the trustee of the estate of a bankrupt—

- (a) has, before the commencement of this Act, transmitted to the Registrar his final account under the repealed Act and all other accounts required by that Act to be transmitted in respect of the estate; and
- (b) has not been released from the trusteeship of the estate before the commencement of this Act,

he is, by force of this section, released from the trusteeship upon the commencement of this Act or the expiration of seven years from the date on which he transmitted the final account, whichever is the later.

(3.) The release of a trustee from the trusteeship of an estate by force of this section has the same effect as an order of release under the last preceding section.

#### PART IX.—SMALL BANKRUPTCIES.

185.—(1.) Where it appears to the Court that a bankrupt's liabilities do not exceed Four thousand dollars, the Court may order that the estate of the bankrupt be administered under this Part.

Order for administration under this Part.  
C.B.A. s. 154.  
E.B.A. s. 129.

(2.) The Court may at any time order—

- (a) that an estate in respect of which an order has been made under the last preceding sub-section shall cease to be administered under this Part; or
- (b) that a provision of this Act that would not otherwise be applicable to an estate in respect of which an order has been made under the last preceding sub-section, or would be applicable subject to prescribed modifications, shall apply in relation to a particular estate, or shall apply in relation to a particular estate without the prescribed modifications, as the case requires.

186.—(1.) Subject to any order of the Court under sub-section (2.) of the last preceding section, where the Court has ordered that the estate of a bankrupt be administered under this Part—

- (a) a meeting of creditors shall not be called unless a creditor requests the trustee, in writing, to call such a meeting;

Application of provisions of this Act to estates administered under this Part.  
C.B.A. s. 154.  
E.B.A. s. 129.

- (b) a public examination of the bankrupt shall not be held unless a creditor, by notice in writing to the trustee, requires such an examination to be held or the trustee is of opinion that such an examination ought to be held;
- (c) such provisions of this Act as the rules prescribe for the purposes of this paragraph shall not apply in relation to the administration of the estate; and
- (d) the other provisions of this Act apply in relation to the administration of the estate subject to such modifications and adaptations, if any, as the rules prescribe in relation to the administration of estates under this Part.

(2.) In this section, "modification" includes the addition or omission of a provision or the substitution of a provision for another provision.

#### PART X.—ARRANGEMENTS WITH CREDITORS WITHOUT SEQUESTRATION.

##### *Division 1.—Interpretation.*

##### **Interpretation.**

**187.—(1.)** In this Part, unless the contrary intention appears—

"composition" means an arrangement by which the creditors of a debtor—

- (a) agree to accept payment of the debts due to them by instalments; or
- (b) agree to accept, in full satisfaction of the debts due to them, less than the full amount of those debts, whether in the form of money or other property and whether by instalments or otherwise;

"debtor" means a person who is unable to pay his debts as they become due out of his own moneys;

"deed of arrangement" means a deed (not being a deed of assignment or a deed in respect of a composition) providing for the arrangement of the affairs of a debtor with a view to the payment, in whole or in part, of his debts;

"deed of assignment" means a deed by which a debtor assigns all his divisible property for the benefit of his creditors;

"divisible property", in relation to a deed of assignment executed by a debtor, means the property, other than property acquired by the debtor after the day on which he executed the deed, that would be divisible amongst his creditors under Part VI. if he had become a bankrupt on that day;

“the controlling trustee”, in relation to a debtor whose property is subject to control under Division 2 of this Part, means—

- (a) the registered trustee named in the authority signed by the debtor under section 188 of this Act; or
- (b) if another registered trustee has, by virtue of section 192 of this Act, become the controlling trustee in relation to the debtor, that other registered trustee;

“the Registrar”, in relation to a debtor who has signed an authority under section 188 of this Act, means the Registrar for the District in which the meeting of creditors called in pursuance of that authority is held and includes a Deputy Registrar for that District.

(2.) In this Part, a reference, in relation to a deed or a composition, to a provable debt shall be read as a reference to a debt or liability that would have been a provable debt in the debtor's bankruptcy if the debtor had become a bankrupt on the day on which he executed the deed or on which the special resolution accepting the composition was passed, as the case may be.

*Division 2.—Meeting of Creditors and Control of Debtor's Property.*

188.—(1.) A debtor who desires that his affairs be dealt with under this Part without his estate being sequestrated and—

- (a) is personally present or ordinarily resident in Australia;
- (b) has a dwelling-house or place of business in Australia;
- (c) is carrying on business in Australia, either personally or by means of an agent or manager; or
- (d) is a member of a firm or partnership carrying on business in Australia by means of a partner or partners or of an agent or manager,

Debtor may authorize trustee or solicitor to call meeting of creditors, &c.

may sign an authority in accordance with the appropriate form in the Third Schedule to this Act—

- (e) authorizing a registered trustee to call a meeting of his creditors and to take over the control of his property; or
- (f) authorizing a solicitor to call a meeting of his creditors.

(2.) An authority signed by a debtor under this section is not effective for the purposes of this Part unless—

- (a) the trustee named in it has consented, in writing, to exercise the powers conferred by the authority or the solicitor named in it has consented, in writing, to call the meeting of creditors, as the case may be; and

- (b) the signature of the debtor to the authority and the signature of the trustee or solicitor to the consent are each attested by a witness.

(3.) An authority under this section that is effective for the purposes of this Part is not revocable by the debtor.

Effect of  
authority to  
registered  
trustee under  
section 188.

**189.—**(1.) Where a debtor has given an effective authority to a registered trustee under the last preceding section, the property of the debtor becomes subject to control under this Division and continues to be so subject until—

- (a) the creditors resolve under section 204 of this Act that the debtor's property be no longer subject to control under this Division;
- (b) a deed of assignment or a deed of arrangement is executed by the debtor and the trustee of the deed in pursuance of a special resolution of his creditors under this Division;
- (c) the creditors accept a composition under this Division;
- (d) the Court, under section 208 of this Act, releases the debtor's property from control under this Division;
- (e) the debtor becomes a bankrupt; or
- (f) the debtor dies,

whichever first happens.

(2.) A debtor whose property is subject to control under this Division—

- (a) shall not remove, dispose of or deal with any of his property except with the consent of the controlling trustee;
- (b) shall furnish to the controlling trustee such information with respect to his property and affairs as the controlling trustee requires; and
- (c) shall comply with any direction given to him by the controlling trustee with respect to his property or affairs.

Penalty: Imprisonment for twelve months.

(3.) A disposal of, or dealing with, property by a debtor in contravention of the last preceding sub-section is not invalid by reason only of that contravention.

Trustee's and  
solicitor's  
duties and  
powers.

**190.—**(1.) Where a registered trustee consents to exercise the powers conferred on him by an authority under section 188 of this Act or a solicitor consents to call a meeting of creditors in pursuance of such an authority, the trustee or solicitor, as the case may be, shall proceed to call a meeting of the debtor's creditors in accordance with this Division.

(2.) Where a registered trustee consents to exercise the powers conferred on him by such an authority, he is, by force of this section, empowered—



- (a) to take immediate control of the debtor's property and affairs;
- (b) to make such inquiries and investigations in connexion with the debtor's property and affairs as the trustee considers necessary;
- (c) to carry on a business of the debtor if, in the opinion of the trustee, it will be in the interests of the creditors to do so; and
- (d) to deal with the debtor's property in any way that will, in the opinion of the trustee, be in the interests of the creditors.

(3.) The power of the trustee to deal with the debtor's property conferred by the last preceding sub-section does not authorize the trustee to sell the property or any part of it (not being perishable property) except in the ordinary course of business.

(4.) For the purposes of exercising his powers under this section, the trustee may act in the name of the debtor as if he had been duly appointed by the debtor to be his lawful attorney to exercise those powers.

(5.) In this section, "the debtor's property" means the property of the debtor that would be divisible amongst his creditors under Part VI. if he had become a bankrupt on the day on which he signed the authority under section 188 of this Act, and includes property acquired by the debtor after that day, not being property acquired by him after—

- (a) a deed of assignment or a deed of arrangement has been executed by him in pursuance of a resolution of a meeting of creditors called in pursuance of the authority; or
- (b) a composition has been accepted by such a meeting of creditors.

**191.** Without prejudice to the powers conferred on a trustee by the last preceding section, the trustee may, at any time while the property of the debtor is subject to his control, pay out of the debtor's moneys any debts of the debtor that, in the opinion of the trustee, it is necessary to pay for the purpose of safe-guarding the value of his property or any of it or of avoiding forfeiture or determination of any interest or rights of the debtor in or to property.

Payments to  
protect  
property. &c.

**192.—(1.)** Where a registered trustee who has consented to exercise the powers conferred by an authority under section 188 of this Act—

Death, &c.,  
of trustee to  
whom authority  
given.

- (a) dies;
- (b) ceases to be a registered trustee;
- (c) becomes incapable of exercising his powers under this Part; or

(d) desires to be relieved of his duties under this Part, the debtor may sign a new authority under that section in favour of another registered trustee and, upon that other trustee consenting to exercise the powers conferred by that authority, he becomes the controlling trustee in place of the first-mentioned trustee.

(2.) Where, in pursuance of this Part, a meeting of creditors or the Court nominates a trustee other than the trustee who is acting under an authority under section 188 of this Act to be trustee of a deed of assignment or deed of arrangement to be executed by the debtor, the trustee so nominated shall, upon signing, in the prescribed manner, a consent to act as trustee, become the controlling trustee in place of the trustee authorized by the debtor.

(3.) A trustee who becomes a controlling trustee under this section has the same powers as the trustee originally authorized by the debtor under section 188 of this Act.

(4.) All acts and things duly done by a trustee in pursuance of an authority signed by a debtor under section 188 of this Act shall, if another trustee becomes the controlling trustee in his place, be deemed, for the purposes of this Division, to have been done by that other trustee.

Remuneration  
of controlling  
trustee.

193. The remuneration to be paid to the controlling trustee in respect of his services as such shall be such as is determined by resolution of the creditors.

Calling of  
meeting.  
C.B.A. s. 157.

194.—(1.) The meeting of creditors to be called in pursuance of an authority under section 188 of this Act shall be held—

(a) not later than twenty-eight days after the authority is signed by the debtor or, in the case of an authority signed by a debtor in the month of December, not later than thirty-five days after the authority is so signed; and

(b) not earlier than seven days after the notices to creditors are delivered or sent by post under the next succeeding sub-section.

(2.) The registered trustee or solicitor calling the meeting shall give to each person who is stated by the debtor to be a creditor and whose business or residential address is known to the trustee or solicitor notice of the meeting by delivering or sending by post to that person a notice in accordance with the prescribed form.

(3.) The registered trustee or solicitor shall also cause notice of the calling of the meeting to be published, not less than seven days before the meeting is held, in a newspaper circulating in the locality in which the meeting is to be held.

(4.) Where there has been a failure to comply with either of the last two preceding sub-sections, the meeting shall not be deemed incompetent to act for the purposes of this Part by reason only of that failure unless the Court, on the application of a creditor, or of the registered trustee or solicitor by whom the meeting was called, otherwise declares.

195.—(1.) The debtor shall, unless prevented by illness or other sufficient cause, attend the meeting and shall submit to the creditors at the meeting a statement in writing, verified by statutory declaration, of his affairs.

Debtor to attend meeting.  
C.B.A. s. 160 (b).

(2.) The statement of the debtor's affairs shall specify his assets and liabilities and shall include—

(a) in respect of each asset—particulars of the asset, including its estimated value;

(b) in respect of each liability—particulars of the liability, including whether it is secured or not; and

(c) in respect of any liability that is secured—particulars of the security.

(3.) The debtor shall, at the meeting, answer, to the best of his knowledge and ability, all questions put to him by the controlling trustee or by a creditor with respect to his conduct, trade dealings, property and affairs.

(4.) The failure of the debtor to attend the meeting does not affect the validity of any resolution passed at the meeting.

196.—(1.) The majority in number of the creditors present at the meeting in person, by attorney or by proxy shall elect a chairman to preside at the meeting.

Election of chairman, &c.  
C.B.A. s. 160 (a), (b), (f).

(2.) If the creditors so present determine, by resolution, that the time or place for which the meeting was called was not convenient to the majority in number of the creditors, the meeting shall be adjourned to a time and place determined, by resolution, by the creditors so present.

197.—(1.) A meeting may, by resolution, be adjourned from time to time.

Adjournments.  
C.B.A. s. 160 (f).  
C.B.R. r. 322.

(2.) Where a meeting is adjourned, the adjourned meeting shall, unless it is otherwise provided by the resolution by which it is adjourned, be held at the same place as the original meeting.

Entitlement  
to vote at  
meeting.  
C.B.A. s. 160  
(c), (d), (e).  
C.B.R. rr. 304-  
305.

198.—(1.) Subject to this section, every creditor is entitled to vote at a meeting under this Division.

(2.) A creditor is not entitled to vote in respect of an unliquidated or contingent debt or a debt the value of which is not ascertained.

(3.) For the purpose of enabling a creditor to vote, a debt that is certain but is payable in the future shall be deemed to be payable at the time of the meeting.

(4.) A creditor is not entitled to vote (otherwise than in respect of the election of a chairman of the meeting), unless he has made known to the chairman particulars of his debt.

(5.) Except as provided by the next succeeding sub-section, a secured creditor is not entitled to vote in respect of a secured debt unless he surrenders his security.

(6.) A secured creditor may, if he has furnished to the chairman, in writing, particulars of the security and of the value at which he estimates it, vote in respect of the balance (if any) of the secured debt after deducting the value at which he has estimated the security.

(7.) The spouse of the debtor is not entitled to vote at a meeting under this Division.

Restriction on  
voting by  
proxy.  
C.B.R. r. 324.

199. A person acting as a proxy or attorney at a meeting under this Division is not eligible, unless he is expressly authorized to do so by the instrument by which he was appointed, to vote for the appointment of himself, his partner or his employer as trustee of a deed of assignment, a deed of arrangement or a composition.

Manner of  
voting.  
C.B.A. s. 160  
(g).

200.—(1.) A creditor may vote either in person or by his attorney or by a proxy appointed in writing by the creditor or his attorney.

(2.) A proxy may be appointed to vote on all matters arising at the meeting or on particular matters specified in the instrument of appointment.

(3.) A person claiming to be the proxy of a creditor is not entitled to vote as proxy (otherwise than in respect of the election of a chairman of the meeting) unless the instrument by which he is appointed has been lodged with the chairman.

(4.) A person claiming to be the attorney of a creditor is not entitled to vote as attorney (otherwise than in respect of the election of a chairman of the meeting) unless—

(a) the instrument by which he is appointed has been produced to the chairman; or

- (b) the chairman is otherwise satisfied that he is the duly authorized attorney of the creditor.

201. Any question as to the right of a person to vote at a meeting under this Division, or as to the amount of the debt in respect of which a person is entitled to vote at such a meeting, shall be determined by the chairman, who may, if he thinks it necessary to do so, adjourn the meeting for a period, not exceeding fourteen days, to enable him to investigate the matter.

Admission  
and rejection  
of claim to  
vote.  
C.B.A. s. 160 (f).

202.—(1.) At a meeting under this Division, two creditors, being creditors entitled to vote at the meeting, present personally, by attorney or by proxy, constitute a quorum.

Quorum.  
C.B.R. r. 319.

(2.) If a quorum is not present within thirty minutes after the time appointed for the meeting, any creditor or attorney or proxy of a creditor entitled to vote at the meeting who is present may adjourn the meeting to such date and place as he appoints.

(3.) The date so appointed shall not be earlier than seven days, or later than fourteen days, from the date on which the adjournment takes place.

(4.) Notice of the adjournment shall forthwith be given to all the creditors by the debtor or by the controlling trustee or the solicitor authorized by the debtor to call the meeting in the manner specified in sub-section (2.) of section 194 of this Act.

(5.) A meeting of creditors on the date and at the place to which the meeting under this Division was adjourned shall not be deemed incompetent to act for the purposes of this Part by reason only of a failure to comply with the last preceding sub-section unless the Court, on the application of a creditor or of the registered trustee or solicitor by whom the meeting was called, otherwise declares.

203.—(1.) The chairman shall cause minutes of the proceedings at a meeting under this Division to be prepared and shall sign the minutes not later than fourteen days after the date of the meeting.

Minutes of  
meeting.  
C.B.R. r. 320.

(2.) If the chairman dies without having signed the minutes or becomes incapable, whether through illness or other cause, of signing the minutes as required by the last preceding sub-section, the controlling trustee or the solicitor who called the meeting, if he attended the meeting, or a creditor who attended the meeting may sign the minutes in place of the chairman.

(3.) Where a meeting is adjourned in pursuance of the last preceding section, the person by whom it is adjourned shall cause a minute to that effect to be prepared and shall sign the minute not later than fourteen days after the date on which the meeting was adjourned.

Resolution for  
deed of  
assignment,  
&c.  
C.B.A. ss. 161,  
162 (1.), (2.),  
(4.).

**204.—**(1.) The creditors may, at a meeting called in pursuance of an authority under section 188 of this Act, by special resolution—

- (a) where the debtor's property is subject to control under this Division, resolve that the debtor's property be no longer subject to control under this Division;
- (b) require the debtor to execute a deed of assignment or a deed of arrangement under this Part;
- (c) accept a composition; or
- (d) require the debtor to present a debtor's petition within seven days from the day on which the resolution was passed.

