

BANKRUPTCY ACT**Principal Act**

Act. No. 1934-13	<i>Commencement</i>	22.8.1934
	<i>Assent</i>	3.8.1934

Amending enactments	Relevant current provisions	Commencement date
Acts. 1935-08	ss.2, 21(2), 52(3), 85(2), 87(1), (4) and (5), 100, 101(5), (8) and (11), 106 and 114(2)	
1948-20	s.102	
1949-25	s.81(5)	
1955-16	s.33(1)	
Regs. of 28.5.1970	ss.28(1) and 50(1)	
Acts. 1971-19	ss.115(1) and (2) and 126	
1983-12	ss.6(1), 14(2), 22(1), 33(1), 38(1), 41(2), 81(3), 106, 115(1), 116, 119(1) and 120	
LN. 1986/063	s.47A	11.6.1986
Acts 1988-34	s.40	1.1.1989
1990-12	s.42A	1.12.1990
1990-30	s.42A(4)	14.6.1990
2002-21	s. 98(1) and (2)	21.1.2003
2006-13	ss. 24(1), 26(b), 38(1)(b), 42(1) & 107	14.12.2006
2007-17	ss. 27(1), 42A(1) & (4), 68, 102, 81(1),(3), (4), (6), (7), 114(1) & (3)	14.6.2007

EU Legislation/International Agreements involved:

Council Regulation 1346/2000

English sources

Bankruptcy Act 1883 (46 & 47 Vict, c.52)

Bankruptcy and Deeds of Arrangement Act 1913 (3 & 4 Geo.5 c. 34)

Bankruptcy Act 1914 (4 & 5 Geo.5 c. 59)

Bankruptcy (Amendment) Act 1926 (16 & 17 Geo.5 c. 7)

BANKRUPTCY.

ARRANGEMENT OF SECTIONS.

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AN ACT TO CONSOLIDATE THE LAW RELATING TO
BANKRUPTCY.**Short title.**

1. This Act may be cited as the Bankruptcy Act.

Interpretation.

- (1914 c.59, s.167) 2. In this Act, unless the context otherwise requires,—

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

“the court” means the Supreme Court;

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

“goods” includes all chattels personal;

“marshal” includes the marshal of the Supreme Court and his deputy, and any officer or person charged with the execution of a writ or other process;

“the official trustee” means the official trustee in bankruptcy of a debtor’s estate appointed by the court to act in that estate;

“ordinary resolution” means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution;

“property” includes money, goods, things in action, land, and every description of property, whether movable or immovable and whether situate in Gibraltar or elsewhere; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property as above defined;

“resolution” means ordinary resolution;

“rules of court” include forms;

“secured creditor” means a person holding a mortgage, charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor;

“special resolution” means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution.

PART I.
PROCEEDINGS FROM ACT OF BANKRUPTCY
TO DISCHARGE.

Acts of Bankruptcy.

Acts of Bankruptcy.

3.(1) A debtor commits an act of bankruptcy in each of the following cases:— *(1914 c.59, s.1)*

- (a) if in Gibraltar or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally;
- (b) if in Gibraltar or elsewhere he makes a fraudulent conveyance, gift, delivery or transfer of his property, or of any part thereof;
- (c) if in Gibraltar or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this Act or any other enactment be void as a fraudulent preference if he were adjudged bankrupt;
- (d) if with intent to defeat or delay his creditors he does any of the following things, namely, departs out of Gibraltar, or being out of Gibraltar remains out of Gibraltar, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house;
- (e) if execution against him has been levied by seizure of his goods under process in an action in any court, or in any civil proceeding in the Supreme Court, and the goods have been either sold or held by the marshal for twenty-one days :

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the proceedings on such summons are finally

disposed of, settled or abandoned, shall not be taken into account in calculating such period of twenty-one days;

- (f) if he files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself;
- (g) if a creditor has obtained a final judgment or final order against him for any amount, and, execution thereon not having been stayed, has served on him in Gibraltar, or, by leave of the court, elsewhere, a bankruptcy notice under this Act, and he does not, within seven days after service of the notice, in case the service is effected in Gibraltar, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the court that he has a counter-claim, set-off or cross demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained.

For the purposes of this paragraph and of section 4, any person who is, for the time being, entitled to enforce a final judgment or final order, shall be deemed to be a creditor who has obtained a final judgment or final order;

- (h) if the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.

(2) In this Act, the expression “a debtor”, unless the context otherwise implies, includes any person, whether a British subject or not, who at the time when any act of bankruptcy was done or suffered by him—

- (a) was personally present in Gibraltar; or
- (b) ordinarily resided or had a place of residence in Gibraltar; or
- (c) was carrying on business in Gibraltar, personally, or by means of an agent or manager; or
- (d) was a member of a firm or partnership which carried on business in Gibraltar.

Bankruptcy notices.

(1914 c.59, s.2)

4. A bankruptcy notice under this Act shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the court, and shall

state the consequences of non-compliance with the notice, and shall be served in the prescribed manner:

Provided that a bankruptcy notice—

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

Receiving Order.

Jurisdiction to make receiving order.

5. Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a receiving order, for the protection of the estate. *(1914 c.59, s.3)*

Conditions on which creditor may petition.

6.(1) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless— *(1914 c.59, s.4)*

- (a) the debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors amounts to £500; and
- (b) the debt is a liquidated sum, payable either immediately or at some certain future time; and
- (c) the act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition; and
- (d) the debtor is domiciled in Gibraltar, or within a year before the date of the presentation of the petition has ordinarily resided or had a dwelling-house or place of business, in Gibraltar, or has

carried on business in Gibraltar, personally or by means of an agent or manager, or is or within the said period has been a member of a firm or partnership of persons which has carried on business in Gibraltar by means of a partner or partners, or an agent or manager,

nor, where a deed of arrangement has been executed, shall a creditor be entitled to present a bankruptcy petition founded on the execution of the deed, or on any other act committed by the debtor in the course or for the purpose of the proceedings preliminary to the execution of the deed, in cases where he is prohibited from so doing by the law for the time being in force relating to deeds of arrangement.

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

Proceedings and order on creditor's petition.

(1914 c.59, s.5) 7.(1) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and served in the prescribed manner.

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

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

(4) When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure or compound for a judgment debt, or sum ordered to be paid, the court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the judgment or order.

(5) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the court, on such security (if any) being given as the court may require for payment to the petitioner of any debt which may be established against him in due course

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

(6) Where proceedings are stayed, the court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.

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

Debtor's petition and order thereon.

8.(1) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts, and the court shall thereupon make a receiving order. *(1914 c.59, s.6)*

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

Effect of receiving order.

9.(1) On the making of a receiving order an official trustee shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, unless with the leave of the court and on such terms as the court may impose. *(1914 c.59, s.7)*

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

Power to appoint interim receiver.

10. The court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition, and before a receiving order is made, appoint an official trustee to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof. *(1914 c.59, s.8)*

Power to stay pending proceedings.

(1914 c.59, s.9) 11. (1) The court may, at any time after the presentation of a bankruptcy petition, stay any action, execution or other legal process against the property or person of the debtor, and any court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

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

Power to appoint special manager.

(1914 c.59, ss.10 & 74(1)) 12. (1) The court may at any time on the application of the official trustee or any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official trustee, appoint a manager thereof accordingly with such powers (including any of the powers of a receiver) as may be entrusted to him by the court.

(2) The special manager shall give security and account in such manner as the court may direct.

(3) The special manager shall receive such remuneration as the court may determine.

(4) The special manager shall be under the control and act under the directions of the official trustee, and the official trustee may authorize the special manager to raise money or make advances, for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary to do so.

Advertisement of receiving order.

(1914 c.59, s.11) 13. Notice of every receiving order, stating the name, address and description of the debtor, the date of the order and the date of the petition, shall be gazetted in the prescribed manner.

Proceedings consequent on Order.

First and other meetings of creditors.

(1914 c.59, s.13) 14. (1) As soon as may be after the making of a receiving order against a debtor a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be accepted or

whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

(2) With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in Schedule I shall be observed:

Provided that notices of meetings, other than first meetings, shall not, unless the court otherwise directs, be sent to creditors outside Gibraltar whose debts do not exceed £100.

Debtor's statement of affairs.

15. (1) Where a receiving order is made against a debtor, he shall make out and submit to the official trustee a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts and liabilities, the names, residences and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official trustee may require. *(1914 c.59, s.14)*

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

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

but the court or the official trustee may, in either case for special reasons, extend the time.

(3) If the debtor fails without reasonable excuse to comply with the requirements of this section, the court may, on the application of the official trustee, or of any creditor, adjudge him bankrupt.

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

Public Examination of Debtor.

Public examination of debtor.

16. (1) Where the court makes a receiving order, it shall, save as in this Act provided, hold a public sitting, on a day to be appointed by the court, for the *(1914 c.59, s.15)*

examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings and property.

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

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

(4) Any creditor who has tendered a proof, or his representative authorized in writing, may question the debtor concerning his affairs and the causes of his failure.

(5) The official trustee shall take part in the examination of the debtor.

(6) The court may put such questions to the debtor as it may think expedient.

(7) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the court may put or allow to be put to him. Such notes of the examination as the court thinks proper shall be taken down in writing, and shall be read over either to or by the debtor and signed by him, and may thereafter, save as in this Act provided, be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times.

(8) When the court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall by order declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors.

(9) Where the debtor is suffering from mental disorder or from any such physical affliction or disability as in the opinion of the court makes him unfit to attend his public examination, the court may make an order dispensing with such examination, or directing that the debtor be examined on such terms, in such manner and at such place as to the court seems expedient.

Composition or Scheme of Arrangement.

Compositions and schemes of arrangement.

(1914 c.59, s.16) 17. (1) Where a debtor intends to make a proposal for a composition in satisfaction of his debts, or a proposal for a scheme of arrangement of his affairs, he shall, within four days of submitting his statement of affairs, or within such time thereafter as the official trustee may fix, lodge with the official trustee a proposal in writing, signed by him, embodying the terms of the composition or scheme which he is desirous of submitting for the

consideration of his creditors, and setting out particulars of any sureties or securities proposed.

(2) In such case the official trustee shall hold a meeting of creditors, before the public examination of the debtor is concluded, and send to each creditor, before the meeting a copy of the debtor's proposal with a report thereon; and if at that meeting a majority in number and three-fourths in value of all the creditors who have proved, resolve to accept the proposal, it shall be deemed to be duly accepted by the creditors, and when approved by the court shall be binding on all the creditors.

(3) The debtor may at the meeting amend the terms of his proposal, if the amendment is, in the opinion of the official trustee, calculated to benefit the general body of creditors.

