

No. XXIX.

An Act to amend the “Bankruptcy Act, 1887,” and the “Bankruptcy Act Amendment Act, 1888,” and to amend the Law relating to Bankruptcy and Bills of Sale. [13th November, 1896.]

BANKRUPTCY ACTS
AMENDMENT.

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

1. This Act may be cited as the “Bankruptcy Acts Amendment Act, 1896,” and this Act and the “Bankruptcy Act, 1887” (hereinafter referred to as the Principal Act), and the “Bankruptcy Act Amendment Act, 1888,” may be cited together as the “Bankruptcy Acts, 1887, 1888, 1896,” and shall be construed as one Act.

2. The following sections of the Principal Act are amended as follows:—

- (1) Section eight, subsections (3) and (10), by substituting the word “debtor” for the word “bankrupt.” Section 8, subsections (3) and (10).
- (2) Section ten, subsection (2), by inserting the words “or take any fresh step in” after the word “commence.” Section 10, subsection (2).
- (3) Section seventeen, subsection (2), by omitting the words “except such matters and directions as relate to an offer of composition or other arrangement of a bankrupt’s affairs.” Section 17, subsection (2).
- (4) Section eighteen, by inserting the words “or Registrar” after the word “Judge” in subsections (1), (3), and (9), wherever it occurs, and in the first clause of subsection (8), and by omitting the words “or by the Registrar” in subsections (1) and (3). Section 18.
- (5) Section nineteen, subsection (15), by omitting the words “if the debtor had been adjudged bankrupt.” Section 19, subsection (15).
- (6) Section twenty-one, subsection (1), by omitting the words “in place of or” before the words “in addition to the Official Assignee.” Section 21, subsection (1).

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- Section 22, subsection (2). (7) Section twenty-two, subsection (2), by substituting the words "termination of the first or single meeting" for the words "expiration of four weeks from the date of the sequestration order."
- Section 30, subsections (3), (4), (5). (8) Section thirty, subsections (3), (4), and (5), by substituting the word "bankrupt" for the word "debtor" in each subsection.
- Section 37. (9) Section thirty-seven, by substituting the word "approved" for the word "confirmed."
- Section 40, subsection (5). (10) Section forty, subsection (5), by adding the words "or Registrar" after the word "Judge."
- Section 50. (11) Section fifty, by inserting the words "as against the estate of the bankrupt" after the words "proceeded with."
- Section 51. (12) Section fifty-one, by substituting the words "an order is made for the sequestration of his estate" for the words "a sequestration order is made against him," and by substituting the word "six" for the word "three" before the word "months."
- Section 52 (3). (13) Section fifty-two (3), by inserting the words "or at any time between that time and the date of the order of sequestration" after the words "commencement of the bankruptcy."
- Section 58. (14) Section fifty-eight, by inserting the word "available" before the words "act of bankruptcy."
- Section 78. (15) Section seventy-eight, by inserting after the words "so much thereof as can" the words "in the opinion of such Official Assignee or trustee or," and by substituting the words "winding up of the estate" for the words "Official Assigneeship or trusteeship."
- Section 81, subsection (1). (16) Section eighty-one, subsection (1), by substituting the words "gross amount coming into the hands of the Official Assignee" for the words "amount realised."
- Section 83, subsections (4), (5), (6), and (7). (17) Section eighty-three, subsections (4), (5), (6), and (7), by adding after the word "Registrar" wherever it occurs, the words "or other taxing officer appointed by the Judge."
- Section 83, subsection (6). (18) Section eighty-three, subsection (6), by substituting the words "Master or Deputy Registrar" for the words "Chief Clerk."
- Section 86, subsection (1). (19) Section eighty-six, subsection (1), by inserting the words "with the approval of the Judge" before the word "appoint."
- Section 97. (20) Section ninety-seven, by substituting the words "so long as he has any assets unadministered in his hands" for the words "during the continuance of the bankruptcy."
- Section 101. (21) Section one hundred and one, by adding the words "for the purposes of this section 'dividends' shall include 'balances.'"
- Section 105. (22) Section one hundred and five, by substituting the words "as if he were still alive" for the words "as if the sequestration order had been made in the first instance against his representatives."
- Section 137. (23) Section one hundred and thirty-seven, by substituting the words "gross amount coming into the hands of the official assignee from time to time in any such estate" for the words "gross produce from time to time of any such estate."
- Amendment of First Schedule. 3. The First Schedule to the Principal Act is hereby amended as follows:—
- Clause 1. (a) Clause one, by substituting the words "twenty-one" for the word "fourteen."
- Clause 2. (b) Clause two, by substituting the words "creditor named in the statement of affairs then resident in the Colony of New South Wales, or his authorised agent" for the words "proved creditor."