(2.) A special resolution requiring the debtor to execute a deed of arrangement under this Part may, subject to this Act, specify provisions to be included in the deed.

(3.) A special resolution accepting a composition shall specify the terms of the composition.

(4.) Where a special resolution requiring the debtor to execute a deed of assignment or a deed of arrangement under this Part or accepting a composition has been passed, the creditors shall, by resolution, nominate a registered trustee or registered trustees to be trustee or trustees of the deed or composition.

(5.) The creditors may, in nominating a registered trustee or registered trustees for the purposes of the last preceding sub-section—

- (a) nominate two or more registered trustees to hold the office of trustee jointly, or jointly and severally; and
- (b) nominate registered trustees to be trustees of the deed or composition in succession in the event of one or more of the trustees nominated declining to act or ceasing for any reason to hold the office of trustee.

(6.) Property of the debtor that vests in two or more trustees of a deed or composition, whether nominated to hold the office jointly, or jointly and severally, vests in those trustees as joint tenants.

(7.) Where the creditors pass a special resolution or a resolution under this section, the chairman of the meeting shall—

- (a) forthwith sign a certificate to that effect in accordance with the prescribed form; and
- (b) forthwith cause the certificate to be filed in the office of the Registrar.

(8.) If the chairman dies without having performed his duties under the last preceding sub-section, or fails to perform those duties, the trustee or the solicitor by whom the meeting was called, or the controlling trustee (if any) may sign and file, or file, as the case requires, the certificate referred to in that sub-section

**205.—(1.)** Subject to this section, where notice in writing of the signing by a debtor of an authority under section 188 of this Act, of the calling of a meeting of creditors of a debtor in pursuance of this Division or of the passing of a special resolution under the last preceding section requiring a debtor to execute a deed of assignment or a deed of arrangement or present a debtor's petition or accepting a composition is given to a sheriff, the sheriff—

*Duties of  
sheriff, &c.,  
after receiving  
notice of  
signing of  
authority under  
section 188, &c.  
C.B.A. ss. 159,  
187.*

- (a) shall refrain from taking any action to sell property of the debtor in pursuance of any process of execution issued by or on behalf of a creditor; and
- (b) shall not pay to the creditor by whom or on whose behalf the execution was issued or any person on his behalf the proceeds of the sale of property of the debtor that has been sold in pursuance of any such process or any moneys seized, or paid to avoid seizure or sale of property of the debtor, under any such process.

(2.) Subject to this section, where such a notice is given to the registrar or other appropriate officer of any court to which proceeds of the sale of property of the debtor or other moneys have been paid by a sheriff in pursuance of a process of execution issued by or on behalf of a creditor, any of those proceeds or moneys not paid out of court (in this section referred to as "the moneys in court") shall not be paid to the creditor or any person on his behalf.

(3.) The preceding provisions of this section do not prevent the sheriff from selling property of the debtor or paying proceeds of the sale of property of the debtor or other moneys to a creditor or a person on his behalf or prevent the registrar or other appropriate officer of a court from paying out of court the moneys in court to a creditor or a person on his behalf if—

- (a) having received notice of the signing by the debtor of an authority under section 188 of this Act, the sheriff, registrar or other officer does not, within forty-two days from the date on which the debtor signed the authority, receive notice of the passing of a special resolution referred to in sub-section (1.) of this section;
- (b) having received notice that a meeting of creditors of the debtor has been called, the sheriff, registrar or other officer does not, within seven days from the date for which the meeting was called, receive notice of the passing of such a special resolution or of the adjournment of the meeting;

- (c) having received notice of the adjournment of a meeting of creditors of the debtor, the sheriff, registrar or other officer does not, within seven days from the date to which the meeting was adjourned, receive notice of the passing of such a special resolution or of the further adjournment of the meeting; or
  - (d) having received notice of the passing of such a special resolution (not being a special resolution accepting a composition), the sheriff, registrar or other officer does not, within twenty-one days from the date on which the resolution was passed, receive notice that the deed required to be executed has been duly executed or that the debtor has presented a debtor's petition.
- (4.) If a deed of assignment or a deed of arrangement is duly executed by a debtor under this Part, the trustee of the deed may serve notice in writing of that fact on the sheriff or the registrar or other officer of the court, as the case requires, and thereupon, subject to sub-section (6.) of this section—
- (a) the sheriff shall deliver or pay to the trustee the property of the debtor, or the proceeds of the sale of property of the debtor or other moneys referred to in sub-section (1.) of this section, that is or are in his possession; or
  - (b) the registrar or other officer of the court shall pay to the trustee the moneys in court,
- as the case requires.
- (5.) If a special resolution accepting a composition is passed under section 204 of this Act, the sheriff, registrar or other officer shall, subject to the next succeeding sub-section, on being satisfied of that fact—
- (a) in the case of the sheriff—deliver or pay the property of the debtor, or the proceeds of the sale of property of the debtor or other moneys referred to in sub-section (1.) of this section, that is or are in his possession; or
  - (b) in the case of the registrar or other officer of a court—pay the moneys in court,
- to the debtor or to a person authorized by the debtor in writing for the purpose.
- (6.) Where—
- (a) property is, or proceeds of the sale of property or other moneys are, required by either of the last two preceding sub-sections to be delivered or paid to a trustee, the debtor or a person authorized by the debtor; or



- (b) the sheriff has, in pursuance of sub-section (1.) of this section, refrained from taking action to sell property of the debtor, being real property, and a deed of assignment or deed of arrangement is executed by the debtor under this Part or a composition is accepted by his creditors under this Part,

the costs of the execution are a first charge on that property or those proceeds of sale or other moneys.

(7.) For the purpose of giving effect to the charge referred to in the last preceding sub-section, the sheriff, registrar or other officer may retain, on behalf of the creditor entitled to the benefit of the charge, such amount from the proceeds of sale or other moneys referred to in that sub-section as he thinks necessary for the purpose.

(8.) A failure by the sheriff to comply with a provision of this section does not affect the title of a person who purchases property of a debtor in good faith under a sale by the sheriff in pursuance of a process of execution issued by or on behalf of a creditor.

**206.—(1.) Where—**

- (a) a meeting of creditors has, in accordance with this Part, passed a special resolution requiring a debtor to execute a deed of assignment or a deed of arrangement under this Part; and
- (b) a creditor's petition was presented against the debtor before the passing of the resolution or is presented against him after the passing of the resolution but before the deed has been duly executed,

Court may adjourn hearing of petition where creditors have passed resolution for deed.  
C.B.A. s. 179A.

the Court may, upon application by the debtor, a creditor or a person nominated as trustee of the proposed deed, if it appears to the Court that it would be for the advantage of the creditors that the debtor's affairs be administered under the deed, adjourn the hearing of the petition for such period as it considers necessary to allow the deed to be executed and, if the deed is duly executed within that period, shall dismiss the petition.

(2.) Where a creditor's petition is presented against a debtor who has been required by special resolution of a meeting of creditors to execute a deed of assignment or a deed of arrangement under this Part, the Registrar shall, as soon as practicable, give notice in writing of that fact to the person who has been nominated as trustee of the deed.

**207.—(1.) Where a secured creditor has estimated the value of his security under section 198 of this Act for the purposes of voting at a meeting of creditors at which a special resolution requiring the debtor to execute a deed of assignment or a deed of arrangement or accepting a composition was passed—**

Surrender of security, &c., where secured creditor has voted.  
C.B.A. s. 160 (d).

- (a) he is not entitled to estimate the value of the security for the purposes of proving part of his debt under the

deed or composition at any other amount except with the approval of the Court; and

- (b) he shall, upon request in writing by the trustee of a deed executed in pursuance of the special resolution or of the composition, as the case may be, surrender the security upon payment of the amount at which he has estimated the value of his security for the purposes of voting or, if the Court has approved his estimating the value of his security at another amount under the last preceding paragraph, upon payment of that other amount.

(2.) The Court shall not grant its approval under paragraph (a) of the last preceding sub-section unless it is satisfied that—

- (a) the estimate made for the purposes of voting was made in good faith on a mistaken basis; or
- (b) the value of the security has changed since that estimate was made.

(3.) Subject to the next succeeding sub-section, where a secured creditor has voted at a meeting of creditors at which a special resolution referred to in sub-section (1.) of this section was passed in respect of the whole of his debt without having surrendered his security as required by section 198 of this Act—

- (a) he shall be deemed to have estimated his security as having no value; and
- (b) he shall, upon request in writing by the trustee of a deed executed in pursuance of the special resolution or the trustee of the composition, as the case may be, surrender the security.

(4.) The Court may, upon application by a secured creditor to whom the last preceding sub-section applies, if it is satisfied that his failure to estimate the value of his security was due to inadvertence, upon such terms as the Court considers just and equitable—

- (a) relieve him from the obligation to surrender the security; and
- (b) permit him to estimate its value for the purposes of proving part of his debt under the deed or composition.

(5.) Subject to the last preceding sub-section, if a creditor referred to in sub-section (1.) or (3.) of this section fails to comply with a request in writing under that sub-section, the trustee by whom the request was made may apply to the Court for an order requiring the creditor to surrender the security to which the request related and the Court may make an order accordingly.

(6.) The right conferred on a secured creditor under section 90 of this Act, as applied in relation to deeds of assignment, deeds of arrangement and compositions under this Part, to realize his security and prove for the balance due to him is not exercisable where the trustee of such a deed or composition has requested the surrender of the security under this section.

208. The Court may, by order, on the application of an interested person, release a debtor's property from control under this Division if—

Determination of control of debtor's property by the Court.

- (a) a meeting of creditors called in pursuance of an authority under section 188 of this Act has not, within four months from the date for which the meeting was first called, passed one of the special resolutions referred to in sub-section (1.) of section 204 of this Act; or
- (b) the Court is satisfied that there are special circumstances that justify its so doing.

209. Where—

- (a) a debtor signs an authority to a registered trustee under section 188 of this Act; and
- (b) subsequently a deed of assignment or a deed of arrangement is entered into by the debtor under this Part, a composition is accepted under this Part or the debtor becomes a bankrupt,

Acts of controlling trustee to bind trustee of subsequent deed, composition or bankruptcy.

all payments made, acts and things done, transactions entered into and liabilities incurred by the controlling trustee in good faith in exercise of his powers under this Part are binding on the trustee of the deed or composition or in the bankruptcy, as the case may be.

210.—(1.) The controlling trustee in relation to a debtor may, if he thinks it desirable to do so, open, in such bank as he thinks fit, a bank account for the purposes of the administration of the debtor's affairs and property.

Controlling trustee's bank account, &c.

(2.) The controlling trustee in relation to a debtor shall keep such accounts and records as are necessary to exhibit a full and correct account of his administration of the debtor's affairs and property.

(3.) Where the controlling trustee carries on a business previously carried on by the debtor, he shall keep such books, accounts and records as are usual and proper in relation to the carrying on of a business of that kind.

Controlling  
trustee's  
accounts.

**211.—**(1.) A registered trustee shall, at such time or times as is or are prescribed, in relation to each debtor in respect of whom he is or has been the controlling trustee, furnish to the Registrar an account in accordance with the prescribed form, signed by the trustee, of his receipts and payments as controlling trustee in relation to that debtor.

(2.) The Registrar may cause an account so furnished to be audited by an appropriate person.

(3.) The Registrar may submit the account (whether or not it has been audited under the last preceding sub-section) to the Auditor-General for audit by the Auditor-General.

(4.) Where at any time a creditor or the debtor satisfies the Registrar that an audit of a controlling trustee's accounts and records is necessary or the Registrar, without any application by a creditor or the debtor, is of opinion that such an audit is necessary, the Registrar shall cause an audit of the trustee's accounts and records to be carried out by an appropriate person.

(5.) For the purposes of an audit under this section, the trustee shall produce to the person carrying out the audit as and when required such books, documents, writings and information as that person requires.

Court may  
order trustee  
to make good  
loss sustained  
by negligence,  
&c.

**212.—**(1.) Where the Registrar has reason to believe that a person who is or has been a controlling trustee has been guilty of misfeasance, negligence or wilful default in relation to the property or affairs of a debtor, the Registrar may apply to the Court for an order under the next succeeding sub-section.

(2.) The Court may order that the trustee make good any loss that has been sustained by reason of the misfeasance, negligence or wilful default of the trustee or may make such other order as the Court thinks just and equitable in the circumstances.

### *Division 3.—General Provisions.*

Arrangements  
by debtor with  
creditors  
otherwise than  
in accordance  
with this Part,  
&c., to be void.

**213.—**(1.) Subject to this Part, a deed of assignment or a deed of arrangement executed by a debtor after the commencement of this Act is void unless—

- (a) it is entered into in accordance with this Part; and
- (b) it complies with the requirements of this Part.

(2.) An instrument not under seal executed by a debtor after the commencement of this Act which, if it had been under seal, would have been a deed of assignment or a deed of arrangement is void.

(3.) Subject to this Part, a composition made by a debtor after the commencement of this Act, not being a composition accepted by a special resolution of a meeting of creditors under section 204 of this Act, is void.

(4.) Nothing in this section affects the validity of a composition or scheme of arrangement under Division 6 of Part IV.

**214.—**(1.) A deed of assignment or a deed of arrangement—

(a) shall be expressed to be entered into in pursuance of this Part; and

(b) shall make provision for a person or persons to be trustee or trustees of the deed.

(2.) A deed of assignment—

(a) shall provide for the assignment of all the divisible property of the debtor for the benefit of his creditors; and

(b) shall be substantially in accordance with the form in the Fourth Schedule to this Act.

Form, &c.,  
of deeds.  
C.B.A. ss. 163  
(1.) (a), 192.

**215.** A person is not eligible to be a trustee of a deed or a composition under this Part unless he is a registered trustee.

Trustee of  
deed or  
composition  
to be  
registered  
trustee.

**216.—**(1.) A deed of assignment or a deed of arrangement shall be executed by the debtor and the trustee within twenty-one days from the day on which the special resolution requiring the debtor to execute the deed was passed.

Execution  
of deeds.  
C.B.A. ss. 162  
(5.), 163 (1.), (e).

(2.) The execution of the deed by the debtor and by the trustee shall be attested by a witness.

**217.—**(1.) Where a person nominated in a resolution of a meeting of creditors under section 204 of this Act to be the trustee, or a trustee, of a deed of assignment or a deed of arrangement dies without having executed the deed, or fails to execute the deed in accordance with the last preceding section, a meeting of creditors called for the purpose may, by resolution, nominate another registered trustee in his place.

Failure of  
trustee to  
execute deed.

(2.) If the deed is not executed by the trustee so nominated within seven days from the date on which the resolution was passed or within such further time as the Registrar, on application made

before the expiration of the period of seven days, allows, the Court may, upon application by a creditor, nominate any registered trustee who is prepared to accept the office to be trustee in place of the person who has died or has failed to execute the deed.

(3.) A trustee so nominated by the Court shall execute the deed within seven days from the date on which he was so nominated or within such further time as the Court, on application made before the expiration of the period of seven days, allows.

Notice of  
execution  
of deed,  
acceptance  
of composition,  
&c.  
C.B.A. ss. 175,  
194.

**218.—**(1.) The trustee of a deed of assignment or a deed of arrangement entered into in pursuance of this Part shall—

(a) forthwith after the execution of the deed by the debtor and the trustee—

(i) give notice of that fact, in accordance with the rules, to each creditor of the debtor; and

(ii) cause notice of that fact, and of the nature of the deed, to be published in the *Gazette* and in such other manner, if any, as is prescribed; and

(b) within twenty-one days after the execution of the deed by the debtor and the trustee—file a copy of the deed and a copy of the statement of the debtor's affairs referred to in section 195 of this Act in the office of the Registrar.

(2.) Where a special resolution accepting a composition is passed under section 204 of this Act, the trustee of the composition shall forthwith—

(a) give notice of that fact, in accordance with the rules, to each creditor of the debtor; and

(b) cause notice of that fact to be published in the *Gazette*.

Trustee may  
sue, be sued,  
&c., by  
official name.

**219.—**(1.) The trustee of a deed of assignment or a deed of arrangement entered into in pursuance of this Part may sue and be sued by the prescribed official name and may, by that name, hold, dispose of or acquire property of every description, make contracts, enter into engagements binding on the trustee and his successors in office and do all other acts and things necessary or expedient to be done in the execution of the office of trustee.

(2.) For the purposes of the last preceding sub-section, the prescribed official name is "The Trustee (*or* Trustees) of the Property of (*name of debtor*), a Debtor".

Filling of  
vacancy in  
office of trustee  
after execution  
of deed, &c.  
C.B.A. ss. 184,  
203A.

**220.—**(1.) Where a vacancy occurs in the office of trustee of a deed of assignment or a deed of arrangement entered into in pursuance of this Part or of a composition accepted under this Part, a meeting of creditors called for the purpose may, by resolution, appoint a registered trustee to the vacant office.

(2.) Where, at any time, a vacancy exists in an office of trustee of such a deed of assignment or deed of arrangement or of such a composition, the Court may, on the report of the Registrar or on the application of the debtor, a creditor or an official receiver—

(a) appoint to the vacant office a registered trustee who is willing to accept the appointment; or

(b) appoint an official receiver or a registered trustee who is willing so to act to act as trustee until the vacant office is filled by a meeting of creditors.