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

(5) The debtor or the official trustee may, after the proposal is accepted by the creditors, apply to the court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(6) The application shall not be heard until after the conclusion of the public examination of the debtor. Any creditor who has proved may be heard by the court in opposition to the application, notwithstanding that he may at a meeting of creditors have voted for the acceptance of the proposal.

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

(8) The court shall, before approving the proposal, hear a report of the official trustee as to the terms thereof, and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

(9) If the court is of opinion that the terms of the proposal are not reasonable, or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal.

(10) If any facts are proved on proof of which the court would be required either to refuse, suspend or attach conditions to the debtor's discharge were he adjudged bankrupt, the court shall refuse to approve the

proposal, unless it provides reasonable security for the payment of not less than 25 pence in the pound on all the unsecured debts provable against the debtor's estate.

(11) In any other case the court may either approve or refuse to approve the proposal.

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

(13) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy, but shall not release the debtor from any liability under a judgment against him in an action under an affiliation order, except to such an extent and under such conditions as the court expressly orders in respect of such liability.

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

(15) The provisions of a composition or scheme under this section may be enforced by the court on application by any person interested, and any disobedience of an order of the court made on the application shall be deemed a contempt of court.

(16) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by the official trustee or by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection, any debt provable in other respects, which has been contracted before the adjudication, shall be provable in the bankruptcy.

(17) If under or in pursuance of a composition or scheme a trustee is appointed to administer the debtor's property or manage his business, or to distribute the composition, section 24 and Part III shall apply as if the trustee were the official trustee in a bankruptcy, and as if the terms "bankruptcy", "bankrupt" and "order of adjudication" included respectively

a composition or scheme of arrangement, a compounding or arranging debtor, and an order approving the composition or scheme.

(18) Part II shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words “trustee”, “bankruptcy”, “bankrupt” and “order of adjudication”, as in subsection (17).

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

(20) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by an order of discharge if the debtor has been adjudged bankrupt.

Effect of composition or scheme.

18. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the debtor would not be released by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme. *(1914 c.59, s.17)*

Adjudication of Bankruptcy.

Adjudication of bankruptcy where composition not accepted or approved.

19. (1) Where a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not approved in pursuance of this Act within fourteen days after the conclusion of the examination of the debtor or such further time as the court may *(1914 c.59 s.18)*

allow, the court shall adjudge the debtor bankrupt; and thereupon the property of the bankrupt shall become divisible among his creditors and shall vest in the official trustee.

(2) Notice of every order adjudging a debtor bankrupt, stating the name, address and description of the bankrupt, and the date of the adjudication, shall be gazetted in the prescribed manner, and the date of the order shall, for the purposes of this Act, be the date of the adjudication.

Power to accept composition or scheme after bankruptcy adjudication.

(1914 c.59, s.19) 20. (1) Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by a majority in number and three-fourths in value of all the creditors who have proved, resolve to accept a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication.

(2) If the court approves the composition or scheme, it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the court may appoint, on such terms, and subject to such conditions (if any), as the court may declare.

(3) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the court was obtained by fraud, the court may, if it thinks fit, on application by any person interested adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this subsection, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the bankruptcy.

Control over Person and Property of Debtor.

Duties of debtor as to discovery and realisation of property.

(1914 c.59, s.22) 21. (1) Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

(2) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the official trustee or special manager, execute such powers of attorney, conveyances, deeds and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official trustee or special manager, or may be prescribed by any rules of court made under this Act, or be directed by the court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official trustee or special manager or any creditor or person interested.

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

(4) A debtor who wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property, which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, to the official trustee, or to any person authorized by the court to take possession of it, is in addition to any other punishment to which he may be subject, guilty of a contempt of court, and may be punished accordingly.

Arrest of debtor in certain circumstances.

22. (1) The court may, by warrant addressed to any police officer or prescribed officer of the court, cause a debtor to be arrested, and any books, papers, money and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the court may order in the following circumstances:— *(1914 c.59, s.23)*

- (a) if, after a bankruptcy notice has been issued under this Act, or after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable reason for believing that he has absconded, or is about to abscond, with a view to avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him;
- (b) it, after presentation of a bankruptcy petition by or against him, it appears to the court that there is probable cause for believing that he is about to remove his goods with a view to preventing or delaying possession being taken of them by the official trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods, or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy;
- (c) if, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any goods in his possession above the value of £50, without the leave of the official trustee;
- (d) if, without good cause shown, he fails to attend any examination ordered by the court:

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

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

Re-direction of debtor's letters, etc.

(1914 c.59, s.24) 23. Where a receiving order is made against a debtor, the court, on the application of the official trustee, may from time to time order that for such time, not exceeding six months, as the court thinks fit, post letters, telegrams, cablegrams and other postal packets, addressed to the debtor at any place or places mentioned in the order for re-direction, shall be re-directed, sent or delivered by the Director of Postal Services or the officers acting under him, or by any other person in charge of the receipt of telegrams or cablegrams, to the official trustee, or otherwise as the court directs, and the same shall be done accordingly.

Enquiry as to debtor's conduct, dealings and property.

(1914 c.59, s.25) 24. (1) The court may, on the application of the official trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife or her husband, or any person known or suspected to have in his possession any of the estate or effects belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the court may deem capable of giving information respecting the debtor, his dealings or property, and the court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.

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

(3) The court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings or property.

(4) If any person on examination before the court admits that he is indebted to the debtor, the court may, on the application of the official trustee, order him to pay to the official trustee, at such time and in such manner as to the court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the court thinks fit, with or without costs of the examination.

(5) If any person on examination before the court admits that he has in his possession any property belonging to the debtor, the court may, on the application of the official trustee, order him to deliver to the official trustee such property, or any part thereof, at such time, and in such manner, and on such terms, as to the court may seem just.

(6) The court may order that any person who if in Gibraltar would be liable to be brought before it under this section shall be examined in any other place out of Gibraltar by commission or otherwise.

Discharge of bankrupt.

25. (1) A bankrupt may, at any time after being adjudged bankrupt, apply to the court for an order of discharge, and the court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall, except when the court in accordance with rules of court under this Act otherwise directs, be heard in open court. *(1914 c.59, s.26; 1926 c.7, s.1)*

(2) On the hearing of the application the court shall take into consideration a report of the official trustee as to the bankrupt's conduct and affairs (including a report as to the bankrupt's conduct during the proceedings under his bankruptcy), and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property:

Provided that where the bankrupt has committed any offence against this Act, or any other offence connected with his bankruptcy, or where in any case any of the facts hereinafter mentioned are proved, the court shall either—

- (a) refuse the discharge; or
- (b) suspend the discharge for such period as the court thinks proper; or
- (c) suspend the discharge until a dividend of not less than 50 pence in the pound has been paid to the creditors; or
- (d) require the bankrupt as a condition of his discharge to consent to judgment being entered against him by the official trustee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge, such balance or part of any balance of the debts to be paid out of the future earnings or after-acquired property of the

bankrupt in such manner and subject to such conditions as the court may direct; but execution shall not be issued on the judgment without leave of the court, which leave may be given on proof that the

bankrupt has since his discharge acquired property or income available towards payment of his debts:

Provided that, if at any time after the expiration of two years from the date of any order made under this section the bankrupt satisfies the court that there is no reasonable probability of his being in a position to comply with the terms of such order, the court may modify the terms of the order, or of any substituted order, in such manner and upon such conditions as it may think fit.

- (3) The facts hereinbefore referred to are :-
- (a) that the bankrupt's assets are not of a value equal to 50 pence in the pound on the amount of his unsecured liabilities, unless he satisfies the court that the fact that the assets are not of a value equal to 50 pence in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible;
 - (b) that the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy;
 - (c) that the bankrupt has continued to trade after knowing himself to be insolvent;
 - (d) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it;
 - (e) that the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities;
 - (f) that the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs;

- (g) that the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him;
- (h) that the bankrupt has brought on or contributed to his bankruptcy by incurring unjustifiable expense by bringing any frivolous or vexatious action;
- (i) that the bankrupt has, within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors;
- (j) that the bankrupt has, within three months preceding the date of the receiving order, incurred liabilities with a view to making his assets equal to 50 pence in the pound on the amount of his unsecured liabilities;
- (k) that the bankrupt has, on any previous occasion, been adjudged bankrupt, or made a composition or arrangement with his creditors;
- (l) that the bankrupt has been guilty of any fraud or fraudulent breach of trust.

(4) With a view to removing any statutory disqualification on account of bankruptcy which is removed if the bankrupt obtains from the court his discharge with a certificate to the effect that the bankruptcy was caused by misfortune without any misconduct on his part, the court may, if it thinks fit, grant such a certificate, but a refusal to grant such a certificate shall be subject to appeal.

(5) For the purposes of this section, a bankrupt's assets shall be deemed of a value equal to 50 pence in the pound on the amount of his unsecured liabilities when the court is satisfied that the property of the bankrupt has realised, or is likely to realise, or with due care in realisation might have realised, an amount equal to 50 pence in the pound on his unsecured liabilities, and a report by the official trustee shall be prima facie evidence of the amount of such liabilities.

(6) For the purposes of this section, the report of the official trustee shall be prima facie evidence of the statements therein contained.

(7) Notice of the appointment by the court of the day for hearing the application for discharge shall be published in the prescribed manner, and sent fourteen days at least before the day so appointed to each creditor who has proved, and the court may hear the official trustee, and may also hear any creditor. At the hearing the court may put such questions to the debtor and receive such evidence as it may think fit.

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

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

Fraudulent settlements.

(1914 c.59, s.27) 26. In either of the following cases:—

- (a) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or
- (b) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or husband or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife or her husband),

if the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the court that such settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the court may refuse or suspend an order of discharge, or grant an order subject to conditions, or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

Effect of order of discharge.

(1914 c.59, s.28) 27. (1) An order of discharge shall not release the bankrupt—

- (a) from any debt on a recognizance nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the marshal or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the

Minister responsible for finance certify in writing his consent to the bankrupt being discharged therefrom; or

- (b) from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party; or
- (c) from any liability under a judgment against him under an affiliation order, except to such an extent and under such conditions as the court expressly orders in respect of such liability.

(2) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(3) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge.

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

Disqualifications of bankrupt.

28. (1) Where a debtor is adjudged bankrupt he shall, subject to the provisions of this Act, be disqualified during a period not exceeding five years from the date of discharge for— *(1883 c.52, s.32)*

- (a) being appointed or acting as a justice of the peace;
- (b) holding or exercising any local public office, and the court may, on the application of the Attorney-General or of any person interested, remove the bankrupt from such office.

(2) The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when—

- (a) the adjudication of bankruptcy against him is annulled; or
- (b) he obtains from the court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

The court may grant or withhold such certificate as it thinks fit.

Power of court to annul adjudication in certain cases.

