



AN BILLE FÉIMHEACHTA, 1982
BANKRUPTCY BILL, 1982

*Mar a tionscnaíodh
As initiated*

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY AND GENERAL

Section

1. Short title.
2. Commencement.
3. Interpretation.
4. Application of Act to subsisting bankruptcies and arrangements.
5. Expenses.
6. Repeals.

PART II

PROCEDURE IN BANKRUPTCY

7. Acts of bankruptcy.
8. Bankruptcy summons.
9. Arrest of absconding debtor.
10. Petition.
11. Presenting petition.
12. Petitioning creditor's costs.
13. Petition or act of bankruptcy agreed between bankrupt and creditor.
14. Adjudication: creditor's petition.
15. Adjudication: debtor's petition.
16. Cause shown against adjudication.
17. Notice of adjudication and statutory sitting.
18. Creditors' assignee.
19. Duties of bankrupt.
20. Change of name or address, etc.
21. Examination of bankrupt and other persons.
22. Admission of debt due to bankrupt.
23. Arrest of bankrupt, etc.
24. Committal to prison.
25. Examination of persons in custody.
26. Release of bankrupt from prison.
27. Warrant of seizure.

Section

28. Search warrant.
29. Indemnity for persons acting under warrant.

Partnership Cases

30. Actions by Official Assignee and bankrupt's partners.
31. Petition against one or more partners.
32. Furnishing of partnership accounts to Official Assignee.
33. Duty of bankrupt partner.
34. Joint and separate properties.
35. Actions on joint contracts.
36. Proceedings in partnership name.
37. Limited partnerships.

Composition After Bankruptcy

38. Stay on realisation of estate.
39. Offer of composition.
40. Payment of composition.
41. Discharge of adjudication order.

Bankrupt Dying after Adjudication

42. Bankrupt dying after adjudication.

Subsequent Bankruptcy

43. Subsequent bankruptcy.

PART III

ADMINISTRATION OF PROPERTY

Effect of Adjudication on Bankrupt's Property

44. Vesting of property in Official Assignee.
45. Excepted articles.
46. Certificate of vesting of property in Official Assignee.
47. Vesting in Official Assignee of certain money and securities.
48. Limitation of Official Assignee's powers in relation to copyright.
49. Restrictive clause in agreement or lease.
50. Execution against debtor's property before adjudication.
51. Priority of judgment mortgage.
52. Order to put purchaser in possession.
53. Permission to mortgagee to bid at sale.
54. Discharge of persons delivering property, etc., to Official Assignee.
55. Title to property sold not to be invalidated.
56. Disclaimer of onerous property.

Section

Fraudulent and Voluntary Conveyances

57. Avoidance of fraudulent preferences.
58. Avoidance of certain transactions.
59. Avoidance of certain settlements.

Management Provisions

60. Office of the Official Assignee.
61. Functions of Official Assignee in bankruptcy and vesting arrangements.
62. Bankruptcy Inspector and assistants.
63. Protection of Official Assignee.
64. Power of Official Assignee to bar entail.
65. Power of Official Assignee to appropriate part of bankrupt's income.
66. Delivery of property to Official Assignee.
67. Right of Official Assignee to transfer stocks or shares.
68. Right of Official Assignee to inspect goods pawned or pledged.
69. Receipt of property of bankrupt.
70. Claim to property in possession of bankrupt.
71. Allowances to bankrupt.
72. Redirection of letters, etc., addressed to bankrupt.
73. Appointment of receivers and managers.
74. Joint and separate dividends.
75. Debts provable in bankruptcy and arrangements.
76. Proof of debts.
77. Bankruptcy of mercantile agent.
78. Proof for costs of judgment.
79. Disallowance of debts already proved.

Distribution of Estate

80. Priority of expenses, etc.
81. Preferential payments.
82. Distribution of estate.
83. Accounts and audit.
84. Official Assignee—Unclaimed Dividend Account.
85. Discharge and annulment.
86. Surplus.

PART IV

ARRANGEMENTS UNDER CONTROL OF COURT

87. Petition for protection.
88. Restriction on dealing with property.
89. Effect of protection on execution orders.
90. Procedure on grant of protection.

Section

91. Filing of statements.
92. Acceptance of proposal.
93. Vesting in Official Assignee.
94. Distribution of property in vesting arrangement.
95. Special private sitting.
96. Carrying proposal into effect.
97. Lodgment with Official Assignee.
98. Certificate of arranging debtor.
99. Publication in relation to arrangements.
100. Taking possession of property by Official Assignee.
101. Discharge of protection order.
102. Surplus.
103. Goods obtained on credit.
104. Private sitting for enquiry.
105. Adjudication of arranging debtor.
106. Partners obtaining protection of the Court.
107. Summoning witnesses.
108. Registration of arrangements.
109. Exclusion of Deeds of Arrangement Act, 1887.