(c)

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- (c) Clause fourteen, by omitting the whole of the clause, and enacting in place thereof the following clause:—When for any cause appearing to the Registrar the said Registrar shall be of opinion that a claimant who has not proved his debt may eventually be able to establish the same it shall be lawful for the said Registrar to allow such claim to be entered for the purpose of voting, and to give such time as he may think fit for establishing the same, and the official assignee shall make provision for the same in any account and plan of distribution filed prior to the expiration of such time: Provided that any vote given by the claimant may be declared invalid in the event of the claim not being established within the time allowed, but subject to such terms as the Judge or Registrar may think fit. Clause 14.
Admission of claim for purpose of voting.
[5 Vic. No. 17, s. 43.]
- (d) Clause nineteen, by adding the words “except with the leave of the Judge or Registrar” at the end of the clause. Clause 19.
- (e) Clauses twenty-three and twenty-four shall not apply to a single meeting. Clauses 23 and 24.
4. The Second Schedule to the Principal Act is hereby amended as follows:— Amendment of Second Schedule.
- (a) Clause six, by inserting the words “or Registrar” after the word “Judge.” Clause 6.
- (b) Clause twenty-three, by omitting the whole clause and substituting the following clause in lieu thereof:—The official assignee or a trustee may upon further evidence and after notice to the creditor who has made the proof apply to the Judge or Registrar to expunge such proof or reduce its amount. Clause 23.
- (c) Clause twenty-four, by inserting the words “or official assignee or trustee” after the word “creditor” wherever it occurs. Clause 24.
5. Section five of the “Bankruptcy Act Amendment Act, 1888,” is hereby amended by inserting the words “or Registrar” after the words “Judge in Bankruptcy.” Amendment of section 5 of 52 Vic. No. 11.
6. (1) Any person who is for the time being entitled to enforce a final judgment shall be deemed a creditor who has obtained a final judgment within the meaning of section four of the Principal Act. Bankruptcy notice: Person entitled to enforce judgment a creditor within sec. 4 of Principal Act.
- (2) Any final judgment obtained against a married woman shall be deemed to be a final judgment within the meaning of section four subsection (1) (g) of the Principal Act, and a bankruptcy notice in the form prescribed by the Fifth Schedule to the said Act may issue and be served upon her in respect thereof as if judgment had been obtained against her as a *femme sole*, and the fact that no execution can issue at law on such judgment shall not prevent the non-compliance with such notice being deemed an act of bankruptcy under the said subsection: Provided that nothing herein contained shall be construed to render a married woman liable to be made bankrupt except in respect of her separate estate, and upon evidence that she is possessed of separate estate, or to alter or repeal anything contained in the Married Women’s Property Act, 1893. Final judgment against a married woman to be a final judgment within section four, subsection (1) (g), of the Principal Act.
- (3) Any decree or order which is in its terms or effect final shall be deemed to be a final judgment within the meaning of section four, subsection (1) (g), of the Principal Act. Any final decree or order to be a final judgment.
7. Section ten, subsection (1), of the Principal Act, is hereby repealed, and in lieu thereof it is enacted that upon the making of a sequestration order, the property of the bankrupt shall vest in one of the official assignees, to be named in such order, and be divisible among the creditors of the bankrupt in accordance with the provisions of the Principal Act, and any Act amending the same. Upon the making of an order for the sequestration of the estate of an undischarged bankrupt or insolvent, the property of such bankrupt or insolvent possessed by him at the date of the second order of sequestration Effect of sequestration order. Sec. 10, subsec. (1) repealed.

Sequestration of estate of undischarged bankrupt.

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sequestration shall, if the official assignee or trustee appointed under such prior order has not intervened, vest in the official assignee named in the subsequent order and be divisible in the first instance among the creditors of the bankrupt in the subsequent bankruptcy.

Judge may make order antedating commencement of bankruptcy.