(1914 c.59, s.29) 29. (1) Where in the opinion of the court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the court that the debts of the bankrupt are paid in full, the court may, on the application of any person interested, by order annul the adjudication.

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

(3) Notice of the order annulling an adjudication shall be forthwith gazetted.

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

PART II.
ADMINISTRATION OF PROPERTY.

Proof of Debts.

Description of debts provable in bankruptcy.

(1914 c.59, s.30) 30. (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust shall not be provable in bankruptcy.

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

(3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of

any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

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

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

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

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

(8) "Liability" shall, for the purposes of this Act, include—

- (a) any compensation for work or labour done;
- (b) any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is not likely to occur or capable of occurring, before the discharge of the debtor;
- (c) generally, any express or implied engagement, agreement or undertaking, to pay, or capable of resulting in the payment of, money or money's worth; whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

Mutual credit and set-off.

31. Where there have been mutual credits, mutual debts or other mutual dealings, between a debtor against whom a receiving order shall be made under this Act and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, *(1914 c.59, s.31)*

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

Rules as to proof of debts.

(1914 c.59, s.32) 32. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in Schedule 2, the rules in that schedule shall be observed.

Priority of debts.

(1914 c.59, s.33;
1926 c.7, s.2) 33. (1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts—

- (a) all local rates due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next before that date, and all taxes assessed on or otherwise due by the bankrupt within twelve months next before the date of the receiving order, and not exceeding in the whole the amount assessed or due in respect of one year;
- (b) all wages or salary (whether or not earned wholly or in part by way of commission) of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding £200;
- (c) all wages of any labourer or workman not exceeding £200 whether payable for time or for piece work, in respect of services rendered to the bankrupt during two months before the date of the receiving order:

Provided that, where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, the priority under this section shall extend to the whole of such sum, or a part thereof, as the court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order;

- (d) all amounts, not exceeding in any individual case £500 payable by the bankrupt in respect of compensation under the provisions

of the Contract and Tort Act¹, the liability wherefor accrued before the date of the receiving order;

- (e) all amounts payable by the bankrupt in respect of contributions as the employer of any person under the Social Security (Employment Injuries Insurance) Act², and under the Social Security (Insurance) Act³.

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

(3) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts shall be discharged forthwith so far as the property of the debtor is sufficient to meet them.

(4) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt within three months next before the date of the receiving order the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made.

(5) This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

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

Provided that where the court is satisfied that there is difficulty in discriminating joint and separate liabilities and joint and separate assets and the court is of opinion that it is for the benefit of the creditors generally that the assets and liabilities should be consolidated, the court may make an order that the assets and liabilities shall be consolidated, and thereupon the

¹ 1960-04

² 1952-10

³ 1955-14

joint and separate creditors shall rank *pari passu* against the consolidated estate:

Provided also that nothing in this subsection shall affect any rule of law relating to debts incurred by fraud.

(7) Subject to the provisions of this Act, all debts provable in the bankruptcy shall be paid *pari passu*.

(8) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of £4 per cent per annum on all debts proved in the bankruptcy.

(9) Nothing in this section shall alter the effect of section 5 of the Partnership Act⁴, or shall prejudice the provisions of the Friendly Societies Act⁵, or the provisions of any enactment relating to deeds of arrangement respecting the payment of expenses incurred by the trustee under a deed of arrangement which has been avoided by the bankruptcy of the debtor.

Preferential claim in case of apprenticeship.

(1914 c.59, s.34) 34. (1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articulated clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or apprentice or clerk gives notice in writing to the official trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement ; and, if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the official trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the official trustee, subject to an appeal to the court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

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

Landlord's power of distress in case of bankruptcy.

(1914 c.59, s.35) 35. (1) The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the

⁴ 1895-11

⁵ 1888-11

bankruptcy, distress upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that, if such distress for rent be levied after the commencement of the bankruptcy, it shall be available only for six months' rent accrued due prior to the date of the order of adjudication and shall not be available for rent payable in respect of any period subsequent to the date when the distress was levied, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

(2) Where any goods of a debtor have been taken in execution, the limit on the amount of rent which the party at whose suit the execution is sued out is liable to pay to the landlord under section 1 of the Landlord and Tenant Act, 1709, or which the landlord is entitled to be paid under section 36 of the Court of First Instance Act⁶, shall, unless notice of claim for rent due has been served on the marshal or other officer levying the execution by or on behalf of the landlord before the commencement of the debtor's bankruptcy, be six months' rent, instead of one year's rent, and the rights of the landlord under the said provisions shall not extend to any claim for rent payable in respect of any period subsequent to the date of such notice, unless such notice was served before the commencement of the debtor's bankruptcy.

(3) Nothing in subsection (2) shall be construed as imposing any liability on the marshal, or other officer levying the execution, or on the person at whose suit the execution was sued out, to account for any sum actually paid to the landlord by him before notice was served on him that a receiving order had been made against the debtor, but the landlord shall be liable to pay to the official trustee any sum he may have received from such marshal, officer or person in excess of the amount which he was entitled to be paid, without prejudice, however, to the right of the landlord to prove for the amount of such excess.

Postponement of husband's and wife's claims.

36. (1) Where a married woman has been adjudged bankrupt, her husband shall not be entitled to claim any dividend as a creditor in respect of any money or other estate lent or entrusted by him to his wife for the purposes of her trade or business until all claims of the other creditors of his wife for valuable consideration in money or money's worth have been satisfied. *(1914 c.59, s.36)*

(2) Where the husband of a married woman has been adjudged bankrupt, any money or other estate of such woman lent or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise, shall be treated as assets of his estate, and the wife shall not be entitled to claim any dividend as a creditor in respect of any such money or

⁶ **1960-03** Repealed as from 1.9.2004

other estate until all claims of the other creditors of her husband for valuable consideration in money or money's worth have been satisfied.

Property available for Payment of Debts.

Relation back of trustee's title.

(1914 c.59, s.37) 37. (1) The bankruptcy of a debtor, whether it takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

(2) Where a receiving order is made against a judgment debtor in pursuance of section 85, the bankruptcy of the debtor shall be deemed to have relation back to, and to commence at, the time of the order, or if the bankrupt is proved to have committed any previous act of bankruptcy, then to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the debtor within three months next preceding the date of the order.

Description of bankrupt's property divisible amongst creditors.

(1914 c.59 s.38) 38. (1) The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars:—

- (a) property held by the bankrupt on trust for any other person;
- (b) the tools (if any) of his trade and the necessary wearing apparel and bedding of himself, his wife or her husband and children, to a value, inclusive of tools and apparel and bedding, not exceeding £400 in respect of himself and his wife or her husband and £25 for each child.

(2) The property of the bankrupt, however, shall comprise the following particulars:—

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

- (b) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge; and
- (c) all goods being, at the commencement of the bankruptcy, in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof:

Provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed goods within the meaning of this section.

Provisions as to second bankruptcy.

39. (1) Where a second or subsequent receiving order is made against a bankrupt, or where an order is made for the administration in bankruptcy of the estate of a deceased bankrupt, then for the purposes of any proceedings consequent upon any such order, the official trustee in the last preceding bankruptcy shall be deemed to be a creditor in respect of any unsatisfied balance of the debts provable against the property of the bankrupt in that bankruptcy. (1926 c.7, s.3)

(2) In the event of a second or subsequent receiving order made against a bankrupt being followed by an order adjudging him bankrupt, or in the event of an order being made for the administration in bankruptcy of the estate of a deceased bankrupt, any property acquired by him since he was last adjudged bankrupt, which at the date when the subsequent petition was presented had not been distributed amongst the creditors in such last preceding bankruptcy, shall (subject to any disposition thereof made by the official trustee in that bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to the provisions of section 47) vest in the official trustee in the subsequent bankruptcy or administration in bankruptcy as the case may be.

(3) Where the official trustee in any bankruptcy receives notice of a subsequent petition in bankruptcy against the bankrupt or after his decease of a petition for the administration of his estate in bankruptcy, the official trustee shall hold any property then in his possession which has been acquired by the bankrupt since he was adjudged bankrupt until the subsequent petition has been disposed of, and if on the subsequent petition an order of adjudication or an order for the administration of the estate in bankruptcy is made, he shall transfer all such property or the proceeds thereof (after deducting his costs and expenses) to the official trustee in the subsequent bankruptcy or administration in bankruptcy, as the case may be.

Effect of Bankruptcy on Antecedent and other Transactions.

Restriction of rights of creditor under execution or attachment.

(1914 c.59, s.40)

40. (1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the official trustee of the debtor, unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor.

(2) For the purposes of this Act—

- (a) an execution against goods is completed by seizure and sale or by the making of a charge order under section 3 of the Charging Orders Act 1988;
- (b) an attachment of a debt is completed by the receipt of debt; and
- (c) an execution against land is completed by seizure, by the appointment of a receiver, or by the making of a charging order under the said section 3.

(3) An execution levied by seizure and sale on the goods of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the marshal shall, in all cases, acquire a good title to them against the official trustee.

Duties of marshal as to goods taken in execution.

*(1914 c.59, s.41;
1913 c.34, s.15)*

41. (1) Where any goods of a debtor are taken in execution, and before the sale thereof, or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the marshal that a receiving order has been made against the debtor, the marshal shall, on request, deliver the goods and any money seized or received in part satisfaction of the execution to the official trustee, but the costs of the execution shall be a first charge on the goods or money so delivered, and the official trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

(2) Where, under an execution in respect of a judgment for a sum exceeding £200, the goods of a debtor are sold or money is paid in order to avoid sale, the marshal shall deduct his costs of the execution from the proceeds of sale or the money paid and retain the balance for fourteen days, and if within that time notice is served on him of a bankruptcy petition having been presented by or against the debtor, and a receiving order is made against the debtor thereon or on any other petition of which the

marshal has notice, the marshal shall pay the balance to the official trustee, who shall be entitled to retain it as against the execution creditor.

(3) Where any goods in the possession of an execution debtor at the time of seizure by a marshal or other officer charged with the enforcement of a writ, warrant or other process of execution, are sold by such marshal or other officer, without any claim having been made to the same, the purchaser of the goods so sold shall acquire a good title to the goods so sold, and no person shall be entitled to recover against the marshal or other officer, or anyone lawfully acting under the authority of either of them, for any sale of such goods or for paying over the proceeds thereof, prior to the receipt of a claim to the goods unless it is proved that the person from whom recovery is sought had notice, or might by making reasonable inquiry have ascertained that the goods were not the property of the execution debtor:

Provided that nothing in this subsection contained shall affect the right of any claimant who may prove that at the time of sale he had a title to any goods so seized and sold to any remedy to which he may be entitled against any person other than such marshal or other officer as aforesaid.

Avoidance of certain settlements.