(3.) The appointment of a registered trustee to a vacant office of trustee by a meeting of creditors shall be deemed to have taken effect as from the date on which the vacancy in the office occurred, except where an official receiver or a registered trustee has been appointed to act as trustee under paragraph (b) of the last preceding sub-section, in which case the appointment takes effect on the date on which it is made.

(4.) The appointment of a registered trustee to a vacant office of trustee by the Court shall be deemed to have taken effect as from the date on which the vacancy in the office occurred.

(5.) Where, under this section, a registered trustee or an official receiver is appointed to an office of trustee or to act as trustee—

(a) all property to which the deed or composition relates that is vested in the former trustee, alone or jointly with another trustee, shall, subject to the next succeeding sub-section, vest in that registered trustee or, where an official receiver is so appointed, in The Official Receiver in Bankruptcy, alone or jointly with any continuing trustee, as the case requires, without any conveyance, assignment or transfer, as from the date on which the appointment takes effect or is to be deemed to have taken effect; and

(b) that registered trustee or official receiver has the same rights, powers, duties and liabilities as if he had been an original trustee, but is not personally liable in respect of any act done, omission made or liability incurred by a prior trustee.

(6.) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered, and enables a registered trustee so appointed or, in the case of an appointment of an official receiver, The Official Receiver in Bankruptcy to be registered as the owner of any such property to which the deed or composition relates, that property, notwithstanding that it vests in equity in the

registered trustee so appointed or in The Official Receiver in Bankruptcy by virtue of this section, does not vest in the trustee or The Official Receiver in Bankruptcy at law until the requirements of that law have been complied with.

Power to make  
sequestration  
order where  
debtor fails to  
attend meeting,  
execute deed,  
&c.

**221.—(1.) Where—**

(a) a debtor has failed, without sufficient cause—

(i) to attend a meeting of creditors called in pursuance of an authority signed by him under section 188 of this Act; or

(ii) to submit to the creditors at such a meeting the statement referred to in section 195 of this Act;

(b) a debtor, having been required by a special resolution of a meeting of creditors called in pursuance of such an authority to execute a deed of assignment or a deed of arrangement or to present a debtor's petition, has failed, without sufficient cause, to execute the deed within the time prescribed by this Act or to present the debtor's petition within the time required by the special resolution; or

(c) a meeting of creditors called in pursuance of such an authority has not, within four months from the date for which the meeting was called, passed one of the special resolutions referred to in sub-section (1.) of section 204 of this Act,

the Court may, if it thinks fit, on the application of a creditor or the controlling trustee, forthwith make a sequestration order against the estate of the debtor.

(2.) The Court may, if it thinks fit, dispense with service on the debtor of notice of an application under this section, either unconditionally or subject to conditions.

(3.) Subject to the next succeeding sub-section, the making of an application under this section in respect of a debtor shall, for the purposes of this Act, be deemed to be equivalent to the presentation of a creditor's petition against the debtor.

(4.) The provisions of sub-section (1.) of section 43, sections 44 and 47 and sub-sections (1.) and (2.) of section 52 of this Act do not apply in relation to an application under this section, but, on the hearing of such an application, the Court shall require proof (which may be given by affidavit) of the matters stated in the application and, unless service has been dispensed with by the Court, of service of the application on the debtor.



**222.—**(1.) Where there is a doubt, on a specific ground, whether a deed of assignment or a deed of arrangement was entered into in accordance with this Part or complies with the requirements of this Part, or whether a composition has been accepted by a special resolution of a meeting of creditors under section 204 of this Act, the trustee, a creditor or the debtor may apply to the Court for an order under the next succeeding sub-section.

*Power of the Court to declare deed or composition void.  
C.B.A. ss. 176, 178, 196.*

(2.) Upon the hearing of such an application, the Court may, subject to this section, make an order declaring that the deed or composition is void or that it is not void on the ground specified in the application.

(3.) The Court shall not make an order declaring a deed to be void on the ground that it does not comply with the requirements of this Part if the deed complies substantially with those requirements.

(4.) Where the Court, on the application of the trustee or a creditor, is satisfied that the debtor—

- (a) has given false or misleading information in answer to a question put to him with respect to his conduct, trade dealings, property or affairs at the meeting of creditors at which the resolution requiring him to execute the deed or accepting the composition was passed; or
- (b) has omitted a material particular from the statement of his affairs under section 195 of this Act or included an incorrect and material particular in that statement,

the Court may make an order declaring the deed or composition to be void.

(5.) The Court shall not make an order declaring a deed or composition to be void on a ground specified in the last preceding sub-section unless it is satisfied that it would be in the interests of the creditors to do so.

(6.) The Court shall not make an order under sub-section (2.) or (4.) of this section unless the application for the order is made—

- (a) in relation to a deed of assignment—before the final dividend has been paid under the deed;
- (b) in relation to a deed of arrangement—before the terms of the deed have been carried out; or
- (c) in relation to a composition—before the final payment has been made under the composition.

(7.) The trustee or a creditor may include in an application under sub-section (1.) or (4.) of this section an application for a sequestration order against the estate of the debtor and if the

Court, on the first-mentioned application, makes an order under sub-section (2.) or (4.) of this section declaring the deed or composition to which it relates to be void, it may, if it thinks fit, forthwith make the sequestration order sought.

(8.) The Court may, if it thinks fit, dispense with service on the debtor of notice of an application by the trustee or a creditor under this section, either unconditionally or subject to conditions.

(9.) The making of an application by the trustee or a creditor for a sequestration order under this section shall, for the purposes of this Act, be deemed to be equivalent to the presentation of a creditor's petition against the debtor, but the provisions of sub-section (1.) of section 43, sections 44 and 47 and sub-sections (1.) and (2.) of section 52 of this Act do not apply in relation to such an application.

Calling of  
meetings  
other than  
the first  
meeting.

**223.—**(1.) The controlling trustee or the trustee of a deed of assignment, a deed of arrangement or a composition—

- (a) may call such general meetings of the creditors as he considers necessary or desirable for the purposes of this Part; and
- (b) shall call general meetings of the creditors at such times as the creditors, by resolution, direct and whenever requested in writing to call such a meeting by not less than one-fourth in value of the creditors.

(2.) Notice of such a meeting shall be given to each person believed by the trustee to be a creditor of the debtor and whose business or residential address is known to the trustee by delivering or posting to that person, at least five days before the meeting is to be held, a notice in accordance with the prescribed form.

(3.) If, at any time, there is no such trustee, any creditor or the debtor may call a meeting of creditors (other than the meeting referred to in section 194 of this Act) for the purposes of this Part, and for that purpose notice of the meeting shall be given, in the manner specified by the last preceding sub-section and at least five days before the meeting is to be held, to each person believed by the person calling the meeting to be a creditor of the debtor and whose business or residential address is known to the person calling the meeting.

Validity of  
acts, &c.,  
where deed  
or composition  
declared void  
or terminated.  
C.B.A. s. 179.

**224. Where—**

- (a) a deed of assignment, a deed of arrangement or a composition is declared by the Court to be void under section 222 of this Act;
- (b) a deed of arrangement is terminated by an occurrence specified in paragraph (a), (b) or (d) of section 235 of this Act;

(c) a deed of arrangement or a composition is terminated by the Court under section 236 or 242 of this Act; or

(d) a composition is terminated by the creditors under section 241 of this Act,

all payments made, acts and things done and transactions entered into in good faith under, or for the purposes of, the deed or composition by the trustee or any other person before he had notice of the order of the Court or of the termination of the deed or composition, as the case may be, are valid and effectual and are not liable to be set aside by the trustee of a subsequent deed of assignment or deed of arrangement or in a subsequent bankruptcy.

**225.—**(1.) A deed of assignment or a deed of arrangement that purports to have been executed by the debtor and by the trustee, and to have been attested in accordance with this Part, shall, unless and until the contrary is proved, be deemed to have been duly executed and attested.

*Evidence of deed, resolution, &c.*  
C.B.A. ss. 162 (2.), 182.

(2.) A certificate of the passing of a special resolution under section 204 of this Act signed in accordance with that section is, in the absence of fraud, conclusive evidence that the meeting was duly convened and held and that the special resolution specified in the certificate was duly passed at the meeting.

(3.) A certificate of the passing of a resolution (not being a special resolution) under section 204 of this Act signed in accordance with that section is, in the absence of fraud, conclusive evidence that the resolution specified in the certificate was duly passed at the meeting.

(4.) The minutes of a meeting held under this Part signed in accordance with section 203 of this Act are evidence of the proceedings at the meeting.

**226.—**(1.) A person who claims, in writing, that he is a creditor of a debtor who has executed a deed of assignment or a deed of arrangement under this Part is entitled, at all reasonable times, either personally or by his attorney or agent, to inspect, and make copies of or take extracts from, the deed and the proofs of debt of creditors.

*Right to inspect deed, &c.*  
C.B.A. ss. 171, 205.

(2.) Subject to the rules, any person is entitled, on payment of the prescribed fees—

(a) to inspect, and make extracts from, a copy of a deed or other document filed in the office of the Registrar under this Part; and

(b) to have an office copy of a deed or other document so filed.

Stamp duty  
not payable  
on deeds, &c.,  
entered into  
under this  
Part.

**227.** Stamp duty is not payable under a law of a State or Territory on—

- (a) an authority under section 188 of this Act; or
- (b) a deed of assignment or a deed of arrangement entered into under this Part or any deed in respect of a composition that has been accepted by a special resolution under this Part.

*Division 4.—Special Provisions applicable to Deeds of Assignment.*

Deed of  
assignment to  
bind all  
creditors.

**228.**—(1.) A deed of assignment that is entered into in accordance with this Part and complies with the requirements of this Part is, upon being duly executed by the debtor and the trustee, binding on all the creditors of the debtor.

(2.) Subject to the next succeeding sub-section, where a deed of assignment has become binding on the creditors of the debtor, it is not competent for a creditor, so long as the deed remains valid—

- (a) to present a creditor's petition against the debtor, or to proceed with such a petition presented before the deed became so binding, in respect of a provable debt;
- (b) to enforce any remedy against the person or property of the debtor in respect of a provable debt; or
- (c) to commence any legal proceeding in respect of a provable debt or take any fresh step in such a proceeding.

(3.) Nothing in this section—

- (a) affects the right of a secured creditor to realize or otherwise deal with his security; or
- (b) prevents a creditor, after the final dividend has been paid under a deed of assignment, from taking any proceeding or enforcing any remedy in respect of a provable debt from which the debtor is not released by the operation of the deed.

Vesting of  
property in  
trustee.  
C.B.A. s. 163.

**229.**—(1.) Subject to this section, the due execution by a debtor of a deed of assignment that is entered into in accordance with this Part and complies with the requirements of this Part operates to vest in the trustee forthwith, upon the trusts and for the purposes of the deed, all the divisible property of the debtor.

(2.) The vesting of the property under the last preceding sub-section is subject to the due execution of the deed by the trustee.

(3.) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered and enables the trustee of a deed of assignment to be registered as the owner of any such property that is part of the divisible property of the debtor, that property, notwithstanding that it vests in equity in the trustee by virtue of this section, does not vest at law in the trustee until the requirements of that law have been complied with.

**230.**—(1.) Subject to this section, a deed of assignment that has become binding on the creditors of the debtor operates, unless declared void under this Part, to release the debtor from all provable debts, other than those (if any) that would not be released by his discharge from bankruptcy if he had become a bankrupt on the day on which he executed the deed.

Release of  
provable debts.  
C.B.A. s. 163.

(2.) The last preceding sub-section does not affect the right of a secured creditor, or any person claiming through or under him, to realize or otherwise deal with his security—

- (a) if the secured creditor has not proved under the deed for any part of the secured debt—for the purpose of obtaining payment of the secured debt; or
- (b) if the secured creditor has proved under the deed for part of the secured debt—for the purpose of obtaining payment of the part of the secured debt for which he has not proved under the deed,

and, for the purposes of enabling the secured creditor or a person claiming through or under him so to realize or deal with his security, but not otherwise, the secured debt, or the part of the secured debt, as the case may be, shall be deemed not to have been released.

(3.) A deed of assignment does not release from any liability a person who, at the date on which the debtor executed the deed, was a partner or a co-trustee with the debtor or was jointly bound or had made a joint contract with him, or a person who was surety or in the nature of a surety for the debtor.

**231.**—(1.) The provisions of section 81 of this Act apply in relation to a debtor who has executed a deed of assignment that has become binding on his creditors and in relation to his trade dealings, property and affairs as if he were a bankrupt and the trustee of the deed were the trustee in his bankruptcy.

Application  
of general  
provisions of  
Act to deeds of  
assignment.  
C.B.A. ss. 166,  
168, 169, 185.

(2.) Subject to this section, the provisions of sub-section (4.) of section 58, section 60, sections 82 to 118 (inclusive), sections 120 to 125 (inclusive), sections 127 to 130 (inclusive) and sections

133 to 148 (inclusive) of this Act apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to such a deed of assignment as if—

- (a) a creditor's petition had been presented against the debtor by whom the deed was executed on the day on which the special resolution requiring the execution of the deed was passed;
- (b) a sequestration order had been made against him on that petition on the day on which he executed the deed; and
- (c) the trustee of the deed were the trustee in his bankruptcy.

(3.) In the application of the provisions of this Act specified in the last preceding sub-section to and in relation to a deed of assignment—

- (a) a reference to the property of the bankrupt shall be read as a reference to the divisible property of the debtor; and
- (b) a reference to a provable debt shall be read as a reference to a provable debt within the meaning of this Part.

(4.) The provisions of sections 162 to 169 (inclusive), sub-section (2.) of section 170, sections 171 to 174 (inclusive), section 175 (other than paragraph (b) of sub-section (1.)) and sections 176 to 184 (inclusive) of this Act apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to a trustee of a deed of assignment as if the debtor by whom the deed was executed were a bankrupt and the trustee of the deed were the trustee in his bankruptcy.

(5.) If, after taking into account the modifications and adaptations made by the rules and the provisions of sub-section (3.) of this section, a provision specified in sub-section (2.) or (4.) of this section is incapable of application to or in relation to a deed of assignment, or the trustee of such a deed, as the case requires, or is inconsistent with this Part, that provision does not so have application.

(6.) In this section, "modification" includes the addition or omission of a provision or the substitution of a provision for another provision.

**Certificate  
of release.**

232.—(1.) Where the trustee of a deed of assignment is satisfied that the divisible property of the debtor has, so far as is practicable, been realized and a final dividend has been paid to the creditors, he shall, upon request by the debtor, furnish to the debtor a certificate signed by him to that effect.

(2.) A certificate signed by a trustee under this section is evidence of the facts stated in it.

*Division 5.—Special Provisions applicable to  
Deeds of Arrangement.*

**233.—(1.)** A deed of arrangement that is entered into in accordance with this Part and complies with the requirements of this Part is, upon being duly executed by the debtor and the trustee, binding on all the creditors of the debtor.

Deed of arrangement to bind all creditors.  
C.B.A. s. 198.

(2.) Where a deed of arrangement has become binding on the debtor's creditors, it is not competent for a creditor, so long as the deed remains in force—

- (a) to present a creditor's petition against the debtor, or to proceed with such a petition presented before the deed became so binding, in respect of a provable debt; or
- (b) except with the leave of the Court and on such terms as the Court imposes—
  - (i) to enforce any remedy against the property or person of the debtor in respect of a provable debt; or
  - (ii) to commence any legal proceeding in respect of a provable debt or take any fresh step in such a proceeding.

(3.) Nothing in this section affects the right of a secured creditor to realize or otherwise deal with his security.

**234.—(1.)** Except in so far as the deed provides for the release of the debtor from his debts, a deed of arrangement does not operate to release the debtor from any of his debts.

Deed of arrangement not to release debts unless otherwise provided.

(2.) Where a deed of arrangement provides that the debtor is to be released from one or more of his debts, the release is binding on the creditor or creditors to whom that debt or those debts was or were owing.

**235.** A deed of arrangement is terminated by—

- (a) the death of the debtor;
- (b) the passing of a special resolution to that effect by a meeting of creditors called for the purpose;
- (c) an order of the Court to that effect under the next succeeding section; or
- (d) the occurrence of any circumstances or event on the occurrence of which the deed provides that it is to terminate.

Termination of deed of arrangement.

**236.—(1.)** The Court may, upon application by the trustee, a creditor or the debtor, if it is satisfied—

- (a) that the debtor has failed to carry out or comply with a provision of a deed of arrangement;

Court may terminate deed.

(b) that a deed of arrangement cannot be proceeded with without injustice or undue delay to the creditors or to the debtor; or

(c) that for any other reason a deed of arrangement ought to be terminated,

make an order terminating the deed.

(2.) The Court shall not make an order terminating a deed on the ground specified in paragraph (a) or (c) of the last preceding sub-section unless it is satisfied that it would be in the interests of the creditors to do so.

(3.) The trustee or a creditor may include in an application under sub-section (1.) of this section an application for a sequestration order against the estate of the debtor and, if the Court makes an order on the first-mentioned application terminating the deed of arrangement, it may, if it thinks fit, forthwith make the sequestration order sought.

(4.) The Court may, if it thinks fit, dispense with service on the debtor of notice of an application by the trustee or a creditor under this section, either unconditionally or subject to conditions.