PART V

ESTATES OF PERSONS DYING INSOLVENT

110. Petition to administer in bankruptcy estate of person dying insolvent.
111. Effect on personal representative of service of notice of petition.
112. Order for administration under *Part V*.
113. Vesting and distribution.
114. Priority of funeral and testamentary expenses.
115. Application of Act.
116. Surplus.
117. Right of retainer restricted.

PART VI

OFFENCES

118. Punishment of fraudulent debtors.
119. Absconding debtor.
120. Corrupt agreement with creditors.
121. False claim.
122. Non-disclosure of after-acquired property.
123. Obstructing officers.
124. Obtaining credit or trading under other name.

Section

- 125. Inserting advertisement without authority.
- 126. Criminal liability after annulment.
- 127. Punishment of offences.

PART VII

MISCELLANEOUS

- 128. Limitation of actions.
- 129. Proceedings in private.
- 130. Power of Court to review its orders.
- 131. Effect of adjudication on creditors' remedies.
- 132. Power to stay or restrain proceedings against bankrupt.
- 133. Winding up of partnerships and deceaseds' estates.
- 134. Prohibition on distress after adjudication or protection.
- 135. Evidence of deceased person.
- 136. Notice in *Iris Oifigiúil* or newspaper.
- 137. Acting in aid of other courts.
- 138. Alteration of monetary limits.
- 139. Laying of orders before Houses of Oireachtas.

FIRST SCHEDULE

PROOF OF DEBTS

SECOND SCHEDULE

REPEALS

ACTS REFERRED TO

Arbitration Act, 1954	1954, No. 26
Auctioneers and House Agents Act, 1967	1967, No. 9
Bankruptcy (Ireland) Amendment Act, 1872	1872, c. 58
Central Bank Act, 1971	1971, No. 24
Civil Liability Act, 1961	1961, No. 41
Civil Liability (Amendment) Act, 1964	1964, No. 17
Courts (Supplemental Provisions) Act, 1961	1961, No. 39
Criminal Procedure Act, 1967	1967, No. 12
Deeds of Arrangement Act, 1887	1887, c. 57
Enforcement of Court Orders Act, 1940	1940, No. 23
Factors Act, 1889	1889, c. 45
Fines and Recoveries (Ireland) Act, 1834	1834, c. 92
Friendly Societies Act, 1896	1896, c. 25
Irish Bankrupt and Insolvent Act, 1857	1857, c. 60

Judgment Mortgage (Ireland) Act, 1850	1850, c. 29
Moneylenders Act, 1933	1933, No. 36
Partnership Act, 1890	1890, c. 39
Preferential Payments in Bankruptcy (Ireland) Act, 1889	1889, c. 60
Statute of Limitations, 1957	1957, No. 6
Supreme Court of Judicature (Ireland) (No. 2) Act, 1897	1897, c. 66
Trustee Savings Banks Act, 1863	1863, c. 87

MARGINAL ABBREVIATIONS

1857—Irish Bankrupt and Insolvent Act, 1857
1872, c. 57—Debtors Act (Ireland), 1872
1872—Bankruptcy (Ireland) Amendment Act, 1872
1887, c. 57—Deeds of Arrangement Act, 1887
1888, c. 44—Local Bankruptcy (Ireland) Act, 1888
1889—Preferential Payments in Bankruptcy (Ireland) Act, 1889
1890, c. 24—Deeds of Arrangement Amendment Act, 1890
33/1963—Companies Act, 1963
16/1964—Registration of Title Act, 1964
27/1965—Succession Act, 1965
36/1971—Courts Act, 1971
RSC—The Rules of the Superior Courts, 1962.
LCR—Local Court Rules, 1888.



AN BILLE FÉIMHEACHTA, 1982
BANKRUPTCY BILL, 1982

BILL

entitled

- 5 AN ACT TO CONSOLIDATE WITH AMENDMENTS THE LAW
RELATING TO BANKRUPTCY AND TO PROVIDE FOR
RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART I

10 PRELIMINARY AND GENERAL

- 1.—This Act may be cited as the Bankruptcy Act, 1982. Short title.
- 2.—This Act shall come into operation on such day as the Minister Commencement.
by order appoints.
- 3.—In this Act, unless the context otherwise requires,— Interpretation.
- 15 “adjudication” means adjudication in bankruptcy;
- “after-acquired property” has the meaning assigned to it by *section 44 (3) (b)*;
- “arrangement” means an arrangement in pursuance of an order for protection under *Part IV*;
- 20 “arranging debtor” means a debtor who has been granted an order for protection under *Part IV*;
- “assignees” means the Official Assignee and the creditors’ assignee, if any;
- 25 “the Bankruptcy Inspector” means the inspector referred to in *section 60 (2)*;
- “bankruptcy summons” has the meaning assigned to it by *section 8 (1)*;
- “conveyance”, in relation to land, includes assignment and transfer;
- “the Court” means the High Court;
- 30 “creditors’ assignee” means a person chosen and appointed as such under *section 18 (1)*;