8. The Judge may at any time, on the motion of the official assignee, and on being satisfied that an act of bankruptcy has been committed by the bankrupt within the six months next preceding the date of the presentation of the petition upon which the sequestration order was made, order and declare that the bankruptcy shall be deemed to have relation back to and commence on the date of such act of bankruptcy; and such order or declaration shall be *prima facie* evidence of the fact of the alleged act of bankruptcy, and of the commencement of the bankruptcy on such date as aforesaid.

Allowance to bankrupt of personal property.

9. Subsections (2) and (3) of section sixteen of the Principal Act are hereby repealed, and in lieu thereof it is enacted that the official assignee may, with the consent of the creditors given by resolution at the first or any other meeting of creditors and with the approval of the Judge or Registrar, allow the bankrupt to retain any of his personal property, and such approval shall have the effect of vesting the said property in the bankrupt as from the date of such resolution: Provided that notice of the intention to allow a bankrupt to retain any of his personal property shall be given to all proved creditors seven days at least before a vote is taken on the resolution.

Distribution of assets where creditors give indemnity for costs.

10. In cases where assets in any estate have been recovered by means of an indemnity for costs of litigation given by certain creditors, the Judge may make such order as he may deem just with reference to the distribution of such assets, with a view to giving the indemnifying creditors an advantage over others in consideration of the risk run by them in giving such indemnity.

Discharge of bankrupt on conditions.

11. The judge may, as one of the conditions of granting an order of discharge under section thirty-seven of the Principal Act, require the bankrupt to consent to judgment being entered against him by the official assignee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge: Provided that in no case shall execution be issued without leave of the judge on a judgment consented to by the bankrupt under the provisions of this section.

Suspension and conditions concurrent.

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

Grounds for refusing or suspending certificate.

13. The facts referred to in section thirty-seven of the Principal Act shall, in addition to those set out in section thirty-eight of the said Act, include the following:—

Frivolous or vexatious action.

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

Making an agreement not to register a bill of sale.

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

Giving a bill of sale within three months of sequestration.

(c) That the bankrupt has given a bill of sale at any time within the three months preceding the sequestration order, he being at the time insolvent within the meaning of section seventeen of this Act.

Obtaining credit without notice while uncertificated.

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

Definition of terms in section thirty-eight, subsection (b).

14. In section thirty-eight, subsection (b), of the Principal Act, the word "bankrupt" shall include "insolvent," and the word "bankruptcy"

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“bankruptcy” shall include “insolvency,” and the words “statutory composition or arrangement” shall include an assignment for the benefit of creditors at Common Law.

15. Section forty, subsection (7), of the Principal Act is hereby repealed. Section 40, subsection (7), of Principal Act repealed.

16. In addition to the matters mentioned in section forty-two, subsection (1), of the Principal Act, a certificate of discharge shall not release the bankrupt from any order made under section sixty-one of the Principal Act, or any amendment thereof, or from any liability under a judgment against him as defendant in an action for seduction, libel, or slander, or from liability as a respondent or co-respondent in a suit in the divorce jurisdiction, or under an affiliation order, except to such extent and subject to such conditions as the Judge may think just. Certificate not to be a release in certain cases except on conditions.

17. Section fifty-six of the Principal Act is hereby repealed, and it is enacted in lieu thereof as follows:— Repeal of s. 56 of Principal Act.

- (1) Every alienation, transfer, gift, surrender, delivery, mortgage, or pledge of any estate or property, real or personal, every warrant of attorney or judicial proceeding made, taken, or suffered by a person being at the time insolvent, or in contemplation of surrendering his estate under this Act, or knowing that proceedings for placing the same under sequestration have been commenced, or within sixty days before the sequestration thereof, and whether fraudulent or not, having the effect in any such case of preferring any then existing creditor to another, shall be absolutely void. Preferences. [C f. 5 Vic. No. 17, s. 8.]
- (2) For the purpose of this section the word insolvent means the inability of a person to pay his debts as they become due from his own moneys.
- (3) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

18. Section fifty-seven of the Principal Act and section two of the “Bankruptcy Act Amendment Act, 1888” (in so far as it amends section fifty-seven of the Principal Act), are hereby repealed, and it is enacted in lieu thereof as follows:— Repeal of s. 57 of Principal Act and part of s. 2 of Bankruptcy Act Amendment Act, 1888.