42. (1) Any settlement of property, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or husband, or children, of the settlor of property which has accrued to the settlor after marriage in right of his wife or her husband, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the official trustee, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the official trustee, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property passed to the trustee of such settlement on the execution thereof. *(1914 c.59, s.42)*

(2) Any covenant or contract made by any person (hereinafter called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's wife or husband, or children, or for the future settlement on or for the settlor's wife or husband or children, of property, wherein the settlor had not at the date of the marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property in right of the settlor's wife or husband, shall, if the settlor is adjudged bankrupt and the covenant or contract has not been executed at the date of the commencement of his bankruptcy, be void against the official trustee, except so far as it enables the persons entitled

under the covenant or contract to claim for dividend in the settlor's bankruptcy under or in respect of the covenant or contract, but any such claim to dividend shall be postponed until all claims of the other creditors for valuable consideration in moneys worth have been satisfied.

(3) Any payment of money (not being payment of premiums on a policy of life assurance) or any transfer of property made by the settlor in pursuance of such a covenant or contract as aforesaid shall be void against the official trustee in the settlor's bankruptcy, unless the persons to whom the payment or transfer was made prove either—

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

but, in the event of any such payment or transfer being declared void, the persons to whom it was made shall be entitled to claim for dividend under or in respect of the covenant or contract in like manner as if it had not been executed at the commencement of the bankruptcy.

(4) "Settlement" shall, for the purposes of this section, include any conveyance or transfer of property.

Protection of assets.

42A.(1) If:—

- (a) under or by virtue of any disposition made in respect of property the same becomes settled property; and
- (b) the Settlor is an individual; and
- (c) the Settlor is not insolvent at the date of the disposition;
- (d) does not become insolvent in consequence thereof; and
- (e) the disposition is registered in accordance with the requirements of any regulations,

such disposition shall not be voidable at the instance of or upon application by any creditor of the Settlor.

Provided that this section shall apply only to dispositions made on or after a day to be specified by the Minister responsible for finance by notice in the Gazette.

(2) Without prejudice to the generality of the provisions contained in the preceding sub-section:—

- (a) notwithstanding the English Law (Application) Act, the Fraudulent Conveyances Act 1571 shall not apply to any disposition to which this section applies;
- (b) section 42 of the Act shall not apply to any settlement to which, but for this proviso, it would have applied and which is a disposition falling within the provisions of subsection (1) of this section.

(3) For the purpose of this section:

- (a) “disposition” means any disposition or series thereof, howsoever effected, and (without prejudice to the generality thereof) includes any transaction, gift, grant or transfer of property of any nature whatsoever;
- (b) “insolvent” means in respect of a Settlor, any Settlor whose liabilities, both actual and contingent or prospective, exceed the value of his assets,

Provided that no claim by creditors shall be deemed to be a contingent or prospective liability of a Settlor who at the time of making the disposition does not have actual notice of such a claim or of the facts or circumstances which may render him liable to such a claim;

- (c) “settled property” means any property held in or upon trust, other than any property held by any person as nominee for another person, or as trustee for any other person who is absolutely entitled to the beneficial interest in such property;
- (d) “the Settlor”, in relation to any settled property, includes the maker of any disposition of property which in consequence thereof becomes settled property.

(4) The Minister responsible for finance may by regulation make provision for the establishment of a register (“the register”) of dispositions to which subsection (1) applies, for all matters incidental to the maintenance

of such a register, and, without prejudice to the generality of the foregoing, such regulations may include—

- (a) the appointment of a person to keep the register;
- (b) the conditions (if any) to be satisfied before a disposition may be entered in the register;
- (c) the information to be provided in respect of a disposition before it may be entered in the register;
- (d) the fees and periodical fees payable in respect of entries in the register and matters related thereto;
- (e) the circumstances in which an entry may be removed from the register;
- (f) any obligations of the persons appointed under paragraph (a) in respect of secrecy in relation to entries in the register;
- (g) provisions that any contravention of any regulation made under this subsection shall be a summary offence punishable by imprisonment for a term not exceeding three months or a fine not exceeding £1,000, or both, on conviction for any such offence.

Avoidance of general assignments of book debts unless registered.

(1914 c.59, s.43) 43. (1) Where a person engaged in any trade or business makes an assignment to any other person of his existing or future book debts or any class thereof, and is subsequently adjudicated bankrupt, the assignment shall be void against the official trustee as regards any book debts which have not been paid at the commencement of the bankruptcy, unless the assignment has been registered as if the assignment were a bill of sale given otherwise than by way of security for the payment of a sum of money, and the provisions of the Bills of Sale Act⁷, with respect to the registration of bills of sale shall apply accordingly, subject to such necessary modifications as may be made by rules under that Act:

Provided that nothing in this section shall have effect so as to render void any assignment of book debts due at the date of the assignment from specified debtors, or of debts growing due under specified contracts, or any assignment of book debts included in a transfer of a business made bona fide and for value, or in any assignment of assets for the benefit of creditors generally.

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(2) For the purposes of this section, “assignment” includes assignment by way of security and other charges on book debts.

Avoidance of preference in certain cases.

44. (1) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or of any person in trust for any creditor, with a view to giving such creditor, or any surety or guarantor for the debt due to such creditor, a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the official trustee. *(1914 c.59, s.44)*

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

(3) Where a receiving order is made against a judgment debtor in pursuance of section 85, this section shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order.

Protection of bona fide transactions without notice.

45. Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, assignments and preferences, nothing in this Act shall invalidate, in the case of a bankruptcy— *(1914 c.59 s.45)*

- (a) any payment by the bankrupt to any of his creditors;
- (b) any payment or delivery to the bankrupt;
- (c) any conveyance or assignment by the bankrupt for valuable consideration;
- (d) any contract, dealing, or transaction by or with the bankrupt for valuable consideration:

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

- (i) that the payment, delivery, conveyance, assignment, contract, dealing or transaction, as the case may be, takes place before the date of the receiving order; and

- (ii) that the person (other than the debtor) to, by or with whom the payment, delivery, conveyance, assignment, contract, dealing or transaction was made, executed or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

Validity of certain payments to bankrupt and assignee.

- (1914 c.59, s.46) 46. A payment of money or delivery of property to a person subsequently adjudged bankrupt, or to a person claiming by assignment from him, shall, notwithstanding anything in this Act, be a good discharge to the person paying the money or delivering the property, if the payment or delivery is made before the actual date on which the receiving order is made and without notice of the presentation of a bankruptcy petition, and is either pursuant to the ordinary course of business or otherwise bona fide.

Dealings with undischarged bankrupt.

- (1914 c.59, s.47) 47. (1) All transactions by a bankrupt with any person dealing with him bona fide and for value, in respect of property, whether real or personal, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the official trustee, be valid against the official trustee, and any estate or interest in such property which by virtue of this Act is vested in the official trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction.

This subsection shall apply to transactions with respect to real property completed before the 1st day of October, 1917, in any case where there has not been any intervention by the official trustee before that date.

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

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

Rights of third parties against insurers on bankruptcy, etc., of the insured.

47A. (1) Where under any contract of insurance a person (in this section referred to as “the insured”) is insured against liabilities to third parties which he may incur, then—

- (a) in the event of the insured becoming bankrupt or making a composition or arrangement with his creditors ; or
- (b) in the case of the insured being a company, in the event of a winding-up order being made, or a resolution for a voluntary winding-up being passed, with respect to the company, or of a receiver or manager of the company’s business or undertaking being duly appointed, or of possession being taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the charge,

if, either before or after that event, any such liability as aforesaid is incurred by the insured, his rights against the insurer under the contract in respect of the liability shall notwithstanding anything in any law to the contrary, be transferred to and vest in the third party to whom the liability was so incurred.

(2) Where an order is made under section 101 of this Act for the administration of the estate of a deceased debtor according to the law of bankruptcy, then, if any debt provable in bankruptcy is owing by the deceased in respect of a liability against which he was insured under a contract of insurance as being a liability to a third party, the deceased debtor’s rights against the insurer under the contract in respect of that liability shall, notwithstanding anything in this Act, be transferred to and vest in the person to whom the debt is owing.

(3) In so far as any contract of insurance in respect of any liability of the insured to third parties purports, whether directly or indirectly, to avoid the contract or to alter the rights of the parties thereunder upon the happening to the insured of any of the events specified in paragraph (a) or paragraph (b) of subsection (1) of this section or upon the making of an order under section 101 of this Act in respect of his estate, the contract shall be of no effect.

(4) Upon a transfer under subsection (1) or (2) the insurer shall be under the same liability to the third party as he would have been under to the insured, but—

- (a) if the liability of the insurer to the insured exceeds the liability of the insured to the third party, nothing in this section shall

affect the rights of the insured against the insurer in respect of the excess; and

- (b) if the liability of the insurer to the insured is less than the liability of the insured to the third party, nothing in this section shall affect the rights of the third party against the insured in respect of the balance.

(5) For the purposes of this section, the expression “liabilities to third parties,” in relation to a person insured under any contract of insurance, shall not include any liability of that person in the capacity of insurer under some other contract of insurance.

(6) This section shall not apply where a company is wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company.

Realization of Property.

Possession of property by trustee.

(1914 c.59, s.48) 48. (1) The official trustee shall, as soon as may be, take possession of the deeds, books and documents of the bankrupt, and all other parts of his property capable of manual delivery.

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

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

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

(5) Subject to the provisions of this Act with respect to property acquired by a bankrupt after adjudication, any treasurer or other officer, or any banker, attorney or agent of a bankrupt, shall pay and deliver to the official trustee all money and securities in his possession or power, as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the bankrupt or the official trustee. If he does not, he is guilty of a

contempt of court, and may be punished accordingly on the application of the official trustee.

Seizure of property of bankrupt.

49. Any person acting under warrant of the court may seize any part of the property of a bankrupt, or of a debtor against whom a receiving order has been made, in the custody or possession of the bankrupt or the debtor, or of any other person, and with a view to such seizure may break open any house, building or room of the bankrupt or the debtor, where the bankrupt or the debtor is supposed to be, or any building or receptacle of the bankrupt or the debtor where any of his property is supposed to be; and where the court is satisfied that there is reason to believe that property of a bankrupt, or of a debtor against whom a receiving order has been made, is concealed in a house or place not belonging to him, the court may grant a search warrant to any police officer or officer of the court, who may execute it according to its tenor. *(1914 c.59, s.49)*

Appropriation of portion of pay or salary to creditors.