(5.) The making of an application by the trustee or a creditor for a sequestration order under this section shall, for the purposes of this Act, be deemed to be equivalent to the presentation of a creditor's petition against the debtor, but the provisions of sub-section (1.) of section 43, sections 44 and 47 and sub-sections (1.) and (2.) of section 52 of this Act do not apply in relation to such an application.

Application  
of general  
provisions of  
Act to deeds of  
arrangement.  
C.B.A. ss. 199,  
203.

237.—(1.) The provisions of section 81 of this Act apply in relation to a debtor who has executed a deed of arrangement that has become binding on his creditors and in relation to his trade dealings, property and affairs as if he were a bankrupt and the trustee of the deed were the trustee in his bankruptcy.

(2.) Subject to this section, the provisions of sub-section (4.) of section 58, sections 82 to 114 (inclusive) and sections 133 to 148 (inclusive) of this Act apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to such a deed of arrangement as if—

(a) a sequestration order had been made against the debtor on the day on which he executed the deed; and

(b) the trustee of the deed were the trustee in his bankruptcy.



(3.) In the application of the provisions of this Act specified in the last preceding sub-section to and in relation to a deed of arrangement, a reference to a provable debt shall be read as a reference to a provable debt within the meaning of this Part.

(4.) The provisions of sections 162 to 169 (inclusive), sub-section (2.) of section 170, sections 171 to 174 (inclusive), section 175 (other than paragraph (b) of sub-section (1.) ) and sections 176 to 184 (inclusive) of this Act apply, subject to such modifications (if any) as are prescribed by the rules, to and in relation to a trustee of a deed of arrangement as if the debtor by whom the deed was executed were a bankrupt and the trustee of the deed were the trustee in his bankruptcy.

(5.) If, after taking into account the modifications and adaptations made by the rules and the provisions of sub-section (3.) of this section, a provision specified in sub-section (2.) or (4.) of this section is incapable of application to or in relation to a deed of arrangement, or the trustee of such a deed, as the case requires, or is inconsistent with this Part, that provision does not so have application.

(6.) In this section, "modification" includes the addition or omission of a provision or the substitution of a provision for another provision.

*Division 5.—Special Provisions applicable to Compositions.*

238.—(1.) A composition that has been accepted by a special resolution of a meeting of a debtor's creditors called in pursuance of an authority under section 188 of this Act (in this Division referred to as a composition under this Part) is binding on all the creditors of the debtor.

Composition  
to bind all  
creditors.  
C.B.A. s. 161  
(a), (e).

(2.) Subject to the next succeeding sub-section, it is not competent for a creditor, so long as a composition under this Part remains valid—

- (a) to present a creditor's petition against the debtor, or to proceed with such a petition presented before the composition was accepted, in respect of a provable debt;
- (b) to enforce any remedy against the property or person of the debtor in respect of a provable debt; or
- (c) to commence any legal proceeding in respect of a provable debt or take any fresh step in such a proceeding.

(3.) Nothing in this section—

- (a) affects the right of a secured creditor to realize or otherwise deal with his security; or
- (b) prevents a creditor, after the final payment has been made under a composition, from taking any proceeding or enforcing any remedy in respect of a provable debt from which the debtor is not released by the operation of the composition.

Court may set  
aside  
composition.  
C.B.A. s. 161  
(6)

**239.**—(1.) A creditor may, within twenty-one days from the date on which the special resolution accepting a composition under this Part was passed, apply to the Court for an order setting aside the composition and may also apply for the making of a sequestration order against the estate of the debtor.

(2.) If the Court, on such an application, considers that the terms of the composition are unreasonable or are not calculated to benefit the creditors generally or that for any other reason the composition ought to be set aside, it may make an order setting it aside and, if it thinks fit, may forthwith make the sequestration order sought.

(3.) The Court may, if it thinks fit, dispense with service on the debtor of notice of an application under this section, either unconditionally or subject to conditions.

(4.) The making of an application for a sequestration order against the estate of a debtor under this section shall, for the purposes of this Act, be deemed to be equivalent to the presentation of a creditor's petition against the debtor, but the provisions of sub-section (1.) of section 43, sections 44 and 47 and sub-sections (1.) and (2.) of section 52 of this Act do not apply in relation to such an application.

Release of  
provable debts.  
C.B.A. s. 161.

**240.**—(1.) Subject to this section, a composition under this Part operates, unless set aside, declared void or terminated under this Part, to release the debtor from all provable debts, other than those (if any) that would not be released by his discharge from bankruptcy if he had become a bankrupt on the day on which the composition was accepted.

(2.) The last preceding sub-section does not affect the right of a secured creditor, or any person claiming through or under him, to realize or otherwise deal with his security—

(a) if the secured creditor has not proved in the composition for any part of the secured debt—for the purposes of obtaining payment of the secured debt; or

(b) if the secured creditor has proved in the composition for part of the secured debt—for the purposes of obtaining payment of the part of the secured debt for which he has not proved in the composition,

and, for the purposes of enabling the secured creditor or a person claiming through or under him so to realize or deal with his security, but not otherwise, the secured debt, or the part of the secured debt, as the case may be, shall be deemed not to have been released.

(3.) A composition does not release from any liability a person who, at the date on which the composition was accepted, was a partner or a co-trustee with the debtor or was jointly bound or had made a joint contract with him, or a person who was surety or in the nature of a surety for the debtor.

**241.** Where a debtor has failed to carry out or comply with a term of a composition under this Part, the creditors may, by special resolution at a meeting called for the purpose, terminate the composition.

Termination of  
composition by  
creditors.

**242.—(1.)** The Court may, upon application by the trustee, a creditor or the debtor, if it is satisfied—

Termination of  
the Court.  
C.B.A. s. 161  
(h).

- (a) that the debtor has failed to carry out or comply with a term of a composition under this Part;
- (b) that such a composition cannot be proceeded with without injustice or undue delay to the creditors or to the debtor; or
- (c) that for any other reason such a composition ought to be terminated,

make an order terminating the composition.

(2.) The Court shall not make an order terminating a composition on the ground specified in paragraph (a) or (c) of the last preceding sub-section unless it is satisfied that it would be in the interests of the creditors to do so.

(3.) The trustee or a creditor may include in an application under sub-section (1.) of this section an application for a sequestration order against the estate of the debtor and if the Court makes an order on the first-mentioned application terminating the composition, it may, if it thinks fit, forthwith make the sequestration order sought.

(4.) The Court may, if it thinks fit, dispense with service on the debtor of notice of an application by the trustee or a creditor under this section, either unconditionally or subject to conditions.

(5.) The making of an application by the trustee or a creditor for a sequestration order under this section shall, for the purposes of this Act, be deemed to be equivalent to the presentation of a creditor's petition against the debtor, but the provisions of sub-section (1.) of section 43, sections 44 and 47 and sub-sections (1.) and (2.) of section 52 of this Act do not apply in relation to such an application.

**243.—(1.)** Subject to this section, the provisions of sections 82 to 107 (inclusive) and sections 140 to 148 (inclusive) of this Act apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to a composition under this Part as if—

Application  
of general  
provisions  
of Act to  
compositions.

- (a) a sequestration order had been made against the debtor on the day on which the special resolution accepting the composition was passed; and
- (b) the trustee of the composition were the trustee in his bankruptcy.

(2.) In the application of the provisions of this Act specified in the last preceding sub-section to and in relation to a composition, a reference to a provable debt shall be read as a reference to a provable debt within the meaning of this Part.

(3.) The provisions of sections 162 to 169 (inclusive), sub-section (2.) of section 170, sections 171 to 174 (inclusive), section 175 (other than paragraph (b) of sub-section (1.) ) and sections 176 to 184 (inclusive) of this Act apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to a trustee of a composition under this Part as if the debtor by whom the composition was made were a bankrupt and the trustee of the composition were the trustee in his bankruptcy.

(4.) If, after taking into account the modifications and adaptations made by the rules and the provisions of sub-section (2.) of this section, a provision specified in sub-section (1.) or (3.) of this section is incapable of application to or in relation to a composition, or the trustee of a composition, as the case requires, or is inconsistent with this Part, that provision does not so have application.

(5.) In this section, "modification" includes the addition or omission of a provision or the substitution of a provision for another provision.

#### PART XI.—ADMINISTRATION OF ESTATES OF DECEASED PERSONS IN BANKRUPTCY.

Administration of estates under this Part upon petition by creditor.  
C.B.A. s. 155.  
E.B.A. s. 130.

**244.**—(1.) Subject to this section, where—

- (a) a debt of not less than Five hundred dollars was owing by a deceased person at the time of his death to a creditor, or debts amounting in the aggregate to not less than that amount were so owing to any two or more creditors;
- (b) a debt incurred by the legal personal representative of a deceased person of not less than Five hundred dollars is owing to a creditor, or debts so incurred amounting in the aggregate to not less than that amount are owing to any two or more creditors; or
- (c) a debt of not less than Five hundred dollars, or debts amounting in the aggregate to not less than that amount, which a deceased person would have been liable to pay to a creditor or any two or more creditors if he had not died becomes or become owing after his death,

the creditor or creditors to whom the debt or debts is or are owing may present a petition to the Court for an order for the administration of the estate of the deceased person (in this section referred to as "the deceased debtor") under this Part.

(2.) Subject to the next succeeding sub-section, a secured creditor shall, for the purposes of the last preceding sub-section, be deemed to be a creditor only to the extent, if any, by which the amount of the debt owing to him exceeds the value of his security.

(3.) A secured creditor may present, or join in presenting, a petition under this section as if he were an unsecured creditor if he includes in the petition a statement that he is willing to surrender his security for the benefit of creditors generally in the event of an order for the administration of the estate under this Part being made.

(4.) Where a petitioning creditor is a secured creditor, he shall set out in the petition particulars of his security.

(5.) A petition under this section shall be verified by the affidavit of a person who has knowledge of the facts.

(6.) A petition under this section shall not be presented unless—

(a) the debt, or each of the debts, in respect of which it is presented—

- (i) is a liquidated sum due at law or in equity or partly at law and partly in equity; and
- (ii) is payable immediately or at a certain future time; and

(b) at the time of his death, the deceased debtor—

- (i) was personally present or ordinarily resident in Australia;
- (ii) had a dwelling-house or place of business in Australia;
- (iii) was carrying on business in Australia, either personally or by means of an agent or manager; or
- (iv) was a member of a firm or partnership carrying on business in Australia by means of a partner or partners, or of an agent or manager.

(7.) Where a secured creditor has presented, or joined in presenting, a petition under this section as if he were an unsecured creditor, he shall, upon request in writing by the trustee within the prescribed time after the making of an order for the administration of the estate under this Part, surrender his security to the trustee for the benefit of the creditors generally.

(8.) A secured creditor to whom the last preceding sub-section applies who fails to surrender his security when requested to do so by the trustee in accordance with that sub-section is guilty of contempt of court.

(9.) Subject to the next succeeding sub-section, a sealed copy of the petition shall be served upon the legal personal representative of the deceased debtor or, if there is no legal personal representative, upon such person as the Court directs.

(10.) The Court may, if it is satisfied that there is no legal personal representative of the deceased debtor and that there are special circumstances that justify its so doing, by order dispense with service of the petition, either unconditionally or subject to conditions.

(11.) At the hearing of the petition, the Court shall require proof of—

- (a) the matters stated in the petition (for which purpose the Court may accept the affidavit verifying the petition as sufficient);
- (b) service of the petition, unless service of the petition has been dispensed with; and
- (c) the fact that the debt or debts to which the petition relates is or are still owing,

and if it is satisfied with the proof of those matters, may make an order that the estate be administered under this Part.

(12.) If the Court is not satisfied with the proof of any of those matters or is of the opinion that for other sufficient cause the order sought ought not be made, it may dismiss the petition.

(13.) Where proceedings have been commenced in a court for the administration of a deceased person's estate under a law of a State or Territory, a petition for an order under this section in relation to the estate shall not be presented by a creditor except by leave of the Court and on such terms and conditions (if any) as the Court thinks fit.

Debtor dying  
after  
presentation  
of creditor's  
petition.

**245.—**(1.) Subject to the next succeeding sub-section, where a person against whom a creditor's petition has been presented under Part IV. or under the repealed Act dies after he has been served with the petition but before a sequestration order has been made on the petition or the petition has been dismissed, an order may be made on that petition for the administration of his estate under this Part.

(2.) The matters of which the Court is to require proof before making such an order in a case to which the last preceding sub-section applies are those of which the Court would have required proof before making a sequestration order on the petition if the deceased person had not died.

Filing of  
statement of  
deceased  
debtor's affairs  
&c., by legal  
personal  
representative.

**246.—**(1.) Where an order is made under either of the last two preceding sections for the administration of the estate of a deceased person under this Part, and there is a legal personal representative of the deceased person, the legal personal representative shall—

- (a) make out and file in the office of the Registrar a statement, in accordance with the prescribed form, verified by affidavit, of the deceased person's affairs and of his administration of the deceased person's estate; and
- (b) furnish a copy of the statement to the official receiver for the District in which the order was made.

(2.) The statement shall be filed within twenty-eight days from the date on which the order for administration of the estate under this Part was made.

(3.) A legal personal representative who fails to file the statement required by this section to be filed by him is guilty of contempt of court.

(4.) The cost of making out and filing such a statement shall be borne by the estate.

(5.) A person who states in writing that he is a creditor of the estate may, without fee, and any other person may, on payment of the prescribed fee, inspect, personally or by an agent, the statement filed under this section in respect of a deceased person and may make a copy of it.

247.—(1.) Subject to this section, a person administering the estate of a deceased person may present a petition for an order for the administration of the estate under this Part, accompanied by a statement, in accordance with the prescribed form and in duplicate, of the deceased person's affairs and of his administration of the deceased person's estate, and the Court may make, or refuse to make, the order sought as it thinks fit.

Petition for administration under this Part by person administering estate of deceased person.  
C.B.A. s. 156.  
E.B.A. s. 130 (9).

(2.) A petition under this section shall not be presented unless, at the time of his death, the deceased person—

- (a) was personally present or ordinarily resident in Australia;
- (b) had a dwelling house or place of business in Australia;
- (c) was carrying on business in Australia, either personally or by means of an agent or manager; or
- (d) was a member of a firm or partnership carrying on business in Australia by means of a partner or partners, or of an agent or manager.

248.—(1.) Subject to this section, the provisions of subsection (2.) of section 47, sections 48 to 51 (inclusive), section 62, sections 64 to 68 (inclusive), sections 70 to 76 (inclusive), section 79, sections 81 to 114 (inclusive), sections 117 to 122 (inclusive), sections 125 to 130 (inclusive), sections 132 to 147 (inclusive) and sections 157 to 184 (inclusive) of this Act apply, subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to proceedings under this Part and the administration of estates under this Part.

Application of general provisions of Act in relation to administrations under this Part.  
C.B.A. s. 153 (4.).  
E.B.A. s. 130 (5).

(2.) In their application to and in relation to proceedings under this Part and the administration of estates under this Part—

- (a) the provisions of section 118 of this Act apply only in relation to an issue of execution or the institution of proceedings to attach a debt or enforce a charge or a charging order after the presentation of the petition on which an order under this Part is made;
  - (b) the provisions of section 119 of this Act apply in relation to any petition under this Part, whether presented by a creditor or not; and
  - (c) the provisions of section 122 of this Act apply only in relation to conveyances, transfers, charges, payments and obligations executed, made or incurred after the presentation of the petition on which an order under this Part is made.
- (3.) Subject to the rules, in the application of the provisions specified in sub-section (1.) of this section to and in relation to proceedings under this Part and the administration of estates of deceased persons under this Part—
- (a) a reference to a sequestration order shall be read as a reference to an order for administration of an estate under this Part;
  - (b) a reference to bankruptcy shall be read as a reference to administration under this Part;
  - (c) a reference to the property of the bankrupt shall be read as a reference to the divisible property of the estate as defined by sub-section (6.) of the next succeeding section;
  - (d) a reference to the date of the bankruptcy or to the date on which a person became a bankrupt shall be read as a reference to the date on which the order for administration under this Part was made;
  - (e) a reference to a bankrupt shall be read as a reference to a deceased person in respect of whose estate an order for administration under this Part has been made and as including a reference to the estate of that deceased person; and
  - (f) a reference to the trustee of the estate of a bankrupt shall be read as a reference to the trustee of the estate of a deceased person in respect of whose estate an order for administration under this Part has been made.
- (4.) If, after taking into account the modifications and adaptations made by the rules and the provisions of the last preceding sub-section, a provision specified in sub-section (1.) of this section is incapable of application to or in relation to proceedings under this Part or the administration of estates under this Part, or is inconsistent with this Part, that provision does not so have application.



(5.) In this section, “modification” includes the addition or omission of a provision or the substitution of a provision for another provision.

249.—(1.) Subject to this Act, where an order is made for the administration of the estate of a deceased person under this Part—

Vesting of  
property on  
making of  
order.

- (a) the divisible property of the estate, not being after-acquired property, vests forthwith in The Official Receiver in Bankruptcy; and
- (b) after-acquired property of the estate vests, as soon as it is acquired by, or devolves on, the estate, in The Official Receiver in Bankruptcy or, if a person other than an official receiver is trustee of the estate under this Act, in that trustee,

and is divisible amongst the creditors of the deceased person and of his estate in accordance with this Act.