“land” includes any estate or interest in or charge over land;

“the Minister” means the Minister for Justice;

“the Official Assignee” means the Official Assignee in Bankruptcy for the time being and his successors as and when appointed;

“prescribed”, except in relation to court fees, means prescribed by 5
rules of court;

“property” includes money, goods, things in action, land and every description of property, whether real or personal and whether situate in the State or elsewhere; also obligations, easements, and every description of estate, interest, and profit, present or future, vested or 10
contingent, arising out of or incident to property as above defined;

“registered”, in relation to land, means registered in the Registry of Deeds or the Land Registry, as may be appropriate;

“secured creditor” means any creditor holding any mortgage, charge or lien on the debtor’s estate or any part thereof as security for a debt 15
due to him;

“vesting arrangement” has the meaning assigned to it by *section 93* (2).

Application of Act to subsisting bankruptcies and arrangements.

4.—(1) Save where otherwise provided in this Act, a bankruptcy or arrangement subsisting at the commencement of this Act shall 20
thereafter be administered according to the provisions of this Act and the rules thereunder, without prejudice to the validity of anything duly done or suffered before such commencement.

(2) The provisions of this Act and the rules shall apply accordingly, so far as they are capable of application and subject to such modifica- 25
tions and adaptations as may be appropriate, as if the bankrupt had been adjudicated or the arranging debtor had been granted an order for protection under this Act.

Expenses.

5.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for 30
Finance, be paid out of moneys provided by the Oireachtas.

Repeals.

6.—(1) The enactments mentioned in the *Second Schedule* are hereby repealed to the extent mentioned in the *third column* of that Schedule.

(2) Any petition, summons, *subpoena*, order, direction, notice or other instrument presented, served, made or issued under a repealed 35
enactment and in force at the commencement of this Act shall continue in force and be treated thereafter as if it had been presented, served, made or issued under this Act.

PART II 40

PROCEDURE IN BANKRUPTCY

Acts of bankruptcy. (1872, s. 21 in pt.)

7.—(1) An individual (in this Act called a “debtor”) commits an act of bankruptcy in each of the following cases—

- (a) if in the State or elsewhere he makes a conveyance or assignment of all or substantially all of his property to a trustee or trustees for the benefit of his creditors generally;
- 5 (b) if in the State or elsewhere he makes a fraudulent conveyance, gift, delivery or transfer of his property or any part thereof;
- 10 (c) if in the State or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would under this or any other Act be void as a fraudulent preference if he were adjudicated bankrupt;
- 15 (d) if with intent to defeat or delay his creditors he leaves the State or being out of the State remains out of the State or departs from his dwelling-house or otherwise absents himself or begins to keep house;
- (e) if he files in the Court a declaration of insolvency;
- (f) if execution against him has been levied by the seizure of his goods under an order of any court or if a return of no goods has been made by the sheriff or county registrar whether by endorsement on the order or otherwise;
- 20 (g) if the creditor presenting a petition has served upon the debtor in the prescribed manner a bankruptcy summons, and he does not within fourteen days after service of the summons pay the sum referred to in the summons or secure or compound for it to the satisfaction of the creditor.
- 25

(2) A debtor also commits an act of bankruptcy if he fails to comply with a debtor's summons served pursuant to section 21 (6) of the Bankruptcy (Ireland) Amendment Act, 1872, within the appropriate time thereunder, and section 8 (6) of this Act shall apply to such debtor's summons.

30

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

35

8.— (1) A summons (in this Act referred to as a "bankruptcy summons") may be granted by the Court to a person (in this section referred to as "the creditor") who proves that—

Bankruptcy summons.
(New: cf. 1872, s. 30 in pt.)

- 40 (a) a debt of £500 or more is due to him by the person against whom the summons is sought,
- (b) the debt is a liquidated sum, and
- (c) a notice in the prescribed form, requiring payment of the debt, has been served on the debtor.

(2) A bankruptcy summons may be granted to two or more creditors who are not partners and whose debts amount together to £500 or more. In such a case, to comply with the requisitions contained in the summons a debtor must pay or compound for the debts or give

45

security for them to all the creditors who are parties to the summons, unless they otherwise agree.