Subject to the provisions of the Principal Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, and subject to the provisions of the Principal Act and of this Act with respect to the avoidance of certain preferences except as hereinafter provided, nothing in the Principal Act or this Act shall invalidate in the case of a bankruptcy— Protection of *bonâ fide* transactions, payments, advances, &c., without notice. [Chamberlain's Act, s. 49 and 25 Vic. No. 8.]

- (a) Any payment by the bankrupt to any of his creditors for or on account of any just debt due at the time of payment.
- (b) Any payment or delivery to the bankrupt.
- (c) Any conveyance or assignment by the bankrupt for valuable consideration.
- (d) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration.
- (e) Any transaction to the extent of any present advance *bonâ fide* made by any existing creditor.

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

- (1) The payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the sequestration order; and
- (2) The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not, at the

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the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time. And provided that the burden of proving that the above conditions have been complied with shall be upon the person who relies upon their having been complied with.

Interpretation of
"Payment."

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

Power to direct pay-
ment by Civil
Servant, &c., out of
salary. Sec. 61 (1)
repealed.

19. (I) Subsection (1) of section sixty-one of the Principal Act is hereby repealed, and in lieu thereof it is enacted that where the bankrupt is an officer of the army or navy, or of the Colonial Forces, or an officer or clerk or otherwise employed or engaged in the Civil Service of the Crown, the Judge or Registrar may, on the application of the official assignee or a trustee, make an order for the payment to such assignee or trustee for distribution among the creditors of the bankrupt of so much of the bankrupt's pay and salary then due or thereafter to become due as he shall think fit: Provided that before making any such order, the Judge or Registrar shall communicate with the chief officer of the Department under which the pay or salary is enjoyed as to the amount, times, and manner of such payment, and shall hear and give consideration to any report which such chief officer may make as to the circumstances of the case.

(II) Subsection (2) of section sixty-one of the Principal Act is hereby amended by substituting the word "may" for the words "shall from time to time."

Permission under sec.
64 to be specific.
Sec. 65 (1) repealed.

20. Subsection (1) of section sixty-five of the Principal Act is repealed, and in lieu thereof it is enacted that the permission given for the purposes of section sixty-four of the Principal Act shall not be a general permission to do all or any of the things therein mentioned but only a permission to do the particular thing for which permission is sought in the specified case.

Audit of accounts of
official assignee and
trustee. Sec. 94
repealed.

21. Section ninety-four of the Principal Act is hereby repealed, and in lieu thereof it is enacted as follows:—

- (I) Every official assignee and 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 Registrar and to the Colonial Treasurer an account of his receipts and payments as such assignee or trustee.
- (II) The account shall be in the prescribed form, and shall be made in duplicate, and verified by affidavit in the prescribed form.
- (III) The Colonial Treasurer shall cause the account so sent to be audited; and for the purpose of the audit the official assignee or trustee shall produce for the inspection of the Colonial Treasurer, or such officer of the Treasury as he may appoint for the purpose, such books, accounts, and vouchers, and shall furnish such information, as the Colonial Treasurer or such officer may require.
- (IV) The Colonial Treasurer shall forthwith forward a report of such audit to the Judge.

Interest on debts.

22. Where a debt shall have been proved upon a debtor's estate under the Principal Act, and such debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding eight per centum per annum, without prejudice to the right of a creditor to receive out of the estate any higher rate of interest to which he may be entitled after all the debts proved in the estate have been paid in full.

Unregistered deeds
of assignment not
protected.

23. No deed of conveyance or assignment for the benefit of creditors shall be taken to come within the proviso to section six, or the provisions

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provisions of subsection (3) of section eight, or of section fifty-eight of the Principal Act, or within the protection of the Principal Act or any Act amending the same, unless such deed is duly registered, within one month from the execution of the same by the assignor, by filing in the office of the Registrar-General an examined copy signed by one or more of the parties to the original deed of assignment and certified by the oath of some credible person taken before a Judge or before the Registrar-General or his deputy, or before any Commissioner for Affidavits. And the Registrar-General shall register the said copy accordingly.

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

Judge may appoint District Registrar for special purposes.

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

Books, &c., may be destroyed with leave of Judge.

26. After a plan of distribution has been approved of by the Judge, no creditor shall be entitled by proof of his debt to disturb the plan of distribution, unless he satisfy the Judge that he could not by the exercise of due diligence have proved his debt prior to such approval; and in any order allowing a disturbance of the plan of distribution the Judge may impose such terms as to costs or otherwise as he may think fit: Provided that if an amendment is ordered in the plan under section seventy of the Principal Act, any creditor who has proved his debt before the order is made directing such amendment shall be entitled to rank for dividend on the amended plan.