(2.) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered and enables The Official Receiver in Bankruptcy or the trustee to be registered as the owner of any such property that is part of the divisible property of the estate, that property, notwithstanding that it vests in equity in The Official Receiver in Bankruptcy or the trustee, as the case may be, by virtue of this section, does not so vest at law until the requirements of that law have been complied with.

(3.) Except as provided by this Act, after an order has been made for the administration of the estate of a deceased person under this Part, it is not competent for a creditor—

- (a) to enforce any remedy against the estate in respect of a debt provable in the administration; or
- (b) except with the leave of the Court and on such terms as the Court thinks fit, to commence any legal proceedings in respect of such a debt or take any fresh step in such a proceeding.

(4.) After an order has been made for the administration of the estate of a deceased person under this Part, distress for rent shall not be levied or proceeded with against the divisible property of the estate, whether or not the deceased person was a tenant of the landlord by whom the distress is sought to be levied.

(5.) Nothing in this section affects the right of a secured creditor to realize or otherwise deal with his security.

(6.) In this section—

“after-acquired property”, in relation to an estate, means property that is acquired by, or devolves on, the estate after the day on which the order for the administration of the estate under this Part is made, being property that is part of the divisible property of the estate;

“the divisible property”, in relation to the estate of a deceased person, means—

(a) property that formed part of the estate on the day on which the order for administration of the estate under this Part was made, not being—

(i) property that, if the deceased person had not died and a sequestration order had been made against him on that day, would not have been divisible amongst his creditors under Part VI.; or

(ii) the proceeds of a policy of life insurance or endowment assurance, a policy for pure endowment or a policy for an annuity, being a policy that would not have been divisible amongst the creditors of the deceased person under Part VI. if he had become a bankrupt immediately before his death;

(b) property that is acquired by, or devolves on, the estate after the day on which the order for administration of the estate under this Part was made and before an order releasing the estate from administration under this Part is made, not being property that, if the deceased person had not died and a sequestration order had been made against him on that day, would not have been divisible amongst his creditors under Part VI.;

(c) the capacity to exercise, and to take proceedings for exercising, all such powers in, over or in respect of property as might have been exercised by the legal personal representative of the deceased person for the benefit of the estate on the day on which the order for administration of the estate under this Part was made or at any time after that day and before an order releasing the estate from administration under this Part is made; and

(d) property that forms part of the divisible property of the estate by virtue of section 251 of this Act and any amount for which a person is liable to account to the trustee of the estate under sub-section (2.) of that section.

**250.—(1.)** Subject to the provisions of this Act other than the last preceding section, where an order is made for the administration under this Part of the estate of a deceased person who was, at the time of his death, an undischarged bankrupt—

Effect of order under this Part when deceased person is an undischarged bankrupt.

- (a) property that has, by virtue of section 58 of this Act, vested in The Official Receiver in Bankruptcy or the trustee in relation to the bankruptcy does not vest in The Official Receiver in Bankruptcy or the trustee in relation to the administration of the estate by force of the order;
- (b) property that is acquired by, or devolves on, the estate of the bankrupt after the making of the order for administration under this Part, being property divisible amongst the creditors of the estate under this Part, vests in The Official Receiver in Bankruptcy or the trustee in relation to the administration of the estate under this Part as soon as it is acquired by, or devolves on, the estate; and
- (c) the trustee in the bankruptcy shall be deemed to be a creditor in the administration of the deceased bankrupt's estate in respect of any unsatisfied balance of debts provable in the bankruptcy, but is not entitled to a dividend as such a creditor until the other creditors in the administration of the deceased bankrupt's estate have been paid in full.

(2.) The vesting of property at law in The Official Receiver in Bankruptcy or a trustee by virtue of paragraph (b) of the last preceding sub-section is subject to a like qualification to that provided by sub-section (2.) of section 58 of this Act in relation to the vesting of property of a bankrupt in The Official Receiver in Bankruptcy or a trustee.

**251.—(1.)** Subject to this section, where an order for the administration of the estate of a deceased person under this Part is made within twelve months after the death of that person, any real property of the deceased person devised by his will which, under a law of a State or Territory, vests, either upon the death of that person or upon compliance with a law of the State or Territory relating to the registration of interests in land, directly in the devisee, forms part of the divisible property of the estate.

Real property devised by will that vests directly in devisee to form part of estate in certain cases.

(2.) Where, before the making of such an order, the devisee has disposed of the property devised, or has mortgaged or charged it, for valuable consideration, to a person acting in good faith, the property does not form part of the divisible property of the estate, or forms part of the divisible property of the estate subject to the mortgage or charge, as the case requires,

but the devisee is liable to account to the trustee of the estate for the proceeds of the disposal of the property or for an amount equal to the amount for which it is mortgaged or charged, as the case requires.

Liability of  
legal personal  
representative,  
C.B.A. s. 155  
(10.), (11.).

**252.—**(1.) A payment or transfer of property made by the legal personal representative of a deceased person—

- (a) after service on him of a petition under this Part in respect of the estate of that person;
- (b) in a case to which sub-section (1.) of section 245 of this Act applies, after he has knowledge of the presentation of a petition against that person; or
- (c) after a petition is presented under section 247 of this Act in respect of the estate of that person,

does not, if an order for the administration of the estate of that person is made under this Part on that petition, operate as a discharge to the legal personal representative as between himself and the trustee.

(2.) Except as provided by the last preceding sub-section, nothing in this Part shall be taken to impose on the legal personal representative of a deceased person any liability for any payment or transfer of property made, or any act or thing done, in good faith by the legal personal representative before an order for administration of the estate of the deceased person is made under this Part.

Application  
of surplus,  
C.B.A. s. 155  
(9.).  
E.B.A. s. 130  
(7).

**253.** Where a surplus remains after payment in full of—

- (a) the costs, charges and expenses of the administration of the estate of a deceased person under this Part;
- (b) all debts that have been proved in the administration; and
- (c) interest on interest-bearing debts that have been proved in the administration,

the surplus shall be paid to the legal personal representative of the deceased person or to such other person as the Court directs and the Court shall make an order releasing the estate from administration under this Part.

## PART XII.—UNCLAIMED DIVIDENDS OR MONEYS.

Payment of  
unclaimed  
dividends or  
moneys to  
Consolidated  
Revenue Fund,  
C.B.A. s. 208.  
E.B.A. s. 153.

**254.—**(1.) In this section, “ trustee ” means—

- (a) a trustee of the estate of a bankrupt;
- (b) a trustee of a deed of assignment or a deed of arrangement, whether the deed was executed under this Act or the repealed Act;

- (c) a trustee of a composition or a scheme of arrangement, whether the composition or scheme was accepted or approved under this Act or the repealed Act; or
  - (d) a trustee of the estate of a deceased person in respect of which an order has been made under Part X. of the repealed Act or Part XI. of this Act,
- and includes The Official Receiver in Bankruptcy.

(2.) Where a trustee has under his control—

- (a) any dividends or other moneys that have remained unclaimed for a period exceeding six months; or
- (b) any moneys that it is proposed not to distribute or pay to any person,

he shall forthwith pay those moneys into the Consolidated Revenue Fund.

(3.) A person who claims to be entitled to any moneys that have been paid into the Consolidated Revenue Fund by a trustee in pursuance of the last preceding sub-section may apply to the Court for an order under this sub-section declaring him to be so entitled and, if the Court is satisfied that the applicant is entitled to those moneys or a part of those moneys, it may make an order accordingly.

(4.) Upon receipt by the Attorney-General of an office copy of an order under the last preceding sub-section, the Attorney-General shall pay to the person in whose favour the order was made the amount specified in the order out of moneys lawfully available for the purpose.

#### PART XIII.—EVIDENCE.

255.—(1.) In this section, “approved shorthand writer” means a shorthand writer approved by the Registrar for the purposes of this section.

Shorthand  
notes of  
evidence, &c.  
C.B.A. ss. 48,  
51.  
E.B.A. s. 141.

(2.) The Court may direct that any evidence, argument, ruling or direction in proceedings before the Court be taken down by an approved shorthand writer or be taken down or recorded by means of a steno-type machine, sound recording apparatus or such other means as is prescribed.

(3.) The Registrar may direct that any evidence to be given before him shall be taken down by an approved shorthand writer or be taken down or recorded by means of a steno-type machine, sound recording apparatus or such other means as is prescribed.

(4.) Any evidence, argument, ruling or direction taken down or recorded in pursuance of either of the last two preceding sub-sections shall subsequently be reduced to writing and the transcript certified, or sealed or signed, as prescribed.

(5.) The cost of the transcript of any evidence, argument, ruling or direction taken down or recorded in pursuance of sub-section (2.) of this section, including any cost of the copy of the transcript for the use of the Court, shall be costs in the proceedings.

(6.) The cost of the transcript of any evidence taken down or recorded in pursuance of sub-section (3.) of this section, including any cost of the copy of the transcript for the use of the Registrar, shall, subject to any order of the Court—

- (a) in the case of evidence given in relation to a bankruptcy—be deemed to be costs awarded by the Court out of the estate of the bankrupt; or
- (b) in the case of evidence given in relation to a deed of assignment or a deed of arrangement—be deemed to be costs awarded by the Court against the trustee of the deed in his capacity as trustee and to be payable by the trustee as a cost of the administration of the deed.

(7.) Where evidence given by a person before the Court or the Registrar is admissible in proceedings under this Act, that evidence may be proved by the production of a transcript of the evidence under this section, being a transcript certified, or sealed or signed, as prescribed.

*Evidence of matters stated in notices published in Gazette.*

C.B.A. s. 44 (1.),  
E.B.A. s. 137.

*Evidence of proceedings at meetings of creditors or committee of inspection.*

C.B.A. s. 45 (1.),  
E.B.A. s. 138  
(1).

*Presumption as to due convening of meetings, &c.*

C.B.A. s. 45 (2.),  
E.B.A. s. 138  
(2).

256. A copy of the *Gazette* containing any notice inserted in it in pursuance of this Act is evidence of the matters stated in the notice.

257. The minutes of proceedings at a meeting of creditors or of a committee of inspection under this Act, signed by a person describing himself as, or appearing to have been, chairman of the meeting is evidence of those proceedings.

258. Unless the contrary is shown—

- (a) a meeting of creditors or of a committee of inspection in respect of which minutes of proceedings have been signed by a person describing himself as, or appearing to have been, chairman of the meeting shall be deemed to have been duly convened and held; and
- (b) all resolutions passed or proceedings taken at such a meeting shall be deemed to have been duly passed or taken.

**259.—(1.) Any—**

- (a) petition;
- (b) order made by the Court;
- (c) instrument, affidavit, document, deed, certificate or extract from a deed or register made or used in the course of proceedings under this Act; or
- (d) copy of a document referred to in any of the preceding paragraphs,

that appears to be sealed with a seal of the Court or to be marked with a stamp referred to in section 26 of this Act or that purports to be signed by a Judge of the Court is receivable in evidence in all legal proceedings.

Evidence of  
bankruptcy  
documents.  
C.B.A. s. 46.  
E.B.A. s. 139.

(2.) A copy of a document referred to in paragraph (a), (b) or (c) of the last preceding sub-section that is certified to be a true copy by the Registrar is receivable in evidence in all legal proceedings.

**260.** A certificate signed by the Registrar that a person named in the certificate became a bankrupt on a date specified in the certificate is evidence of that fact in all legal proceedings.

Certificate by  
Registrar as to  
bankruptcy.

**261. A certificate signed by the Registrar—**

- (a) that a registered trustee named in the certificate has been appointed as trustee of the estate of a bankrupt, of a deed of assignment or a deed of arrangement or of a composition or scheme of arrangement; or
- (b) that an official receiver named in the certificate is the trustee of the estate of a bankrupt or has been appointed to act as trustee of a deed of assignment or a deed of arrangement or of a composition,

is conclusive evidence of that fact in all legal proceedings.

Evidence of  
appointment  
of trustee.  
C.B.A. s. 50.  
E.B.A. s. 143.

**262.—(1.)** An affidavit to be used in a proceeding under this Act may be sworn within the Commonwealth or a Territory of the Commonwealth before a person authorized to administer oaths for the purposes of the High Court or the Supreme Court of a State or Territory of the Commonwealth, a Judge of a Court having jurisdiction under this Act, a Registrar, an official receiver, a justice of the peace, a commissioner for affidavits or a commissioner for declarations.

Swearing of  
affidavits.  
C.B.A. s. 47.  
E.B.A. s. 140.

(2.) An affidavit to be used in a proceeding under this Act may be sworn at a place outside the Commonwealth and the Territories of the Commonwealth before—

- (a) a commissioner of the Supreme Court of a State or Territory of the Commonwealth for taking affidavits empowered and authorized to act in that place;

- (b) an Australian Diplomatic Officer or an Australian Consular Officer, as defined by the *Consular Fees Act* 1955, exercising his function in that place;
- (c) a notary public exercising his function in that place; or
- (d) a person qualified to administer an oath in that place, being a person certified by a person mentioned in any of the last three preceding paragraphs, or by the superior court of that place, to be so qualified.

## PART XIV.—OFFENCES.

263.—(1.) A person shall not—

(a) with intent to defraud the creditors of—

- (i) a bankrupt;
- (ii) a deceased person or the estate of a deceased person; or
- (iii) a debtor who has executed a deed of assignment or a deed of arrangement,

conceal property of the bankrupt, of the deceased person or his estate or of the debtor;

(b) receive property—

- (i) from a bankrupt or a debtor who has executed a deed of assignment or a deed of arrangement or a person on behalf of a bankrupt or such a debtor;
- (ii) from the legal personal representative of a deceased person; or
- (iii) from a debtor who subsequently becomes a bankrupt or executes such a deed or a person on behalf of such a debtor,

with intent to defraud, or to assist the bankrupt, the legal personal representative or the debtor to defraud, the creditors of the bankrupt, of the deceased person or his estate or of the debtor;

(c) with intent to defraud, insert or cause to be inserted in the *Gazette* or in a newspaper an advertisement purporting to be under this Act without authority or knowing it to be false in any particular; or

(d) with intent to defraud—

- (i) in any proceedings in bankruptcy;
- (ii) in connexion with the administration of the estate of a deceased person; or

Concealment,  
&c., of  
property, &c.  
C.B.A. s. 209.  
B.B.A. s. 154.



- (iii) in connexion with the administration of a debtor's affairs under a deed of assignment, a deed of arrangement, a composition or a scheme of arrangement,

make a false claim or a declaration or statement of account that is untrue in any particular or lodge a proof of debt that is untrue in any particular.

Penalty: Imprisonment for three years.

(2.) A person shall not—

- (a) dispose of, receive, remove, retain or conceal property that has been seized—

- (i) as part of the property of a bankrupt;
    - (ii) as part of the estate of a deceased person; or
    - (iii) under a deed of assignment,
- knowing it to have been so seized; or

- (b) with intent to defeat the seizure of property—

- (i) forming part of the property of a bankrupt;
    - (ii) forming part of the estate of a deceased person;
    - or
    - (iii) under a deed of assignment,
- obstruct or endeavour to obstruct a person in the discharge of his duty.

Penalty: Imprisonment for one year.

(3.) In this section—

“composition” includes a composition under Division 5 of Part IV. of the repealed Act or under Part XI. of the repealed Act;

“deceased person” means a deceased person in respect of whose estate an order for administration has been made under Part XI. of this Act or Part X. of the repealed Act;

“deed of arrangement” includes a deed of arrangement under Part XII. of the repealed Act;

“deed of assignment” includes a deed of assignment under Part XI. of the repealed Act;

“scheme of arrangement” includes a scheme of arrangement under Division 5 of Part IV. of the repealed Act or under Part XI. of the repealed Act.

Forgery of  
process, &c.  
C.B.A. s. 209  
(b).

**264. A person shall not—**

- (a) deliver or cause to be delivered to a person a paper or writing falsely purporting to be, or to be a copy of, a summons, order, warrant or process of a Court having jurisdiction in bankruptcy or of a Judge of such a Court or of a Registrar or Deputy Registrar, knowing the paper or writing to be false; or
- (b) act or endeavour to act under colour or pretence of any such paper or writing.

Penalty: Imprisonment for three years.

Failure of  
bankrupt or  
debtor to  
disclose  
property, &c.  
C.B.A. s. 210.  
E.B.A. s. 154.

**265.—(1.) A bankrupt—**

- (a) shall, to the best of his knowledge and belief, fully and truly disclose to the trustee all his property, and its value;
- (b) shall, to the best of his knowledge and belief, fully and truly disclose to the trustee particulars of any disposition of property made by him within the period of two years immediately preceding the date on which he became a bankrupt;
- (c) shall not refuse or fail to comply with a direction of the trustee to deliver up to the trustee his property or a part of his property, being property or a part of his property that is in his custody or under his control;
- (d) shall not refuse or fail to disclose to the trustee the whereabouts of any books, documents, papers or writings relating to his trade dealings, property or affairs;
- (e) shall not refuse or fail to comply with a direction of the trustee to deliver up to the trustee any books, documents, papers or writings in his custody or under his control relating to his trade dealings, property or affairs;
- (f) shall not omit any material particular from a statement relating to his trade dealings, property or affairs;
- (g) shall, if he knows that a person has lodged a proof of debt in the bankruptcy that is false, forthwith inform the trustee of the fact; and
- (h) shall give to the trustee a full and proper explanation of any loss or depreciation of any of his assets or part of any of his assets that occurred within the period of two years immediately preceding the date on which he became a bankrupt.