50. (1) Where a bankrupt is an officer of the army, navy or air force, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the official trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the court, on the application of the official trustee, with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct. Before making any order under this subsection, the court shall communicate with the chief officer of the department as to the amount, time and manner of the payment to the official trustee, and shall obtain the written consent of the chief officer to the terms of such payment. *(1914 c.59, s.51)*

(2) Where a bankrupt is in receipt of a salary or income other than as aforesaid, or is a salaried clergyman, or is entitled to any half-pay or pension, or to any compensation granted by any public department, the court, on the application of the official trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, half-pay, pension or compensation, or of any part thereof, to the official trustee, to be applied by him in such manner as the court may direct.

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

Vesting and transfer of property.

51. (1) Immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the official trustee. *(1914 c.59, s.53)*

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

Disclaimer of onerous property.

(1914 c.59, s.54) 52. (1) Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsalable, or not readily salable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the official trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within twelve months after the date of adjudication of the bankrupt or such extended period as may be allowed by the court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the official trustee within one month after the adjudication, he may disclaim such property at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the official trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the official trustee from liability, affect the rights or liabilities of any other person.

(3) An official trustee shall not be entitled to disclaim a lease without the leave of the court, except in any cases which may be prescribed by any rules of court made under this Act, and the court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the court thinks just.

(4) The official trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the official trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the official trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the court, declined or neglected to give notice whether he disclaims the property or

not; and, in the case of a contract, if the official trustee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

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

(6) The court may, on application by any person either claiming any interest in any disclaimed property or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a leasehold nature, the court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise except upon the terms of making that person—

- (a) subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed; or
- (b) if the court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order; and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the bankrupt who is willing to accept an order upon such terms, the court shall have power to vest the bankrupt's estate and interest in the property in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in the lease, freed and discharged from all estates, incumbrances and interests created therein by the bankrupt:

Provided also that nothing in this subsection shall affect the rights of the Crown or the provisions of any enactment relating to the registration of titles in Gibraltar.

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

Powers of official trustee to deal with property.

(1914 c.59, s.55) 53. Subject to the provisions of this Act, the official trustee may do all or any of the following things:—

- (a) sell all or any part of the property of the bankrupt (including the goodwill of the business (if any) and the book debts due or growing due to the bankrupt), by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;
- (b) give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;
- (c) prove, rank, claim and draw a dividend in respect of any debt due to the bankrupt;
- (d) exercise any powers, the capacity to exercise which is vested in the official trustee under this Act, and execute any powers of attorney, deeds and other instruments, for the purpose of carrying into effect the provisions of this Act;
- (e) deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it.

Powers exercisable by official trustee with permission of the court.

1914 c.59, s.56) 54. The official trustee may, with the permission of the court, do all or any of the following things:—

- (a) carry on the business of the bankrupt, so far as may be necessary for the beneficial winding up of the same;
- (b) bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt;
- (c) employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the court;

- (d) accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the court thinks fit;
- (e) mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts;
- (f) refer any dispute to arbitration, compromise any debts, claims and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times and generally on such terms as may be agreed on;
- (g) make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy;
- (h) make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the official trustee by any person or by the official trustee on any person ;
- (i) divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

Power to allow bankrupt to manage property.

55. The official trustee, with the permission of the court, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property, in such manner and on such terms as the official trustee may direct. *(1914 c.59, s.57)*

Allowance to bankrupt for maintenance or service.

(1914 c.59, s.58) 56. The official trustee may from time to time, with the permission of the court, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate.

Right of official trustee to inspect goods pawned, etc.

(1914 c.59, s.59) 57. Where any goods of a debtor against whom a receiving order has been made are held by any person by way of pledge, pawn or other security, it shall be lawful for the official trustee, after giving notice in writing of his intention to do so, to inspect the goods, and, where such notice has been given, such person shall not be entitled to realise his security until he has given the official trustee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so.

Limitation of official trustee's powers in relation to copyright.

(1914 c.59, s.60) 58. Where the property of a bankrupt comprises the copyright in any work or any interest in such copyright, and he is liable to pay to the author of the work royalties or a share of the profits in respect thereof, the official trustee shall not be entitled to sell, or authorize the sale of, any copies of the work, or to perform or authorize the performance of the work, except on the terms of paying to the author such sums by way of royalty or share of the profits as would have been payable by the bankrupt, nor shall he, without the consent of the author or of the court, be entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except upon terms which will secure to the author payments by way of royalty or share of the profits at a rate not less than that which the bankrupt was liable to pay.

Protection of official trustee from personal liability in certain cases.

(1914 c.59, s.61) 59. Where the official trustee has seized or disposed of any goods, chattels, property or other effects in the possession or on the premises of a debtor against whom a receiving order has been made, without notice of any claim by any person in respect of the same, and it is thereafter made to appear that such goods, chattels, property or other effects were not, at the date of the receiving order, the property of the debtor, the official trustee shall not be personally liable for any loss or damage arising from such seizure or disposal sustained by any person claiming such property, nor for the costs of any proceedings taken to establish a claim thereto, unless the court is of opinion that the official trustee has been guilty of negligence in respect of the same.

Distribution of Property.

Declaration and distribution of dividends.

60. (1) Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the official trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts. *(1914 c.59, s.62)*

(2) The first dividend (if any) shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the official trustee satisfies the court that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.

(4) Before declaring a dividend, the official trustee shall cause notice of his intention to do so to be gazetted in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

(5) When the official trustee has declared a dividend, he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

Joint and separate dividends.

61. (1) Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts. *(1914 c.59, s.63)*

(2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, unless otherwise directed by the court on the application of any person interested, be declared together, and the expenses of and incidental to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

Provision for creditors residing at a distance, etc.

62. (1) In the calculation and distribution of a dividend the official trustee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from Gibraltar that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined. *(1914 c.59, s.64)*

(2) He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise.

(3) Subject to the foregoing provisions, he shall distribute as dividend all money in hand.

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

(1914 c.59, s.65) 63. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the official trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Interest on debts.

(1914 c.59, s.66) 64. (1) Where a debt has been proved, and the debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding 5 per cent per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

(2) In dealing with the proof of the debt, the following rules shall be observed:—

- (a) any account settled between the debtor and the creditor within three years preceding the date of the receiving order may be examined, and, if it appears that the settlement of the account forms substantially one transaction with any debt alleged to be due out of the debtor's estate (whether in the form of renewal of a loan or capitalisation of interest or ascertainment of loans or otherwise), the account may be re-opened and the whole transaction treated as one;
- (b) any payments made by the debtor to the creditor before the receiving order, whether by way of bonus or otherwise, and any sums received by the creditor before the receiving order from the realisation of any security for the debt, shall, notwithstanding any agreement to the contrary, be appropriated to principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate;

- (c) where the debt due is secured and the security is realised after the receiving order, or the value thereof is assessed in the proof, the amount realised or assessed shall be appropriated to the satisfaction of principal and interest in the proportion that the principal bears to the sum payable as interest at the agreed rate.

Final dividend.

65. (1) Where the official trustee has realised all the property of the bankrupt, or so much thereof as can be realised without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the court within a time limited by the notice, he will proceed to make a final dividend, without regard to their claims. *(1914 c.59, s.67)*

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

No action for dividend.

66. No action for a dividend shall lie against the official trustee, but, if the official trustee refuses to pay any dividend, the court may order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application. *(1914 c.59, s.68)*

Right of bankrupt to surplus.

67. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Act provided, and of the costs, charges and expenses of the proceedings under the bankruptcy petition. *(1914 c.59, s.69)*

PART III.
OFFICIAL TRUSTEE.**Appointment of official trustees.**

68. The Minister responsible for finance may from time to time, by warrant, appoint one or more persons to be called official trustees, and who shall be officers of the court. An official trustee, upon his appointment, shall enter into a recognizance with two sureties in such sum as the Minister responsible for finance shall order:

Provided always that it shall be lawful for the Minister responsible for finance, for sufficient reason, to remove any official trustee, and by warrant to appoint some other fit and proper person to be an official trustee.

Status of official trustee.

(1914 c.59, s.72) 69. (1) The duties of the official trustee shall have relation both to the conduct of the debtor and to the administration of his estate.

(2) An official trustee may, for the purpose of affidavits verifying proofs, petitions or other proceedings under this Act, administer oaths.

Duties of official trustee as regards the debtor's conduct.

(1914 c.59, s.73) 70. As regards the debtor, it shall be the duty of the official trustee—

- (a) to investigate the conduct of the debtor and to report to the court, stating whether there is reason to believe that the debtor has committed any act which constitutes an offence against this Act or which would justify the court in refusing, suspending or qualifying an order for his discharge;
- (b) to make such other reports concerning the conduct of the debtor as the court may direct;
- (c) to take part in the public examination of the debtor; and
- (d) to take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the court or the Attorney-General may direct.

Duties of official trustee as to debtor's estate.

(1914 c.59, s.74) 71. (1) As regards the estate of a debtor, it shall be the duty of the official trustee—

- (a) to act as receiver and manager of the debtor's estate until a composition or scheme is approved or the debtor is adjudged bankrupt, and to act as trustee where the debtor is adjudged bankrupt;
- (b) to summon and preside at the meetings of creditors;
- (c) to issue forms of proxy for use at the meetings of creditors;
- (d) to report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs; and

- (e) to advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise.

(2) For the purpose of his duties as interim receiver or manager, the official trustee shall have the same powers as if he were a receiver and manager appointed by the Supreme Court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the court otherwise orders, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods;

Provided that, when the debtor cannot himself prepare a proper statement of affairs, the official trustee may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

(3) Every official trustee shall account to the court and pay over all moneys and deal with all securities in such manner as may be prescribed or as the court may direct.

Name of official trustee.

72. The official name of the official trustee shall be "the official trustee of the property of a bankrupt" (inserting the name of the bankrupt), and by that name the official trustee may hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office. *(1914 c.59, s.76)*

Discretionary powers of official trustee and control thereof.

73. (1) Subject to the provisions of this Act, the official trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting. *(1914 c.59, s.79)*

(2) The official trustee may from time to time summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, may direct or whenever requested in writing to do so by one-sixth in value of the creditors, and the official trustee shall call such meeting accordingly within fourteen days:

Provided that the persons at whose instance the meeting is summoned shall deposit with the official trustee a sum sufficient to pay the costs of summoning the meeting, such sum to be repaid to him out of the estate if the court so directs.

(3) The official trustee may apply to the court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

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

Appeal to court against official trustee.

(1914 c.59, s.80) 74. If the bankrupt or any of the creditors, or any other person, is aggrieved by any act or decision of the official trustee, he may apply to the court, and the court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of court over official trustee.

(1914 c.59 s.81) 75. (1) The court shall take cognizance of the conduct of an official trustee, and, in the event of any official trustee not faithfully performing his duties, and duly observing all the requirements imposed on him by statute, rules or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the court by any creditor in regard thereto, the court shall inquire into the matter and take such action thereon as may be deemed expedient.