Plan of distribution not to be disturbed in certain cases.

27. If a bankrupt removes out of the jurisdiction of the Court before the confirmation of the account and plan of distribution in his estate, except with the consent of three-fourths in number and value of the proved creditors in his estate or by the leave of the Judge, the Judge may, on the information of the official assignee or trustee, or of any creditor, by warrant addressed to the sheriff or any constable or prescribed officer of the court, cause such bankrupt to be arrested, and to be safely kept as prescribed until such time as the Judge may order.

Bankrupt liable to arrest if he removes out of the jurisdiction before account and plan is confirmed.

28. Whenever any person shall at any time at or after the commencement of this Act have been imprisoned—

Sequestration of estates of persons under imprisonment for debt.

(a) in execution of a judgment for defamation or libel obtained under the Act eleventh Victoria number thirteen for a period of twelve months; or

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

(c) in any other case for debt for a period of three months, and has not presented a bankruptcy petition against himself, it shall be lawful for the Minister of Justice to present a petition against such person, and a sequestration order may thereupon be made, and shall have effect in all respects as if made upon the petition of such person himself.

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- Appeal to be by way of rehearing. 29. (I) Appeals from any order, decision, or ruling of the Judge in Bankruptcy shall be by way of rehearing, anything in the Principal Act to the contrary notwithstanding, and shall be subject to such terms and conditions as may be prescribed, and subject thereto according to the practice for the time being in force with reference to appeals in the equitable jurisdiction of the Supreme Court.
- All orders to be subject to review. (II) The Court or Judge or Registrar may review, rescind, or vary any order made in the bankruptcy jurisdiction by it or him respectively.
- Remission of fees in certain cases. 30. It shall be lawful for the Judge or Registrar upon good cause shown to remit or reduce any of the fees payable under the Third Schedule to the Principal Act.
- Renewal of registration of bill of sale. 31. (I) No bill of sale shall have any validity as against the official assignee or trustee of a bankrupt estate unless it is duly registered in accordance with and within the time prescribed by the law then in force dealing with the registration of bills of sale, and unless such registration is renewed by the grantee or his assignee once at least every twelve months.
- Promise to give a bill of sale. (II) No promise to give a bill of sale shall have any validity for any purpose against such assignee or trustee as aforesaid, unless it be in writing, stating the amount secured thereby, the names, residences, and occupations of the parties thereto, and signed by the person making the promise, and unless it be registered in accordance with and within the time prescribed by the law then in force dealing with the registration of bills of sale, and unless such registration is renewed by the promisee once at least every twelve months.
- Form of renewal. 32. Such renewal of registration shall be effected by filing in the office of the Supreme Court an affidavit stating the date of the bill of sale or promise as aforesaid, the date of its registration, and the date of the last renewal of registration, and the names, residences, and occupations of the parties thereto, as stated therein, and that the bill of sale or promise as aforesaid is still an existing security, and stating what amount is then actually due thereon; and the fact of such renewal shall be noted by the Prothonotary in the book kept by him under the Act of Council nineteenth Victoria number two, or any Act amending the same or in substitution therefor.
- Goods comprised in certain bills of sale not within sec. 52 (3). 33. The goods comprised in a bill of sale in respect of which the provisions of this Act have been duly complied with shall be exempt from the provisions of section fifty-two (3) of the Principal Act.
- 19 Vic. No. 2 incorporated for certain purposes. 34. The enactments from time to time in force with respect to keeping records and lists of bills of sale and making searches therein and extracts therefrom shall apply to renewals of registration and promises to give bills of sale, and for that purpose the provisions of the Act of Council nineteenth Victoria number two, and any other Act relating to bills of sale which may from time to time be in force shall be read with the last three preceding sections.
- Bankruptcy of settlor not to affect title under settlement. 35. Nothing contained in section fifty-five of the Principal Act, in case of the bankruptcy of the settlor, shall be deemed to affect or invalidate the rights of any person deriving title to any property in good faith, and for valuable consideration, through or under any person taking or claiming as a donee of any settlement: Provided that nothing herein shall affect any action or suit or other proceeding which shall have been commenced or instituted before the passing of this Act.