Penalty: Imprisonment for one year.

(2.) A bankrupt shall be deemed to have complied with paragraph (b) of the last preceding sub-section in respect of any

property if he shows that that property has been disposed of in the ordinary way of his business or in meeting the ordinary expenses of his family.

(3.) A bankrupt shall not, for the purpose of obtaining the consent of his creditors or any of them to any matter relating to his trade dealings, property or affairs, make a false representation or commit any fraud.

Penalty: Imprisonment for three years

(4.) A person who, after the presentation of a petition on which, or by virtue of the presentation of which, he becomes a bankrupt—

- (a) conceals or removes any part of his property to the value of Twenty dollars or more;
- (b) conceals a debt due to or by him;
- (c) conceals, parts with, destroys, mutilates, falsifies, alters or makes a false entry in or omits a material particular from, a book or document affecting or relating to his trade dealings, property or affairs;
- (d) attempts to account for any part of his property by falsely stating that he has incurred a loss or expense;
- (e) otherwise than in the ordinary way of his business, disposes of, or gives security over, property that he has obtained on credit and for which he has not paid; or
- (f) prevents the production of any book, document, paper or writing affecting or relating to his trade dealings, property or affairs,

is guilty of an offence and is punishable, upon conviction, by imprisonment for a period not exceeding one year.

(5.) A person who, after the presentation of a petition on which, or by virtue of the presentation of which, he becomes a bankrupt—

- (a) obtains property by fraud; or
- (b) in incurring any debt or liability, obtains credit by fraud,

is guilty of an offence and is punishable, upon conviction, by imprisonment for a period not exceeding three years.

(6.) The last two preceding sub-sections extend to an act or omission done or made after the commencement of this Act where the petition was presented before the commencement of this Act but do not apply to an act or omission done or made after the person by whom it was done or made has been discharged from the bankruptcy or after his bankruptcy has been annulled.

(7.) A person who has become a bankrupt after the commencement of this Act and, within twelve months before the

presentation of the petition on which, or by virtue of the presentation of which, he became a bankrupt, has done any of the things specified in any of paragraphs (a) to (f) of sub-section (4.) of this section or paragraph (a) or (b) of sub-section (5.) of this section, whether before or after the commencement of this Act, is guilty of an offence and is punishable, upon conviction, by imprisonment for a period not exceeding the maximum period of imprisonment applicable to the doing of that thing under sub-section (4.) or sub-section (5.) of this section, as the case may be.

(8.) A person who has become a bankrupt and, within two years before he became a bankrupt and after the commencement of this Act, has contracted a debt provable in the bankruptcy of an amount of Five hundred dollars or upwards without having at the time of contracting it any reasonable or probable ground of expectation, after taking into consideration his other liabilities (if any), of being able to pay the debt, is guilty of an offence and is punishable, upon conviction, by imprisonment for a period not exceeding one year.

(9.) It is a defence to a charge under this section (not being a charge under paragraph (c) or (e) of sub-section (1.) or sub-section (3.), (5.) or (8.)) if the defendant proves that the act or omission to which the charge relates was done or made without intent to defraud any of his creditors.

Disposing or  
charging of  
property by  
person who  
becomes, or has  
become, a  
bankrupt.  
C.B.A. s. 212  
(1.) (b).

266.—(1.) A person who, after the presentation of a petition on which, or by virtue of the presentation of which, he becomes a bankrupt disposes of, or creates a charge on, any property with intent to defraud his creditors is guilty of an offence and is punishable, upon conviction, by imprisonment for a period not exceeding three years.

(2.) The last preceding sub-section does not apply to the disposal of, or the creation of a charge on, property after the person by whom the disposal is effected or the charge is created is discharged from bankruptcy or after his bankruptcy has been annulled.

(3.) A person who has become a bankrupt after the commencement of this Act and, within twelve months before the presentation of the petition on which, or by virtue of the presentation of which, he became a bankrupt and after the commencement of this Act, has disposed of, or created a charge on, any property with intent to defraud his creditors is guilty of an offence and is punishable, upon conviction, by imprisonment for a period not exceeding three years.

Omitting  
material  
particular from  
statement of  
affairs  
accompanying  
debtor's  
petition.

267. A person who presents a debtor's petition shall not omit a material particular from the statement of his affairs accompanying the petition.

Penalty: Imprisonment for one year.

268.—(1.) A debtor shall not knowingly give a false or misleading answer to a question put to him at a meeting called under Part X.

Offences in  
relation to  
deeds and  
compositions.

Penalty: Imprisonment for one year.

(2.) A debtor who has executed a deed of assignment or a deed of arrangement under Part X.—

- (a) shall, to the best of his knowledge and belief, fully and truly disclose to the trustee of the deed all the property assigned by the deed and its value;
- (b) shall not refuse or fail to comply with a direction of the trustee of the deed to deliver up to the trustee property assigned by the deed that is in the custody or under the control of the debtor;
- (c) shall not refuse or fail to comply with—
  - (i) a direction of the trustee of the deed to disclose the whereabouts of any books, documents, papers or writings relating to his trade dealings, property or affairs; or
  - (ii) a direction of the trustee of the deed to deliver up to the trustee any books, documents, papers or writings relating to his trade dealings, property or affairs that are in his custody or under his control;
- (d) shall not omit any material particular from a statement relating to his trade dealings, property or affairs;
- (e) shall, if he knows that a person has lodged a proof of debt under the deed that is false, forthwith inform the trustee of the fact;
- (f) shall execute such instruments and do all such acts and things in relation to property assigned by the deed and its realization as are required by this Act or by the trustee or as are ordered by the Court upon the application of the trustee; and
- (g) shall aid to the utmost of his power in the administration of his property and affairs under the deed.

Penalty: Imprisonment for one year.

(3.) A debtor who has executed a deed of assignment or a deed of arrangement under Part X. shall not make a false representation or commit any fraud for the purpose of obtaining the consent of his creditors or any of them to any matter relating to his trade dealings, property or affairs.

Penalty: Imprisonment for three years.

(4.) The last two preceding sub-sections do not apply to an act or omission that is done or made—

- (a) in the case of a deed of assignment—after the final dividend has been paid under the deed or after the deed has been declared to be void; or

- (b) in the case of a deed of arrangement—after the terms of the deed have been carried out or after the deed has been declared to be void or has been terminated.

(5.) A debtor who has executed a deed of assignment under Part X. shall, to the best of his knowledge and belief, fully and truly disclose to the trustee of the deed particulars of any disposition of property made by him within the period of two years immediately preceding the date on which he signed the authority under section 188 of this Act authorizing the calling of the meeting of his creditors at which the resolution requiring the execution of the deed was passed.

Penalty: Imprisonment for one year.

(6.) A debtor shall be deemed to have complied with the last preceding sub-section in respect of any property if he shows that that property has been disposed of in the ordinary way of his business or in meeting the ordinary expenses of his family.

(7.) A debtor who has signed an authority under section 188 of this Act, and has, within twelve months before the date on which he signed that authority and after the commencement of this Act—

- (a) done any of the things specified in any of paragraphs (a) to (f) of sub-section (4.) of section 265 of this Act or paragraph (a) or (b) of sub-section (5.) of that section; or

- (b) disposed of, or created a charge on, any property with intent to defraud his creditors,

is guilty of an offence and is punishable, upon conviction, if the offence relates to the doing of a thing specified in paragraph (a) or (b) of sub-section (5.) of section 265 of this Act or a thing specified in paragraph (b) of this sub-section, by imprisonment for a period not exceeding three years or, in any other case, by imprisonment for a period not exceeding one year.

(8.) It is a defence to a charge under this section (not being a charge under paragraph (b) or (c) of sub-section (2.) or sub-section (3.) of this section or a charge relating to the doing of a thing specified in paragraph (a) or (b) of sub-section (5.) of section 265 of this Act or paragraph (b) of the last preceding sub-section) if the defendant proves that the act or omission to which the charge relates was done or made without intent to defraud any of his creditors.

269. A bankrupt shall not—

- (a) either alone or jointly with another person, obtain credit to the extent of Two hundred dollars or more from a person without informing that person that he is an undischarged bankrupt; or

Bankrupt  
obtaining  
credit, &c.,  
without  
disclosing his  
bankruptcy.  
C.B.A. s. 211.  
B.B.A. s. 155.

- (b) carry on business under an assumed name, in the name of another person or, either alone or in partnership, under a firm name without disclosing to every person with whom he or, if he is carrying on business in partnership under a firm name, the partnership deals, his true name and the fact that he is an undischarged bankrupt.

Penalty: Imprisonment for three years.

**270.—**(1.) A person who has become a bankrupt after the commencement of this Act and—

*Failure to keep proper books of account.*  
C.B.A. ss. 213.  
209(x).  
E.B.A. s. 158.

- (a) has not kept such books, accounts and records as are usual and proper in any business carried on by him and as sufficiently disclose his business transactions and financial position during any period while the business was being carried on within the period of five years immediately preceding the date on which he became a bankrupt; or

- (b) having kept such books, accounts or records, has not preserved them,

is guilty of an offence and is punishable, upon conviction—

- (c) in the case of a person who has previously been either a bankrupt whose bankruptcy has not been annulled or a person whose affairs have been administered under a deed of assignment or a deed of arrangement under this Act or the repealed Act or who has made a composition or arrangement with creditors under this Act or the repealed Act—by imprisonment for a period not exceeding three years; and
- (d) in the case of any other person—by imprisonment for a period not exceeding one year.

(2.) It is a defence to a prosecution under the last preceding sub-section if the accused proves that in the circumstances his failure to keep or preserve the books, accounts or records was honest and excusable.

**271.** A person who has become a bankrupt after the commencement of this Act and—

*Gambling or hazardous speculations.*  
C.B.A. s. 214.  
E.B.A. s. 157.

- (a) within two years before the presentation of the petition on which, or by virtue of the presentation of which, he became a bankrupt, whether the petition was presented before or after the commencement of this Act, materially contributed to, or increased the extent of, his insolvency; or

(b) during any period between the presentation of that petition and the date on which he became a bankrupt, lost any of his property,

by gambling or by speculations that, having regard to his financial position at the time and any other material circumstance, were rash and hazardous, being gambling or speculations not connected with a trade or business carried on by him, is guilty of an offence and is punishable, on conviction, by imprisonment for a period not exceeding one year.

Leaving  
Australia with  
intent to  
defeat  
creditors, &c.  
C.B.A. s. 215.  
E.B.A. s. 159.

272. A person who has become a bankrupt after the commencement of this Act and—

(a) has, within twelve months before he became a bankrupt, left Australia, or done an act preparatory to leaving Australia, with intent to defeat or delay his creditors; or

(b) without the consent in writing of the trustee of his estate, leaves Australia, or does an act preparatory to leaving Australia, before he is discharged from the bankruptcy,

is guilty of an offence and is punishable, on conviction, by imprisonment for a period not exceeding one year.

Trial of  
offences.  
C.B.A. s. 217.  
E.B.A. s. 163.

273.—(1.) Subject to this section, an offence against this Act, other than an offence that is punishable by a fine only, is punishable either on indictment or on summary conviction.

(2.) Where proceedings for an offence that is punishable as provided by the last preceding sub-section are brought in a court of summary jurisdiction, the court may either determine the proceedings or commit the defendant for trial, but shall not, if it determines the proceedings, impose a period of imprisonment exceeding one year in respect of the offence.

(3.) Subject to the next succeeding sub-section, an offence against this Act that is punishable by a fine only is punishable by a court of summary jurisdiction.

(4.) The Court has jurisdiction to try summarily any offence against this Act.

(5.) Where proceedings for an offence other than an offence that is punishable by a fine only are brought in the Court, the Court may either determine the proceedings or commit the defendant for trial before a court of competent jurisdiction, but shall not, if it determines the proceedings, impose a period of imprisonment exceeding one year in respect of the offence.

(6.) The Court has, in relation to proceedings for an offence against this Act brought in the Court, power to admit the defendant to bail and to bind over witnesses to appear and such other powers as are prescribed.



(7.) The procedure of the Court in relation to proceedings for an offence against this Act, including the procedure by which those proceedings are to be instituted, shall be as prescribed.

**274.** Summary proceedings in respect of an offence against this Act, whether in a court of summary jurisdiction or in the Court, shall not be instituted later than one year after the discovery of the offence by the official receiver or the trustee in the bankruptcy or the trustee of the deed or composition, as the case may be, or, in the case of proceedings by a creditor, the discovery of the offence by the creditor.

Time within which summary proceedings to be brought.  
C.B.A. s. 219 (2).  
E.B.A. s. 164 (2).

**275.** A person may be prosecuted for an offence against this Act although—

- (a) he has been discharged from bankruptcy or his bankruptcy has been annulled;
- (b) a composition or a scheme of arrangement has been accepted or approved under Division 6 of Part IV.; or
- (c) a deed of assignment or a deed of arrangement has become binding on his creditors, or his creditors have accepted a composition, under Part X.

Criminal liability not affected by discharge, &c.  
C.B.A. s. 218.  
E.B.A. s. 162.

**276.—(1.)** A person who acts as trustee under a deed of assignment or a deed of arrangement under Part X. that has, to his knowledge, been declared to be void or been terminated is liable, on conviction by the Court or a court of summary jurisdiction, to a fine not exceeding Twenty dollars for each day on which he has so acted, not being a day on which his acting as a trustee was confined to taking such steps as were necessary for the protection of the property of the debtor.

Trustee acting under void deed.  
C.B.A. s. 221.

(2.) It is a defence to proceedings brought under the last preceding sub-section if the person alleged to have acted as trustee proves that his acting as a trustee was confined to taking such steps as were necessary for the protection of the property of the debtor.

**277.** Where by this Act it is provided that a person is guilty of contempt of court, that person may be dealt with by any court having jurisdiction in bankruptcy as if he were guilty of a contempt of that court, but a person is not liable to be punished by more than one court in respect of the one contempt.

Punishment of contempt of court.

#### PART XV.—TRANSITIONAL PROVISIONS.

**278.—(1.)** A person who was a bankrupt at the commencement of this Act, whether he became a bankrupt under the repealed Act or a law of a State or Territory, continues to be a bankrupt until he is discharged, or his bankruptcy is annulled, under this Act and, subject to this Part, the provisions of this Act apply, so far as they are capable of application and subject to such modifications and adaptations (if any) as are prescribed by the rules, to and in relation to such a bankrupt as if he had become a bankrupt under this Act.

Bankrupts under repealed Act, &c., to continue to be bankrupts under this Act.

(2.) The provisions of section 66 of the *Bankruptcy Act* 1924–1965 continue to apply in relation to a person against whose estate a sequestration order was made under the repealed Act but who had not filed the statement of affairs referred to in that section before the commencement of this Act, whether or not the time allowed under that section for filing the statement of affairs had expired before the commencement of this Act.

(3.) In this section, “modification” includes the addition or omission of a provision or the substitution of a provision for another provision.

Orders, &c.,  
made under  
repealed Act  
to continue  
to have force  
and effect.

279.—(1.) An order made by a court or a Registrar or Deputy Registrar in Bankruptcy under the repealed Act in relation to a person who continues to be a bankrupt by virtue of the last preceding section (including an order made under section 101 of the repealed Act in relation to such a person), being an order in force immediately before the commencement of this Act, continues to have force and effect after the commencement of this Act.

(2.) An order continued in force by the last preceding sub-section or an order made after the commencement of this Act in pursuance of sub-section (4.) of section 285 of this Act—

(a) may be rescinded, varied or suspended under this Act; and

(b) may be enforced under this Act in the same manner as a corresponding order made under this Act.

(3.) A direction given to a bankrupt under the repealed Act by an official receiver or trustee continues to have force and effect as if given by the official receiver or trustee under this Act.

Continuance of  
Registrars, &c.

280. All persons who held office immediately before the commencement of this Act as Registrar in Bankruptcy, Deputy Registrar in Bankruptcy or official receiver under the *Bankruptcy Act* 1924–1965 shall continue to hold office as such under this Act as if appointed under this Act.

Registration  
of existing  
trustees.

281.—(1.) A person who was, immediately before the commencement of this Act, registered under the repealed Act as qualified to act as a trustee shall be registered under section 155 of this Act by the Registrar without application as if the Court had directed under that section that he be so registered.

(2.) A bond entered into by such a person under section 126 of the repealed Act and any security given in relation to that bond shall be deemed to have been entered into and given under section 155 of this Act.

(3.) A reference in such a bond or security to the repealed Act shall be read as including a reference to this Act and a reference in such a security to a bond entered into under sub-section (2.) of section 126 of the repealed Act shall be read as

including a reference to a bond entered into under sub-section (2.) of section 155 of this Act.

**282.—**(1.) A person who held office immediately before the commencement of this Act as the trustee, or a trustee, of the estate of a bankrupt or of the estate of a deceased debtor under the repealed Act continues to be the trustee, or a trustee, as the case may be, of the estate of that bankrupt or of the estate of the deceased debtor, as the case may be.