(2) The court may at any time require any official trustee to answer any inquiry made by it in relation to any bankruptcy in which the official trustee is engaged, and may examine on oath the official trustee or any other person concerning the bankruptcy.

(3) The court may also direct an investigation to be made of the books and vouchers of the official trustee.

(4) The court may at any time for sufficient reason by order transfer the trusteeship of any particular estate from one official trustee to another.

Costs and expenses.

(1914 c.59 ss.82 and 83) 76. (1) An official trustee shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the court may approve.

(2) All bills and charges of solicitors, managers, accountants, auctioneers, brokers and other persons, not being official trustees, shall be

taxed by the Registrar of the Supreme Court and no payments in respect thereof shall be allowed in the official trustee's accounts without proof of such taxation having been made. The Registrar shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned. The sanction must be obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

(3) Every such person shall, on request by the official trustee (which request the official trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the Registrar for taxation, and, if he fails to do so within seven days after receipt of the request, or such further time as the court, on application, may grant, the official trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the official trustee personally as against the estate.

Receipts, Payments, Accounts, Audit.

Official trustee to furnish list of creditors,

77. The official trustee shall, whenever required by any creditor so to do, (1914 c.59, s.84) furnish and transmit to him by post a list of the creditors showing the amount of the debt due to each creditor, and shall be entitled to charge for such list the sum of one penny per folio of seventy-two words, together with the cost of the postage thereof.

Official trustee to furnish statement of accounts.

78. It shall be lawful for any creditor, with the concurrence of one-sixth of the creditors (including himself), at any time to call upon the official trustee to furnish and transmit to the creditors a statement of the accounts up to the date of such notice, and the official trustee shall, upon receipt of such notice, furnish and transmit such statement of the accounts: (1914 c.59 s.85)

Provided that the person at whose instance the accounts are furnished shall deposit with the official trustee a sum sufficient to pay the costs of furnishing and transmitting the accounts, which sum shall be repaid to him out of the estate if the court so directs.

Books to be kept by trustee.

79. The official trustee shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor of the bankrupt may, subject to the control of the court, personally or by his agent, inspect any such books. (1914 c.59, s.86)

Trustee not to pay into private account.

(1914 c.59, s.88) 80. No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account.

Disposal of money received by official trustee.

(1914 c.59, s.89) 81. (1) Every official trustee shall, in such manner and at such times as the Financial Secretary directs, pay the money received by him to the credit of a Government deposit account which shall be kept at the Treasury and shall be known as the Bankruptcy Estates Account and the Financial Secretary shall furnish him with a certificate of receipt of the moneys so paid:

Provided that if it appears to the court that, for the purpose of carrying on the debtor's business or of obtaining advances or because of the probable amount of the cash balance or for any other reason it is for the advantage of the creditors that the official trustee should have an account with a local bank, the court shall, on the application of the official trustee, authorize him to make his payments into and out of such local bank as the court may select.

(2) Where the official trustee opens an account in a local bank, he shall open and keep it in the name of the debtor's estate, and any interest receivable in respect of the account shall be part of the assets of the estate, and the official trustee shall make his payments into and out of the local bank in the prescribed manner.

(3) If an official trustee at any time retains for more than ten days a sum exceeding £200, or such other amount as the Financial Secretary in any particular case authorises him to retain, then, unless he explains the retention to the satisfaction of the Financial Secretary, he shall pay interest on the amount so retained in excess at the rate of 20 per cent per annum, and shall have no claim to remuneration, and may be removed from his office by the court, and shall be liable to pay any expenses occasioned by reason of his default.

(4) All payments out of money standing to the credit of the Bankruptcy Estate Account shall be made by the Financial Secretary in the prescribed manner.

(5) *Omitted.*

(6) Where any money in the Bankruptcy Estates Account has remained unclaimed or undistributed for a period of five years or where a dividend has been declared, if such dividend has remained unclaimed for a period of two years, it shall be lawful for the Financial Secretary to transfer such

unclaimed or undistributed money or dividend, as the case may be, to the credit of the Consolidated Fund.

(7) Any person claiming to be entitled to any money so transferred to the Consolidated Fund pursuant to subsection (6) may apply to the Financial Secretary for payment of the same and the Financial Secretary, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due. Any person dissatisfied with the decision of the Financial Secretary in respect of his claim may appeal to the court.

Audit of official trustee's accounts.

82. (1) Every official trustee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the court an account of his receipts and payments as such trustee. *(1914 c.59 s.92)*

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The account so sent shall be audited by the Principal Auditor, and, for the purposes of the audit, the official trustee shall furnish the Auditor with such vouchers and information as the Auditor may require, and the Auditor may at any time require the production of and inspect any books or accounts kept by the official trustee.

(4) When any such account has been audited, one copy thereof shall be filed and kept by the court, and the other copy shall be returned to the trustee, and each copy shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

Release of Official Trustee.

Release of official trustee.

83. (1) When the official trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realised without needlessly protracting the trusteeship, and distributed a final dividend (if any) or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the court shall, on his application, either grant or withhold the release. *(1914 c.59, s.93 and 94)*

(2) An order of the court releasing the official trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as official trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(3) If a receiving order is made against an official trustee, he shall thereby vacate his office of trustee.

PART IV.
PROCEDURE AND POWERS OF COURT,

Jurisdiction.

Jurisdiction.

(1914 c.59, s.96) 84. The court having jurisdiction in bankruptcy shall be the Supreme Court.

Adjudication of debtor on judgment creditor's application for committal.

(1914 c.59, s.107) 85. (1) Where, under section 5 of the Debtors Act, 1869, application is made by a judgment creditor to the Supreme Court for the committal of a judgment debtor, the court may, if it thinks fit, decline to commit, and in lieu thereof, with the consent of the judgment creditor and on payment by him of the prescribed fee, make a receiving order against the debtor. In such case the judgment debtor shall be deemed to have committed an act of bankruptcy at the time the order is made, and the provisions of this Act except Part VI thereof shall apply as if for references to the presentation of a petition by or against a person there were substituted references to the making of such a receiving order.

(2) Rules of court under this Act may be made for the purpose of carrying into effect the provisions of the Debtors Act, 1869.

Appeals.

Appeal in bankruptcy.

(1914 c.59, s.108) 86. (1) The court may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

(2) *Repealed.*

(3) Where by this Act an appeal to the court is given against any decision of the official trustee, the appeal shall be brought within twenty-one days from the time when the decision appealed against is pronounced or made.

Procedure.

Discretionary powers of the court.

87. (1) Subject to the provisions of this Act and to any rules of court made under this Act, the costs of and incidental to any proceeding in court under this Act shall be in the discretion of the court: *(1914 c.59, s.109)*

Provided that, where any issue is tried by a jury, the costs shall follow the event, unless, upon application made at the trial, for good cause shown, the court otherwise orders.

(2) The court may at any time adjourn any proceedings before it upon such terms (if any) as it may think fit to impose.

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

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

(5) Subject to any rules of court made under this Act, the court may in any matter take the whole or any part of the evidence either viva voce, or by interrogatories, or upon affidavit, or, out of Gibraltar, by commission or otherwise.

Consolidation of petitions.

88. Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the court may consolidate the proceedings, or any of them, on such terms as the court thinks fit. *(1914 c.59, s.110)*

Power to change carriage of proceedings.

89. Where the petitioner does not proceed with due diligence on his petition, the court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of the petitioning creditor. *(1914 c.59, s.111)*

Continuance of proceedings on death of debtor.

90. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the court otherwise orders, be continued as if he were alive. *(1914 c.59, s.112)*

Power to stay proceedings.

91. The court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a *(1914 c.59, s.113)*

limited time, on such terms and subject to such conditions as the court may think just.

Power to present petition against one partner.

*(1914 c.59,
s.114)*

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

Power to dismiss petition against some respondents only.

*(1914 c.59,
s.115)*

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

Property of partners to be vested in same official trustee.

*(1914 c.59,
s.116)*

94. Where a receiving order has been made on a bankruptcy petition by or against one member of a partnership, and where any other bankruptcy petition by or against a member of the same partnership is filed, unless the court otherwise directs, the same official trustee shall be appointed as may have been appointed in respect of the property of the first-mentioned member of the partnership, and the court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Actions by official trustee and bankrupt's partners.

*(1914 c.59,
s.117)*

95. Where a member of a partnership is adjudged bankrupt, the court may authorize the official trustee to commence and prosecute any action in the names of the official trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void ; but notice of the application for authority to commence the action shall be given to him, and he may show cause against it, and on his application the court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and, if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the court directs.

Actions on joint contracts.

*(1914 c.59,
s.118)*

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

Proceedings in partnership name.

*(1914 c.59,
s.119)*

97. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded

against under this Act in the name of the firm, but in such case the court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath or otherwise, as the court may direct.

Auxiliary Jurisdiction

Court to be auxiliary to other British and EC courts.

98. (1) The Supreme Court and the officers thereof shall act in aid of and be auxiliary in all matters of bankruptcy, to every court in the United Kingdom or in any British possession having jurisdiction in bankruptcy or insolvency, and an order of such court seeking aid, with a request to the Supreme Court, shall be deemed sufficient to enable the latter court to exercise, in regard to the matters directed by the order, such jurisdiction as either the court which made the request, or the Supreme Court, could exercise in regard to similar matters within their respective jurisdictions. *(1914 c.59, s.122)*

(2) The Supreme Court and the officers thereof shall also act in aid of courts in the European Community (other than the United Kingdom) in respect of insolvency proceedings falling under Council Regulation 1346/2000 on insolvency proceedings.

PART V. SUPPLEMENTAL PROVISIONS.

Application of Act.

Exclusion of companies.

99. A receiving order shall not be made against any corporation or against any partnership or association or company registered under the Companies Act⁸. *(1914 c.59, s.126)*

Application to limited partnerships.

100. Subject to such modifications as may be made by rules of court under this Act, the provisions of this Act shall apply to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and, on all the general partners of a limited partnership being adjudged bankrupt, the assets of the limited partnership shall vest in the official trustee. *(1914 c.59, s.127)*

Administration in bankruptcy of estate of person dying insolvent.

⁸ 1930-07

(1914 c.59,
s.130)

101. (1) Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy.

(2) Upon the prescribed notice being given to the legal personal representative of the deceased debtor, the court may, in the prescribed manner, upon proof of the petitioner's debt, unless the court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may, upon cause shown, dismiss the petition with or without costs.

(3) A petition for administration under this section shall not be presented to the court after proceedings have been commenced in the court for the administration of the deceased debtor's estate, but the court may, when satisfied that the estate is insufficient to pay its debts, make an order for the administration of the estate of the deceased debtor in bankruptcy, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(4) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official trustee and he shall forthwith proceed to realise and distribute it in accordance with the provisions of this Act.

(5) With the modifications hereinafter mentioned, all the provisions of Part II and, subject to any modification that may be made therein by rules of court under subsection (11), section 24 and 76, shall so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act, and section 35(1) shall apply as if for the reference to an order of adjudication there were substituted a reference to an administration order under this section.

(6) In the administration of the property of the deceased debtor under an order of administration, the official trustee shall have regard to any claim by the legal personal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed preferential debts under the order, and shall, notwithstanding anything to the contrary in the provisions of this Act relating to the priority of other debts, be payable in full, out of the debtor's estate, in priority to all other debts.

(7) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official trustee, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of bankruptcy, such surplus shall be

paid over to the legal personal representative of the deceased debtor's estate, or dealt with in such manner as may be prescribed.

(8) Notice to the legal personal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal personal representative shall operate as a discharge to him as between himself and the official trustee; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal personal representative before the date of the order for administration.

(9) A petition for the administration of the estate of a deceased debtor under this section may be presented by the legal personal representative of the debtor; and, where a petition is so presented by such a representative, this section shall apply subject to such modifications as may be prescribed by rules of court made under subsection (11).

(10) Unless the context otherwise requires, "creditor" in this section means one or more creditors qualified to present a bankruptcy petition as in this Act provided.

(11) Rules of court for carrying into effect the provisions of this section may be made in the same manner and to the like effect and extent as in bankruptcy.

Rules, etc.

Rules.

102. Subject to the prior approval of the Minister responsible for finance, the Chief Justice may make rules of court—

- (a) prescribing the fees, percentages and costs to be charged for or in respect of proceedings under this Act, and the remuneration to be allowed to official trustees and other officers of the court for the services they are thereby required to perform; and
- (b) generally for carrying into effect the provisions of this Act.

Evidence.

Gazette to be evidence.

103. (1) A copy of the Gazette containing any notice inserted therein in pursuance of this Act, shall be evidence of the facts stated in the notice. *(1914 c.59, s.137)*

(2) The production of a copy of the Gazette containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

Evidence of proceedings at meetings of creditors.

(1914 c.59, s.138) 104.(1)A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting by the official trustee shall be received in evidence without further proof.

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

Evidence of proceedings in bankruptcy.

(1914 c.59, s.139) 105. Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by the court, any instrument or copy of an instrument, affidavit or document made or used in the court of any bankruptcy proceedings or other proceedings had under this Act, shall, if it appears to be sealed with the seal of the court, or purports to be signed by the Chief Justice, or is certified as a true copy by the Registrar, be receivable in evidence in all legal proceedings whatever.

Swearing of affidavits.

106. Subject to any rules of court made under this Act, any affidavit to be used in bankruptcy proceedings may be sworn as follows:—

- (a) in Gibraltar, before the Registrar;
- (b) in any other part of the Commonwealth, before any court, judge, or justice of the peace, or any person authorized to administer oaths there in any court; and
- (c) in any other place, before a British minister, consul, vice-consul, or notary public, or before a judge or magistrate, his signature being authenticated by the official seal of the court to which he is attached.

Death of debtor or witness.

(1914 c.59, s.141) 107. In the case of the death of the debtor or his wife or her husband, or of a witness whose evidence has been received by any court in any proceeding under this Act, the deposition of the person so deceased, purporting to be

sealed with the seal of the court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposited to.

Certificate of appointment of official trustee.

108. A certificate of the Registrar of the Supreme Court that a person has been appointed an official trustee under this Act shall be conclusive evidence of his appointment. *(1914 c.59, s.143)*

Miscellaneous.

Service of notices.

109. All notices and other documents for the service of which no special mode is directed may be sent by post to the last known address of the person to be served therewith. *(1914 c.59, s.146)*

Formal defect not to invalidate proceedings.

110. (1) No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to the proceedings is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that court. *(1914 c.59, s.147)*

(2) No defect or irregularity in the appointment of an official trustee, or special manager shall vitiate any act done by him in good faith.

Exemption of deeds, etc., from stamp duty.

111. Every deed, conveyance, assignment, surrender, admission or other assurance relating solely to freehold or leasehold property, or to any mortgage, charge or other incumbrance on, or any estate, right or interest in, any real or personal property which is part of the estate of any bankrupt, and which, after the execution of the deed, conveyance, assignment, surrender, admission or other assurance, either at law or in equity, is or remains the estate of the bankrupt or of the official trustee under the bankruptcy, and every power of attorney, proxy paper, writ, order, certificate, affidavit, bond or other instrument or writing relating solely to the property of any bankrupt, or to any proceeding under any bankruptcy, shall be exempt from stamp duty, except in respect of fees under this Act. *(1914 c.59, s.148)*

Acting of corporations and firms.

112. For all or any of the purposes of this Act, a corporation may act by any of its officers authorized in that behalf under the seal of the corporation, and a firm may act by any of its members. *(1914 c.59, s.149)*

Certain provisions to bind Crown.

(1914 c.59,
s.151) 113. Save as provided in this Act, the provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge, shall bind the Crown.

*Unclaimed Funds or Dividends.***Unclaimed and undistributed dividends or funds.**

(1914 c.59,
s.153) 114. (1) Where the trustee, under any bankruptcy composition or scheme, pursuant to this Act, has under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, he shall forthwith pay it to the Bankruptcy Estates Account at the Treasury. The Financial Secretary shall furnish him with a certificate of receipt of the money so paid, which shall be an effectual discharge to him in respect thereof.

(2) The court may at any time order any such trustee to submit to it an account verified by affidavit of the sums received and paid by him under or in pursuance of any composition or scheme and may direct and enforce an audit of the account. The court may appoint a person to collect and get in all such unclaimed or undistributed funds or dividends and for the purposes of this section the court shall have and, at the instance of the person so appointed, may exercise all the powers conferred by this Act with respect to the discovery and realisation of the property of a debtor and the provisions of Part I shall, with any necessary modifications, apply to proceedings under this section.

(3) Any person claiming to be entitled to any moneys paid into the Bankruptcy Estates Account, pursuant to this section, may apply to the Financial Secretary for payment to him of the same, and the Financial Secretary, if satisfied that the person claiming is entitled, shall make an order for the payment to such person of the sum due. Any person dissatisfied with the decision of the Financial Secretary in respect of his claim may appeal to the court.

PART VI.**BANKRUPTCY OFFENCES.****Fraudulent debtors.**

115. (1) A person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made is guilty of an offence— *(1914 c.59, s.154; 1926 c.7, s.5)*

- (a) if he does not to the best of his knowledge and belief fully and truly discover to the official trustee all his property, real and personal, and how and to whom and for what consideration and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any) or laid out in the ordinary expense of his family, unless he proves that he had no intent to defraud;
- (b) if he does not deliver up to the official trustee, or as he directs, all such part of his real and personal property as is in his custody or under his control, and which he is required by law to deliver up, unless he proves that he had no intent to defraud;
- (c) if he does not deliver up to the official trustee, or as he directs, all books, documents, papers and writings in his custody or under his control relating to his property or affairs, unless he proves that he had no intent to defraud;
- (d) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he conceals any part of his property to the value of £50 or upwards, or conceals any debt due to or from him, unless he proves that he had no intent to defraud;
- (e) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently removes any part of his property to the value of £50 or upwards;
- (f) if he makes any material omission in any statement relating to his affairs, unless he proves that he had no intent to defraud;
- (g) if, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails for the period of a month to inform the official trustee thereof;
- (h) if, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper or writing affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
- (i) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he conceals, destroys, mutilates or falsifies, or is privy to the

concealment, destruction, mutilation or falsification of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;

- (j) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs or to defeat the law;
- (k) if, after the presentation of a bankruptcy petition by or against him, or within twelve months next before such presentation, he fraudulently parts with, alters or makes any omission in, or is privy to the fraudulently parting with, altering or making any omission in, any document affecting or relating to his property or affairs;
- (l) if, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within twelve months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses;
- (m) if, within twelve months next before the presentation of a bankruptcy petition by or against him, or, in the case of a receiving order made under section 85 before the date of the order, or after the presentation of a bankruptcy petition and before the making of a receiving order, he pawns, pledges or disposes of any property which he has obtained on credit and has not paid for, unless, in the case of a trader, such pawning, pledging or disposing is in the ordinary way of his trade, and unless in any case he proves that he had no intent to defraud; or
- (n) if he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or to his bankruptcy.

(2) A person guilty of an offence against subsection (1) (m) is liable on conviction on indictment to imprisonment for five years, or, on summary conviction to imprisonment for twelve months.

(3) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence against subsection (1) (m), every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances is guilty of an offence, and on conviction is liable to be punished in the same

way as if he had received the property knowing it to have been obtained in circumstances amounting to an offence.

Undischarged bankrupt obtaining credit.

116. An undischarged bankrupt who— *(1914 c.59, s.155)*

- (a) either alone or jointly with any other person obtains credit to the extent of £50 or upwards from any person without informing that person that he is an undischarged bankrupt; or
- (b) engages in any trade or business under a name other than that under which he was adjudicated bankrupt without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudicated bankrupt,

is guilty of an offence.

Frauds by bankrupts, etc.

117.(1) A person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made and who— *(1914 c.59, s.156; 1926 c.7, s.6)*

- (a) in incurring any debt or liability has obtained credit under false pretences or by means of any other fraud;
- (b) with intent to defraud his creditors or any of them, has made or caused to be made any gift or transfer of, or charge on, his property; or
- (c) with intent to defraud his creditors, has concealed or removed any part of his property since, or within two months before, the date of any unsatisfied judgment or order for payment of money obtained against him,

is guilty of an offence.

(2) For the purposes of subsection (1) (b) it is hereby declared that if any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, has with intent to defraud his creditors or any of them caused or connived at the levying of any execution against his property he shall be deemed to have made a transfer of or charge on his property, and is guilty of an offence.

Bankrupt guilty of gambling, etc.

118.(1) A person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, is guilty of an offence, if, having been engaged in any trade or business, and having outstanding at the date of *(1914 c.59, s.157)*

the receiving order any debts contracted in the course and for the purposes of such trade or business,—

- (a) he has, within two years prior to the presentation of the bankruptcy petition, materially contributed to or increased the extent of his insolvency by gambling or by rash and hazardous speculations, and such gambling or speculations are unconnected with his trade or business; or
- (b) he has, between the date of the presentation of the petition and the date of the receiving order, lost any part of his estate by such gambling or rash and hazardous speculations; or
- (c) on being required by the official trustee at any time, or in the course of his public examination by the court, to account for the loss of any substantial part of his estate incurred within a period of a year next preceding the date of the presentation of the bankruptcy petition, or between that date and the date of the receiving order, he fails to give a satisfactory explanation of the manner in which such loss was incurred:

Provided that, in determining for the purposes of this section whether any speculations were rash and hazardous, the financial position of the accused person at the time when he entered into the speculations shall be taken into consideration.