*Continuance  
of trustees.*

(2.) A person who held office immediately before the commencement of this Act as the trustee, or a trustee, of—

- (a) a composition or scheme of arrangement under Division 5 of Part IV. of the repealed Act;
- (b) a deed of assignment or a composition or scheme of arrangement under Part XI. of the repealed Act; or
- (c) a deed of arrangement under Part XII. of the repealed Act,

continues to be the trustee, or a trustee, of the composition, scheme of arrangement or deed as continuing in force after the commencement of this Act.

(3.) Nothing in the last two preceding sub-sections prevents the removal of a trustee to whom either of those sub-sections applies, or the resignation or vacation of office by such a trustee, after the commencement of this Act.

**283.—**(1.) Subject to this section, where, immediately before the commencement of this Act, an official receiver held office, or was acting, as trustee of the estate of a bankrupt or of a deceased debtor under the repealed Act, the property of the bankrupt or of the deceased debtor vested in the official receiver vests, upon the commencement of this Act, in The Official Receiver in Bankruptcy, without any conveyance, assignment or transfer.

*Vesting of  
certain property  
in The Official  
Receiver in  
Bankruptcy.*

(2.) Where a law of the Commonwealth or of a State or Territory of the Commonwealth requires the transmission of property to be registered, and enables The Official Receiver in Bankruptcy to be registered as the owner of any such property that is part of the property of the bankrupt or of the deceased debtor, as the case may be, that property, notwithstanding that it vests in equity in The Official Receiver in Bankruptcy by virtue of this section, does not so vest at law until the requirements of that law have been complied with.

**284.** A committee of inspection appointed under the repealed Act and in existence immediately before the commencement of this Act shall continue in existence as if appointed under this Act.

*Continuance of  
committees of  
inspection.*

**285.—**(1.) Where—

- (a) a bankruptcy notice under the repealed Act has been served on a debtor before the commencement of this Act; and

*Uncompleted  
proceedings  
under the  
repealed  
Act.*

(b) the debtor has failed, whether before or after the commencement of this Act, to comply with the notice, a bankruptcy petition may be presented against the debtor under the repealed Act, and proceedings in relation to the petition may, subject to sub-section (3.) of this section, be taken and had under that Act, as if this Act had not been passed.

(2.) Where a bankruptcy petition has been presented against a debtor under the repealed Act before the commencement of this Act, but a sequestration order has not been made on the petition, and the petition has not been withdrawn or dismissed, before the commencement of this Act, proceedings in relation to the petition may, subject to the next succeeding sub-section, be continued, or taken and had, after the commencement of this Act under the repealed Act, as if this Act had not been passed.

(3.) Where a person becomes a bankrupt on a petition to which either of the last two preceding sub-sections applies, all subsequent proceedings in relation to the bankrupt or his estate shall be taken and had, and this Act shall apply, as if he had become a bankrupt on a creditor's petition presented under this Act.

(4.) Any proceedings (including the hearing of an appeal) in a court or before a Registrar or Deputy Registrar in Bankruptcy under the repealed Act that had not been completed before the commencement of this Act may be continued and completed, and any right of appeal in relation to those proceedings may be exercised and the appeal heard and determined, as if this Act had not been passed.

(5.) Any right of appeal to the High Court from an order of a court having jurisdiction under the repealed Act, being an order made before the commencement of this Act, may be exercised, and the appeal heard and determined, after the commencement of this Act, as if this Act had not been passed.

(6.) Any right of appeal to a court having jurisdiction in bankruptcy under the repealed Act from an act or decision of a trustee, a Registrar or any other officer under the repealed Act done or made before the commencement of this Act and any right to apply to such a court to review such an act or decision, may be exercised, and the appeal or application heard and determined, by a court having jurisdiction under this Act.

Presentation  
of petition  
based on acts  
of bankruptcy  
under repealed  
Act.

286.—(1.) A creditor's petition may be presented under this Act in respect of any act, occurrence or omission that was done, or occurred, before the commencement of this Act and constituted an act of bankruptcy under the repealed Act but is not an act of bankruptcy under this Act, as if the act, occurrence or omission constituted an act of bankruptcy under this Act.

(2.) Any restriction under the repealed Act with respect to the time within which a petition may be presented or a sequestration order made in respect of a particular act of bankruptcy applies in relation to the presentation of a petition under this Act in respect of that act of bankruptcy by virtue of the last preceding sub-section and the making of a sequestration order on such a petition.

287.—(1.) Where a sequestration order has been made against the estate of a person, or a person otherwise became a bankrupt, before the commencement of this Act, the property of the bankrupt shall, subject to this section, be administered and distributed—

*Administration of property of existing bankrupts.*

(a) in the case of a person who became a bankrupt—

- (i) on a creditor's petition; or
- (ii) by virtue of a sequestration order under Part XI. of the repealed Act, as if a sequestration order had been made against his estate under this Act; or

(b) in the case of a person who became a bankrupt on, or by virtue of the presentation of, his own petition— as if he had become a bankrupt by virtue of the presentation of his own petition under this Act.

(2.) All orders and applications made, notices and consents given, matters advertised, meetings held, resolutions passed, debts proved and acts and things done before the commencement of this Act in relation to a bankrupt or the property of a bankrupt shall, in relation to the administration and distribution of the property of the bankrupt under this Act, be deemed to have been made, given, advertised, held, passed, proved or done under this Act.

(3.) The preceding provisions of this section do not apply in relation to the administration or distribution of the property of a bankrupt where any payment has been made under paragraph (e), (f), (g), (h), (i) or (j) of sub-section (1.) of section 84 of the repealed Act, or any dividend has been declared, in respect of the bankrupt's estate before the commencement of this Act and, in such a case, the administration and distribution of the property of the bankrupt shall be completed, and the provisions of the *Bankruptcy Act 1924–1965* shall apply in relation to the administration and distribution of the property, as if this Act had not been passed.

288.—(1.) For the purposes of the administration after the commencement of this Act of the property of a person who became a bankrupt before the commencement of this Act, including the recovery after the commencement of this Act by the trustee in the bankruptcy of property or money for the

*Continuance of certain provisions of repealed Act in respect of existing bankruptcies.*

benefit of the creditors, the bankruptcy of that person shall continue to be deemed to have relation back to, and to have commenced at, the time at which the bankruptcy was, by virtue of section 90 of the repealed Act, to be deemed to have commenced.

(2.) Notwithstanding the repeal effected by section 4 of this Act—

- (a) a settlement of property;
- (b) a covenant or contract made in consideration of marriage or a payment of money or transfer of property made in pursuance of such a covenant or contract; or
- (c) a conveyance or transfer of property, a charge on property or a payment made, obligation incurred or judicial proceeding taken or suffered,

that was, immediately before the commencement of this Act, void as against the trustee of the estate of a bankrupt continues to be void as against that trustee after the commencement of this Act and the provisions of Division 4 of Part VI. of the *Bankruptcy Act 1924–1965* continue to apply in relation to the settlement, covenant, contract, conveyance, transfer, charge, payment, obligation or judicial proceeding.

(3.) The provisions of sub-sections (5.), (6.) and (7.) of section 98 of the *Bankruptcy Act 1924–1965* continue to apply in relation to a notice given to an official receiver or trustee under sub-section (4.) of section 98 of the repealed Act.

Existing compositions, &c., under Division 5 of Part IV. of repealed Act.

289.—(1.) A composition or scheme of arrangement approved by the Court under Division 5 of Part IV. of the repealed Act continues in force notwithstanding the repeal effected by section 4 of this Act.

(2.) The provisions of Division 5 of Part IV. of the *Bankruptcy Act 1924–1965* continue to apply to and in relation to proposals for compositions and schemes of arrangement accepted by special resolution of a meeting of creditors held under Division 5 of Part IV. of the repealed Act, and to compositions and schemes of arrangement approved by the Court under that Division.

Administration of estates ordered to be administered summarily under Part IX. of repealed Act.

290.—(1.) Where an order for the administration of a debtor's estate in a summary manner has been made under Part IX. of the repealed Act, but the administration of the estate has not been completed before the commencement of this Act, the estate shall, so far as is practicable, be administered as if an order had been made under Part IX. of this Act for its administration under that Part.

(2.) The power conferred on the Court by sub-section (2.) of section 185 of this Act may be exercised in relation to such an estate as if an order had been made under sub-section (1.) of that section.

**291.—(1.)** Where an order for the administration in bankruptcy of a deceased debtor's estate has been made under Part X. of the repealed Act, but the administration of the estate has not been completed before the commencement of this Act, the estate of the deceased debtor shall, subject to this section, be administered and distributed as if an order for administration of the estate had been made under Part XI. of this Act, and the provisions of that Part shall apply in relation to the estate accordingly.

*Application of Part X. of Bankruptcy Act 1924–1965 to existing estates.*

(2.) All orders and applications made, notices and consents given, matters advertised, meetings held, resolutions passed, debts proved and acts and things done before the commencement of this Act in relation to the estate of a deceased debtor shall, in relation to the administration and distribution of the estate under Part XI. be deemed to have been made, given, advertised, held, passed, proved or done under that Part.

(3.) The preceding provisions of this section do not apply in relation to the administration or distribution of the estate of a deceased debtor where any payment has been made under paragraph (e), (f), (g), (h), (i) or (j) of sub-section (1.) of section 84 of the repealed Act, or any dividend has been declared, in respect of his estate before the commencement of this Act and, in such a case, the administration and distribution of the estate shall be completed, and the provisions of Part X. of the *Bankruptcy Act 1924–1965* shall apply in relation to the administration and distribution of the estate, as if this Act had not been passed.

(4.) The provisions of section 288 of this Act apply, so far as they are capable of application, in relation to the estate of a deceased debtor in respect of which an order has been made under Part X. of the repealed Act, as if the references to the trustee of the estate of a bankrupt were references to the trustee of the estate of a deceased debtor and the references to a person who became a bankrupt before the commencement of this Act were references to a deceased debtor in respect of whose estate an order has been made under Part X. of the repealed Act.

**292.—(1.)** A composition or scheme of arrangement accepted under Part XI. of the repealed Act, and a deed of assignment executed by a debtor under Part XI. of that Act, before the commencement of this Act continues in force notwithstanding the repeal effected by section 4 of this Act, and the provisions of Part XI. of the *Bankruptcy Act 1924–1965* continue to apply to and in relation to the composition, scheme of arrangement or deed.

*Application of Part XI. of Bankruptcy Act 1924–1965 to existing deeds of assignment, &c.*

(2.) Where a meeting of creditors has been called under Part XI. of the repealed Act before the commencement of this Act (whether or not the meeting was held before the commencement of this Act), the provisions of Part XI. of the *Bankruptcy Act* 1924–1965 continue to apply in relation to the meeting, any proposal for a composition or scheme of arrangement accepted by the creditors at the meeting and any deed of assignment executed by the debtor in pursuance of a resolution of the meeting as if this Act had not been passed.

(3.) Where, in relation to a meeting of creditors, a composition or scheme of arrangement, a proposal for a composition or scheme of arrangement or a deed of assignment to which the provisions of Part XI. of the *Bankruptcy Act* 1924–1965 continue to apply by virtue of the preceding provisions of this section, an act or omission that, but for the repeal of that Act, would have constituted an act of bankruptcy under paragraph (1) of section 52 of that Act takes place after the commencement of this Act—

- (a) that act or omission shall be deemed to constitute an act of bankruptcy under this Act; and
- (b) subject to the restrictions specified in that paragraph, a creditor's petition may be presented, and a sequestration order made, under this Act in respect of that act of bankruptcy.

**Application of  
Part XII. of  
Bankruptcy Act  
1924–1965 to  
existing deeds  
of arrangement.**

293. A deed of arrangement executed by a debtor under Part XII. of the repealed Act continues in force notwithstanding the repeal effected by section 4 of this Act, and the provisions of Part XII. of the *Bankruptcy Act* 1924–1965 continue to apply to and in relation to the deed.

**Closing of  
Bankruptcy  
Sutors' Fund.**

294.—(1.) Upon the commencement of this Act, the moneys standing to the credit of the trust account known as the Bankruptcy Sutors' Fund established under the repealed Act shall be paid to the Consolidated Revenue Fund and the Bankruptcy Sutors' Fund shall be closed.

(2.) Where the Attorney-General has directed payment of the cost of any inquiries, proceedings or prosecution out of the Bankruptcy Sutors' Fund in pursuance of section 208 of the repealed Act, and those costs have not been paid before the commencement of this Act, those costs shall be paid after the commencement of this Act out of moneys lawfully available for the purpose.

**Closing of  
Bankruptcy  
Estates  
Account.**

295.—(1.) Upon the commencement of this Act, the moneys standing to the credit of The Bankruptcy Estates Account established under section 208 of the repealed Act shall be paid to the Consolidated Revenue Fund and that Account shall be closed.



(2.) A person who claims to be entitled to any moneys paid into The Bankruptcy Estates Account in pursuance of section 208 of the repealed Act, being moneys paid to the Consolidated Revenue Fund in pursuance of the last preceding sub-section, may apply to the Court for an order under this section declaring him to be so entitled and, if the Court is satisfied that the applicant is entitled to those moneys or any part of those moneys, it may make an order accordingly.

(3.) Upon receipt by the Attorney-General of an office copy of an order under this section, the Attorney-General shall pay to the person in whose favour the order was made the amount specified in the order out of moneys lawfully available for the purpose.

296.—(1.) The provisions of sub-sections (2.) and (3.) of section 210 of the *Bankruptcy Act* 1924–1965 apply, notwithstanding the repeal effected by section 4 of this Act, in relation to acts and things done or omitted to be done before the commencement of this Act by a person who becomes a bankrupt after the commencement of this Act, whether the petition on which, or by virtue of the presentation of which, he becomes a bankrupt was presented before or after the commencement of this Act.

Application of certain offences provisions of *Bankruptcy Act* 1924–1965 after the commencement of this Act.

(2.) The provisions of sub-section (4.) of section 210 of the *Bankruptcy Act* 1924–1965 apply, notwithstanding the repeal effected by section 4 of this Act, in relation to acts done before the commencement of this Act by a person who becomes a bankrupt after the commencement of this Act.

(3.) The provisions of section 212 of the *Bankruptcy Act* 1924–1965 apply, notwithstanding the repeal effected by section 4 of this Act, in relation to acts done before the commencement of this Act by a person who becomes a bankrupt after the commencement of this Act.

(4.) For the purposes of the application of sub-sections (2.), (3.) and (4.) of section 210 and section 212 of the *Bankruptcy Act* 1924–1965 by virtue of the preceding provisions of this section in relation to acts and things done or omitted to be done before the commencement of this Act by a person who becomes a bankrupt after the commencement of this Act, a person who becomes a bankrupt by force of section 55 of this Act shall be deemed to be a person against whom a sequestration order is made.

(5.) The defence provided by sub-section (6.) of section 210 of the *Bankruptcy Act* 1924–1965 is applicable in relation to a charge under sub-section (2.) or (4.) of that section as applying by virtue of this section.

(6.) The provisions of section 221 of the *Bankruptcy Act* 1924–1965 apply, notwithstanding the repeal effected by section

4 of this Act, in relation to a trustee who, after the commencement of this Act, acts under a deed of arrangement executed by a debtor under the repealed Act—

- (a) after the deed has to his knowledge become void by reason of non-compliance with any of the requirements of the repealed Act; or
- (b) after he has failed to give security within the time and in the manner provided by the repealed Act.

(7.) An offence against a provision of the *Bankruptcy Act* 1924–1965 referred to in the preceding provisions of this section constituted by an act or thing done or omitted to be done before the commencement of this Act by a person who becomes a bankrupt after the commencement of this Act shall, for the purposes of Part XIV., be deemed to be an offence against this Act.

(8.) Nothing in this section affects the operation of section 8 of the *Acts Interpretation Act* 1901–1964 in relation to a provision of the *Bankruptcy Act* 1924–1965 referred to in this section.

References to the Court, &c., in *Bankruptcy Act* 1924–1965 in its application after the commencement of this Act.

297. In the application after the commencement of this Act by virtue of this Part of a provision of the *Bankruptcy Act* 1924–1965 in relation to—

- (a) a bankrupt or the property of a bankrupt;
- (b) a composition or scheme of arrangement or proposal for a composition or scheme of arrangement under Division 5 of Part IV. of the repealed Act;
- (c) a deceased debtor or the estate of a deceased debtor;
- (d) a deed of assignment or a composition or scheme of arrangement under Part XI. of the repealed Act; or
- (e) a deed of arrangement under Part XII. of the repealed Act,

a reference to the Court or to a Court having jurisdiction in bankruptcy shall be read as a reference to a Court having jurisdiction in bankruptcy under this Act and a reference to a Registrar, Deputy Registrar or official receiver shall be read as a reference to a Registrar, Deputy Registrar or official receiver holding office under this Act.

Application of evidence provisions of *Bankruptcy Act* 1924–1965.

298.—(1.) The provisions of Division 3 of Part III. of the *Bankruptcy Act* 1924–1965 continue to apply to and in relation to—

- (a) a notice inserted in the *Gazette* in pursuance of the repealed Act;
- (b) minutes of proceedings at a meeting of creditors held under the repealed Act;

- (c) a petition, order, certificate, instrument, affidavit, document, deed or extract from a deed or register made or used in the course of proceedings under the repealed Act or a copy of any such document;
- (d) a deposition of a debtor or witness in a proceeding under the repealed Act where the debtor or witness has died; and
- (e) a transcript of a shorthand writer's notes under section 51 of the repealed Act.