(2) A prosecution shall not be instituted against any person under this section except by order of the court.

(3) Where a receiving order is made against a person under section 85, this section shall apply as if for references to the presentation of a petition there were substituted references to the making of the receiving order.

Bankrupt failing to keep proper accounts.

*(1914 c.59,
s.158; 1926
c.7, s.7)*

119.(1) A person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made, is guilty of an offence, if, having been engaged in any trade or business during any period in the two years immediately preceding the date of the presentation of the bankruptcy petition, he has not kept proper books of account throughout that period and throughout any further period in which he was so engaged between the date of the presentation of the petition and the date of the receiving order, or has not preserved all books of accounts so kept.

Provided that a person who has not kept or has not preserved such books of account shall not be convicted of an offence under this section—

- (a) if his unsecured liabilities at the date of the receiving order did not exceed, in the case of a person who has not on any previous occasion been adjudged bankrupt or made a composition or arrangement with his creditors £2,500, or in any other case £500; or
- (b) if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable.

(2) A prosecution shall not be instituted against any person under this section except by order of the court.

(3) For the purposes of this section, a person shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business had involved dealings in goods, statements of annual stocktakings, and (except in the case of goods sold by way of retail trade to the actual consumer) accounts of all goods sold and purchased showing the buyers and sellers thereof in sufficient detail to enable the goods and the buyers and sellers thereof to be identified.

(4) Paragraphs (i), (j), and (k) of section 115(1), shall, in their application to such books as aforesaid, have effect as if “two years next before the presentation of the bankruptcy petition” were substituted for the time mentioned in those paragraphs as the time prior to the presentation within which the acts or omissions specified in those paragraphs constitute an offence.

(5) Where a receiving order is made against a person under section 85, this section shall apply as if for references to the presentation of a petition there were substituted references to the making of the receiving order.

Bankrupt absconding with property.

120. A person who is adjudged bankrupt, or in respect of whose estate a receiving order has been made, who, after the presentation of a bankruptcy petition by or against him, or within six months before such presentation, quits Gibraltar and takes with him, or attempts or makes preparation to quit Gibraltar and take with him, any part of his property to the amount of £100 or upwards, which ought by law to be divided amongst his creditors, is (unless he proves that he had no intent to defraud) guilty of an offence. *(1914 c.59, s.159)*

False claim, etc.

121. A creditor, or a person claiming to be a creditor, who, in any bankruptcy proceedings, wilfully and with intent to defraud makes any false *(1914 c.59, s.160)*

claim, or any proof, declaration or statement of account, which is untrue in any material particular, is guilty of an offence and is liable on conviction on indictment to imprisonment for twelve months.

Order by court for prosecution on report of official trustee.

(1914 c.59,
s.161; 1926
c.7, s.8)

122. Where an official trustee in a bankruptcy reports to the court that in his opinion a debtor who has been adjudged bankrupt or in respect of whose estate a receiving order has been made has been guilty of any offence under this Act, or where the court is satisfied upon the representation of any creditor that there is ground to believe that the debtor has been guilty of any such offence, the court shall, if it appears to the court that there is a reasonable probability that the debtor will be convicted and that the circumstances are such as to render a prosecution desirable, order that the debtor be prosecuted for such offence.

Criminal liability after discharge or composition.

(1914 c.59,
s.162)

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

Trial and punishment of offences.

(1914 c.59,
s.164; 1926
c.7, s.10)

124.(1) A person guilty of an offence against this Act in respect of which no special penalty is imposed by this Act is liable, on conviction on indictment, to imprisonment for two years, or, on summary conviction, to imprisonment for twelve months.

(2) Summary proceedings in respect of any such offence shall not be instituted after one year from the first discovery thereof either by the official trustee, or, in the case of proceedings instituted by a creditor, by the creditor, nor in any case shall they be instituted after three years from the commission of the offence.

(3) *Repealed.*

(4) In an indictment for an offence against this Act, it shall be sufficient to set forth the substance of the offence charged in the words of this Act specifying the offence, or as near thereto as circumstances admit, without alleging or setting forth any debt, act of bankruptcy, trading, adjudication, or any proceedings in, or order, warrant or document of, any court acting under this Act.

Attorney-General to act in certain cases.

125. Where the court orders the prosecution of any person for any offence against this Act, or for any offence arising out of or connected with any bankruptcy proceedings, it shall be the duty of the Attorney-General to institute and carry on the prosecution: *(1914 c.59, s.165)*

Provided that, where the order of the court is made on the application of the official trustee and based on his report, the police on the directions of the Attorney-General shall institute the prosecution and carry on the proceedings, if or so long as those proceedings are conducted before the magistrates' court.

Evidence as to frauds by agents.

126. A statement or admission made by any person in any compulsory examination or deposition before any court on the hearing of any matter in bankruptcy shall not be admissible as evidence against that person or (unless they married after the making of the statement or admission) against the wife or husband of that person in any proceedings in respect of an offence against Part X of the Criminal Offences Act⁹. *(1914 c.59, s.166)*

⁹ 1960- 17

SCHEDULE 1.

Section 14.

MEETINGS OF CREDITORS.

1. The first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the court for any special reason deem it expedient that the meeting be summoned for a later day.
2. The official trustee shall summon the meeting by giving not less than six clear days' notice of the time and place thereof in the Gazette.
3. The official trustee shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's statement of affairs, including the cause of his failure, and any observations thereon which the official trustee may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.
4. The meeting shall be held at such place in Gibraltar as is in the opinion of the official trustee most convenient for the majority of the creditors.
5. The official trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the court, or so requested by a creditor in accordance with the provisions of this Act.
6. Meetings subsequent to the first meeting shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting:

Provided that unless the court otherwise orders, no notice of such meeting shall be sent to any creditor outside Gibraltar, but if a creditor has appointed a general proxy in Gibraltar, notice of the meeting shall be sent to such general proxy.
7. The official trustee shall be the chairman at every meeting of the creditors.
8. A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt provable in

bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

9. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

10. For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security unless the court on application is satisfied that the omission to value the security has arisen from inadvertence.

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

12. It shall be competent to the official trustee within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of 20 per cent:

Provided that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security, correct such valuation by a new proof, and deduct such new value from his debt, but in that case such addition of 20 per cent shall not be made if the official trustee requires the security to be given up.

13. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

14. The official trustee shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

15. A creditor may vote either in person or by proxy.

16. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official trustee, and every insertion therein shall be in the handwriting of the person giving the proxy, or of any manager or clerk, or other person in his regular employment, or of any commissioner to administer oaths in the Supreme Court.

17. General and special forms of proxy shall be sent to the creditors, together with a notice summoning a meeting of creditors, and neither the name nor the description of the official trustee, or of any other person, shall be printed or inserted in the body of any instrument of proxy before it is so sent.

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

19. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters:—

- (a) for or against any specific proposal for a composition or scheme of arrangement;
- (b) for or against the appointment of any specified person as special manager at a specified rate of remuneration;
- (c) on all questions relating to any matter other than those above referred to, arising at any specified meeting or adjournment thereof.

20. A proxy shall not be used unless it is deposited with the official trustee before the meeting at which it is to be used.

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

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

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

24. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to

the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven nor more than twenty-one days.

25. The official trustee shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in a book kept for that purpose, and the minutes shall be signed by him.

26. No person acting either under a general or special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor ratably with the other creditors of the debtor. Any person so offending is, in addition to any other penalty to which he may be liable, guilty of contempt of court:

Provided that where any person holds special proxies to vote for the appointment of himself as special manager he may use such proxies and vote accordingly.

27. The vote of the official trustee, or of his partner, clerk, solicitor or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the conduct of the official trustee.

SCHEDULE 2.

Section 32.

PROOF OF DEBTS.

Proof in ordinary cases.

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.
2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official trustee, an affidavit verifying the debt.
3. The affidavit may be made by the creditor himself, or by some person authorized by or on behalf of the creditor. If made by a person so authorized it shall state his authority and means of knowledge.
4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers (if any) by which the same can be substantiated. The official trustee may at any time call for the production of the vouchers.
5. The affidavit shall state whether the creditor is or is not a secured creditor and if it is found at any time that the affidavit made by or on behalf of a secured creditor has omitted to state that he is a secured creditor, the secured creditor shall surrender his security to the official trustee for the general benefit of the creditors unless the court on application is satisfied that the omission has arisen from inadvertence, and in that case the court may allow the affidavit to be amended upon such terms as to the repayment of any dividends or otherwise as the court may consider to be just.
6. A creditor shall bear the cost of proving his debt, unless the court otherwise specially orders.
7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors before the first meeting and at all reasonable times.
8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding 5 per cent on the net amount of his claim, which he may have agreed to allow for payment in cash.

Proof by Secured Creditors.

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

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

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

12. (a) Where a security is so valued the official trustee may at any time redeem it on payment to the creditor of the assessed value.

(b) If the official trustee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the official trustee, or as, in default of such agreement, the court may direct. If the sale be by public auction the creditor, or the official trustee on behalf of the estate, may bid or purchase.

(c) The creditor may at any time, by notice in writing, require the official trustee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realised, and if the official trustee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the official trustee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the official trustee, or the court, that the valuation and proof were made

bona fide on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the court shall order, unless the official trustee shall allow the amendment without application to the court.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he may have received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of

any money, for the time being available for dividend, any dividend or share of dividend which he may have failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor after having valued his security subsequently realises it, or if it is realised under the provisions of paragraph 12, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all reports as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing provisions he shall be excluded from all share in any dividend.

17. Subject to the provisions of paragraph 12, a creditor shall in no case receive more than 100 pence in the pound, and interest as provided by this Act.

Proof in respect of Distinct Contracts.

18. If a debtor was, at the date of the receiving order, liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor, and also as member of a firm, the circumstances that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts, against the properties respectively liable on the contracts.

Periodical Payments.

19. Where any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the order as if the rent or payment grew due from day to day.

Interest.

20. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding 4 per cent per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Debt payable at a future time.

21. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of £5 per cent per annum computed from the declaration of a dividend to the time when the debt would have become payable, according to the terms on which it was contracted.

Admission or Rejection of Proofs.

22. The official trustee shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection.

23. If the official trustee thinks that a proof has been improperly admitted, the court may, on the application of the official trustee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

24. If a creditor is dissatisfied with the decision of the official trustee in respect of a proof, the court may, on the application of the creditor, reverse or vary the decision.

25. The court may also expunge or reduce a proof upon the application of a creditor if an official trustee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

26. For the purpose of any of his duties in relation to proofs, the official trustee may administer oaths and take affidavits.