(2.) The provisions of sub-sections (5.) and (6.) of section 49 of the *Bankruptcy Act* 1924–1965 continue to apply to and in relation to a document and a mark of a stamp to and in relation to which those sub-sections applied immediately before the commencement of this Act.

(3.) Notes of an examination under section 68, 69 or 80 of the repealed Act duly signed by the person examined may be used in evidence after the commencement of this Act in any proceeding in which they could have been used before the commencement of this Act.

**299.—(1.)** The costs and fees applicable to proceedings and matters under the repealed Act that take place after the commencement of this Act by virtue of this Part are those applicable to the like proceedings and matters under this Act.

Costs, fees and remuneration.

(2.) The maximum rate of commission payable to—

- (a) a trustee in a bankruptcy under the repealed Act;
- (b) a trustee of the estate of a deceased debtor in respect of which an order has been made under Part X. of the repealed Act;
- (c) a trustee of a deed of assignment, a deed of arrangement or a composition or scheme of arrangement under Part XI. or XII. of the repealed Act; or
- (d) a trustee of a composition or scheme of arrangement under Division 5 of Part IV. of the repealed Act,

in respect of his services as trustee after the commencement of this Act, is that prescribed for the purposes of Division 2 of Part VIII. of this Act.

**300.—(1.)** Where any difficulty arises in the application to a particular matter of the provisions of this Act or of the repealed Act by reason of the operation of this Part, the Court may, on the application of an interested person, make such order as it thinks proper to resolve the difficulty.

Court may resolve difficulties.

(2.) An order so made has effect notwithstanding anything contained in the repealed Act or in this Act.

## PART XVI.—MISCELLANEOUS.

Certain provisions in contracts, &c., to be void.

301.—(1.) A provision in a contract or agreement for the sale of property, in a lease of property, in a hire-purchase agreement or in a licence to the effect that—

- (a) the contract, agreement, lease, hire-purchase agreement or licence is to terminate, or may be terminated by the vendor, lessor, owner or licensor;
- (b) the operation of the contract, agreement, lease, hire-purchase agreement or licence is to be modified; or
- (c) property to which the contract, agreement, lease, hire-purchase agreement or licence relates may be repossessed by or on behalf of the vendor, lessor, owner or licensor,

if the purchaser, lessee, hirer or licensee becomes a bankrupt or commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement under this Act is void.

(2.) This section extends to contracts, agreements, leases, hire-purchase agreements and licences entered into or granted before the commencement of this Act.

(3.) In this section—

- “lease” includes an agreement for a lease;
- “lessee” includes a person who has agreed to take a lease;
- “lessor” includes a person who has agreed to grant a lease.

Certain provisions in bills of sale, &c., to be void.

302.—(1.) A provision in a bill of sale, mortgage, lien or charge—

- (a) enabling the grantee, mortgagee or person entitled to the benefit of the lien or charge to exercise any power or remedy; or
- (b) to the effect that the operation of the bill of sale, mortgage, lien or charge is to be modified,

if the grantor, mortgagor or person whose property is subject to the lien or charge becomes a bankrupt or commits an act of bankruptcy or executes a deed of assignment or a deed of arrangement under this Act is void.

(2.) This section extends to bills of sale, mortgages, liens and charges entered into or granted before the commencement of this Act.

Applications to Court or Registrar.

303. Where in respect of any matter this Act provides that—

- (a) an application may be made to the Court or to the Registrar; or
  - (b) the Court or the Registrar may exercise a power,
- and does not specify the person by whom the application may be made or the person on whose application the power may be

exercised, as the case may be, the application may be made by, or the power may be exercised on the application of, any person aggrieved by or interested in that matter.

304. In determining for the purposes of this Act whether a majority in value of creditors, or a particular proportion in value of creditors, has passed a resolution or done any other act or thing, if a creditor's debt consists of a number of whole dollars and a part of a dollar, the part of the dollar shall be disregarded.

Parts of dollar to be disregarded in determining majority in value of creditors, &c.

305.—(1.) Where the Attorney-General is, upon the application of the trustee of the estate of a bankrupt or the trustee of the estate of a deceased person that is being administered under Part XI. of this Act or Part X. of the repealed Act, satisfied—

Payment of expenses of inquiries, &c., C.B.A. s. 208 (7.).

(a) that inquiries or proceedings relating to—

- (i) the estate of the bankrupt or his conduct, trade dealings, property or affairs; or
- (ii) the estate of the deceased person or his trade dealings, property or affairs,

should be instituted or carried on; and

(b) that there are no moneys in the estate of the bankrupt or in the estate of the deceased person, as the case may be, to meet the cost of the inquiries or proceedings,

the Attorney-General may approve that the cost of the inquiries or proceedings be paid by the Commonwealth and in that case the cost shall be paid accordingly out of moneys lawfully available for the purpose.

(2.) An approval by the Attorney-General under the last preceding sub-section may be unconditional or may be subject to such conditions (including conditions as to the taxation of all or any of the costs and the reimbursement of the Commonwealth out of moneys recovered or obtained by the estate of the bankrupt or of the deceased person as a result of the inquiries or proceedings) as the Attorney-General thinks fit.

306.—(1.) Proceedings under this Act are not invalidated by a formal defect or an irregularity, unless the court before which the objection on that ground is made is of opinion that substantial injustice has been caused by the defect or irregularity and that the injustice cannot be remedied by an order of that court.

Formal defect not to invalidate proceedings. C.B.A. s. 7. E.B.A. s. 147.

(2.) A defect or irregularity in the appointment of any person exercising, or purporting to exercise, a power or function under this Act or under a deed entered into under this Act does not invalidate an act done by him in good faith.

307. Any person or persons carrying on business under a firm name may take proceedings or be proceeded against under this Act in the firm name, but in that case the Court may, on the

Proceedings in firm name. C.B.A. s. 33. E.B.A. s. 119.

application of an interested person, order the name of the person or the names of the persons so carrying on business to be disclosed and verified in such manner as the Court directs.

Representation  
of corporation,  
&c.  
C.B.A. s. 42.  
E.B.A. s. 149.

308. Subject to this Act, for the purposes of this Act—

- (a) a corporation may act by any person duly authorized in that behalf by the corporation;
- (b) a partnership may act by any of its members or a duly authorized agent;
- (c) a person of unsound mind may act by a person authorized or empowered by law to act for him; and
- (d) any person may act by his agent duly authorized in that behalf.

Service of  
notices, &c.  
C.B.A. s. 43.  
E.B.A. s. 146.

309.—(1.) A notice or other document in relation to which no special manner of service is prescribed may be sent by post as a prepaid letter to the last-known address of the person to be served with the notice or other document and shall, unless the contrary is proved, be deemed to have been served at the time at which the letter would be delivered in the ordinary course of post.

(2.) Where a notice or other document is required by this Act to be served on or given to a person, the Court may, in a particular case, order that it be given or served in a manner specified by the Court, whether or not any other manner of giving or serving the notice or other document is prescribed.

Publication of  
notice of  
making of  
sequestration  
order, discharge,  
&c.  
C.B.A. ss. 65,  
123.  
E.B.A. s. 11.

310.—(1.) Where—

- (a) a sequestration order is made against the estate of a debtor; or
- (b) a debtor becomes a bankrupt by virtue of the presentation of his own petition,

the Registrar shall cause notice of that fact to be published in the *Gazette* and in such other manner (if any) as is prescribed.

(2.) There shall be stated in the notice the name, address and description of the bankrupt and the date on which he became a bankrupt.

(3.) Where—

- (a) a bankrupt is discharged from bankruptcy (whether by order of discharge or by the operation of section 149 of this Act); or

(b) the bankruptcy of a person is annulled by the Court, the Registrar shall cause notice of that fact, specifying the name, address and description of the bankrupt and the date on which he was discharged or on which his bankruptcy was annulled to be published in the *Gazette* and in such other manner (if any) as is prescribed.

(4.) Where an order is made for the administration of the estate of a deceased person under Part XI., the Registrar shall cause notice of that fact to be published in the *Gazette* and in such other manner (if any) as is prescribed.

(5.) There shall be stated in the notice the name and description of the deceased person, his address at the time of his death and the date on which the order under Part XI. was made in respect of his estate.

(6.) Where the Court makes an order releasing the estate of a deceased person from administration under Part XI., the Registrar shall cause notice of that fact, specifying the name and description of the deceased person, his address at the time of his death and the date on which the order was made to be published in the *Gazette* and in such other manner (if any) as is prescribed.

311.—(1.) In this section, “trustee” means—

- (a) a trustee of the estate of a bankrupt;
- (b) a trustee of a deed of assignment or a deed of arrangement, whether the deed was executed under this Act or the repealed Act;
- (c) a trustee of a composition or a scheme of arrangement, whether the composition or scheme was accepted or approved under this Act or the repealed Act; or
- (d) a trustee of the estate of a deceased person in respect of which an order has been made under Part IX. of the repealed Act or Part XI. of this Act.

Stamp duty  
not payable  
on trustee's  
cheques or  
receipts.

(2.) Notwithstanding anything contained in a law of a State or Territory, stamp duty is not payable under such a law—

- (a) on a cheque drawn by a trustee on an account kept under this Act or the repealed Act;
- (b) on a cheque received by a trustee in his capacity as trustee, being a cheque drawn in a State or Territory other than that in which it is received by the trustee; or
- (c) on a receipt given by a trustee in his capacity as trustee.

312.—(1.) An official receiver or a trustee may destroy documents in his custody relating to a bankruptcy or the administration of the estate of a deceased person in bankruptcy that occurred, a deed of assignment or arrangement that was executed or a composition or arrangement that was entered into or made, whether before or after the commencement of this Act, not less than twenty-five years previously.

Destruction of  
old documents.

(2.) The last preceding sub-section does not authorize—

- (a) the destruction of documents relating to a bankruptcy, where the bankrupt has not been discharged;

- (b) the destruction of documents relating to the administration of the estate of a deceased person, where the estate has not been fully administered; or
- (c) the destruction of documents relating to a deed of assignment or arrangement or a composition or arrangement where the trustee has not completed the administration of the debtor's affairs under the deed or the composition or arrangement.

Audit of  
official  
receiver's  
accounts.

**313.—**(1.) The accounts and records of an official receiver are subject to inspection and audit by the Auditor-General.

(2.) The Auditor-General shall draw the Attorney-General's attention to any irregularity revealed by an inspection or audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his so doing.

(3.) The Auditor-General or an authorized officer is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of an official receiver.

(4.) The Auditor-General or an authorized officer may make copies of or take extracts from any such accounts, records, documents or papers.

(5.) The Auditor-General or an authorized officer may require an official receiver or an officer referred to in sub-section (1.) of section 15 of this Act to furnish him with such information in the possession of that person or to which that person has access as the Auditor-General or authorized officer considers necessary for the purposes of an inspection or audit under this Act, and that person shall comply with the requirement.

(6.) In this section, "authorized officer" means an officer of the Public Service of the Commonwealth authorized by the Auditor-General to perform functions under this section.

Annual  
report.  
C.B.A. s. 17(2).  
E.B.A. s. 136.

**314.** The Attorney-General shall cause an annual report of the operation of this Act to be laid before each House of the Parliament.

Rules and  
regulations.  
C.B.A. s. 223.  
E.B.A. ss. 132,  
133.

**315.—**(1.) The Governor-General may make rules or regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular, prescribing matters for or in relation to—

- (a) the forms to be used under this Act;
- (b) the practice and procedure of courts having jurisdiction under this Act, including costs and the taxation of costs;



- (c) the application of provisions of this Act or the rules to proceedings instituted under sub-section (3.) of section 9 of this Act;
- (d) the summoning of meetings of creditors and the proceedings at meetings of creditors, including the persons who are entitled to vote at such meetings;
- (e) the appointment by telegram of proxies of creditors; and
- (f) the fees or other payments to be charged in respect of proceedings under this Act or otherwise for the purpose of this Act and for prescribing the manner in which those fees or payments shall be paid.

(2.) Subject to the next succeeding sub-section, the power to make rules conferred by the last preceding sub-section includes power to make rules modifying or adapting the rules in force under the *Bankruptcy Act* 1924–1965 immediately before the commencement of this Act in their application to proceedings, matters and things to which, by virtue of this Act, the *Bankruptcy Act* 1924–1965 continues to apply.

(3.) The last preceding sub-section does not authorize the making of rules that could not have been made under the *Bankruptcy Act* 1924–1965 if that Act had not been repealed.

(4.) Sections 48, 49, 49A and 50 of the *Acts Interpretation Act* 1901–1964 apply to and in relation to rules made under this section in like manner as they apply to and in relation to regulations.

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## THE SCHEDULES.

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### FIRST SCHEDULE.

#### Section 4 (1.).

##### Acts Repealed.

*Bankruptcy Act* 1924  
*Bankruptcy Act* 1927  
*Bankruptcy Act* 1928  
*Bankruptcy Act* 1929  
*Bankruptcy Act* 1930  
*Bankruptcy Act* 1932  
*Bankruptcy Act* 1933  
*Bankruptcy Act* 1945  
*Bankruptcy Act* 1946  
*Bankruptcy Act* 1954  
*Bankruptcy Act* 1958  
*Bankruptcy Act* 1959  
*Bankruptcy (Decimal Currency) Act* 1965

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## SECOND SCHEDULE.

Section 24.

*Judicial Oath or Affirmation.*

I, \_\_\_\_\_, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, and Her Heirs and Successors according to law, that I will well and truly serve Her in the office of Judge of the Federal Court of Bankruptcy and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God!

Or, I, \_\_\_\_\_, do solemnly and sincerely promise and declare that (*as above, omitting the words "So help me God!"*).

## THIRD SCHEDULE.

Section 188.

*Bankruptcy Act 1966.*

AUTHORITY TO REGISTERED TRUSTEE TO CALL MEETING OF CREDITORS AND  
TAKE OVER CONTROL OF PROPERTY.

In pursuance of section 188 of the *Bankruptcy Act 1966*, I (*name of debtor*) of (*address and occupation*) hereby authorize (*name and address of registered trustee*) to call a meeting of my creditors for the purposes of Part X. of that Act and to take over control of my property in accordance with that Part.

Signed by the said (*name of debtor*) this }  
day of \_\_\_\_\_, }  
19 \_\_\_\_\_, in the presence of—

(*Signature of Witness*)

I, the said (*name of registered trustee*) do hereby consent to exercise the powers conferred on me by the above-mentioned authority.

Signed by the said (*name of registered trustee*) this }  
day of \_\_\_\_\_, }  
19 \_\_\_\_\_, in the presence of—

(*Signature of Witness*)

## AUTHORITY TO SOLICITOR TO CALL MEETING OF CREDITORS.

In pursuance of section 188 of the *Bankruptcy Act 1966*, I (*name of debtor*) of (*address and occupation*) hereby authorize (*name and address of solicitor*) to call a meeting of my creditors for the purposes of Part X. of that Act.

Signed by the said (*name of debtor*) this }  
day of \_\_\_\_\_, 19 \_\_\_\_\_, }  
in the presence of—

(*Signature of Witness*)

I, the said (*name of solicitor*) do hereby consent to call a meeting of creditors of the above-named debtor for the purposes of Part X. of the *Bankruptcy Act 1966*.

Signed by the said (*name of solicitor*) this }  
day of \_\_\_\_\_, 19 \_\_\_\_\_, }  
in the presence of—

(*Signature of Witness*)

**FOURTH SCHEDULE.**

**Bankruptcy Act 1966.**

Section 214.

## DEED OF ASSIGNMENT.

THIS DEED made the \_\_\_\_\_ day of \_\_\_\_\_ One thousand nine hundred and \_\_\_\_\_ in pursuance of Part X. of the *Bankruptcy Act* 1966 BETWEEN \_\_\_\_\_ of \_\_\_\_\_ (or as the case may be) (hereinafter called "the Debtor") in the State of \_\_\_\_\_ in the said State (or as the case may be) Registered Trustee of the other part (hereinafter called "the Trustee"):

WITNESSETH that—

- (a) the Debtor conveys and assigns to the Trustee all his divisible property within the meaning of Part X. of the *Bankruptcy Act* 1966 UPON TRUST to deal with the same in accordance with Part X. of that Act for the benefit of the creditors of the Debtor and as to any surplus after paying in full the several debts and liabilities of the Debtor proved under this Deed together with the costs charges and expenses of or incidental to the execution of the trusts of this Deed (including the remuneration and expenses of the Trustee) UPON TRUST for the Debtor his executors administrators or assigns; and
- (b) the Trustee accepts appointment as trustee of this Deed and the conveyance and assignment of the said property upon the trusts hereinbefore set out.

**IN WITNESS** whereof the parties have hereunto set their hands and seals.

Signed, sealed and delivered by the said  
(name of Debtor) this \_\_\_\_\_, 19\_\_\_\_, in the  
day of \_\_\_\_\_, in the  
presence of—

(Signature of Witness)

Signed, sealed and delivered by the said }  
(name of Trustee) this }  
day of , 19 , in the }  
presence of— }

(Signature of Witness)