(3) The notice requiring payment of the debt shall set out the particulars of the debt due and shall require payment within four days after service thereof on the debtor. 5

(4) The bankruptcy summons shall be in the prescribed form.

(5) A debtor served with a bankruptcy summons may apply to the Court in the prescribed manner and within the prescribed time to dismiss the summons.

(6) The Court— 10

(a) may dismiss the summons with or without costs, and

(b) shall dismiss the summons if satisfied that an issue would arise for trial.

Arrest of
absconding debtor.
(1872, ss. 78, 79 and
80)

9.—Where, after a bankruptcy summons has been granted against a debtor and before a petition to adjudicate him bankrupt can be presented against him, it appears to the Court that there is probable cause for believing that he is about to leave the State or to otherwise abscond with a view to avoiding payment of the debt for which the bankruptcy summons was issued or avoiding examination in respect of his affairs or otherwise avoiding or delaying proceedings in bankruptcy, the Court may cause such debtor to be arrested and brought before the Court. 15 20

(2) No arrest under this section shall be lawful unless the debtor, before or at the time of his arrest, is served with the bankruptcy summons. 25

(3) On the debtor offering such security, or making such payment or composition as the Court thinks reasonable, he shall be discharged from custody unless the Court otherwise orders.

(4) Any such security, payment or composition shall not be exempt from the provisions of this Act relating to fraudulent preferences. 30

Petition.
(1857, s. 116 in pt.)

10.—An application for adjudication shall be by petition verified by the affidavit of the petitioner.

Presenting petition.
(1872, s. 20)

11.—(1) A creditor shall be entitled to present a petition for adjudication against a debtor if—

(a) the debt owing by the debtor to the petitioning creditor (or, if two or more creditors join in presenting the petition, the aggregate amount of debts owing to them) amounts to £500 or more, 35

(1872, s. 21 in pt.)

(b) the debt is a liquidated sum,

(cf. 1857, s. 115)

(c) the act of bankruptcy on which the petition is founded has occurred within three months before the presentation of the petition, and 40

(New: cf. 1857, s.
409)

(d) the debtor (whether a citizen or not) is domiciled in the State 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 the State or has carried on business in the State personally or by means of an agent or manager, or is or within the said period has been a member of a partnership which has carried on business in the State by means of a partner, agent or manager.

5
10
15
(2) If a creditor who presents or joins in presenting the petition is a secured creditor, he shall in his petition set out particulars of his security and shall either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudicated bankrupt or give an estimate of the value of his security. In the latter case, he may be admitted as a petitioning creditor or joint 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 but he shall on application being made by the Official Assignee after the date of adjudication give up his security to the Official Assignee for the benefit of the creditors upon payment of such estimated value. (1872, s. 21 in pt.)

(3) Any debtor may petition for adjudication against himself. (1857, s. 120)

20
12.—The petitioning creditor shall at his own cost present his petition and prosecute it until the statutory sitting referred to in section 17 (3), and the Court shall at or after the sitting make an order for the payment of such costs out of the estate of the bankrupt in course of priority to be settled by rules of court. Petitioning creditor's costs. (1857, s. 135)

25
13.—No petition for adjudication shall be dismissed or adjudication annulled by reason only that the petition or act of bankruptcy has been concerted or agreed upon between the bankrupt or his solicitor and any creditor or other person. Petition or act of bankruptcy agreed between bankrupt and creditor. (1857, s. 136)

30
14.—(1) Where the petition is presented by a creditor, the Court shall, if satisfied that the requirements of section 11 (1) have been complied with, by order adjudicate the debtor bankrupt. Adjudication: creditor's petition. (1857, s. 127 in pt.)

(2) A copy of the order shall be served on the debtor, either personally or by leaving it at his residence or place of business in the State. (1857, s. 129 in pt.; 36/1971, s. 23 (1))

35
15.—Where the petition is presented by a debtor, the Court shall, on proof that he is unable to meet his engagements with his creditors and that his available estate is sufficient to realise at least £500, by order adjudicate the debtor bankrupt. Adjudication: debtor's petition. (RSC, 0.76, r. 37)

40
16.—(1) The bankrupt may, within three days or such extended time not exceeding fourteen days as the Court thinks fit from the service of the copy of the order of adjudication on him, show cause to the Court against the validity of the adjudication. Cause shown against adjudication. (cf. 1857, s. 129)

45
(2) On an application to show cause under subsection (1) the Court shall, if within such time the bankrupt shows to its satisfaction that any of the requirements of section 11 (1) have not been complied with, annul the adjudication and may, in any other case, dismiss the application or adjourn it on such conditions as the Court thinks fit,

having regard to the interests of the bankrupt, his creditors and any persons who might advance further credit to him.

(3) Nothing in this section shall be construed to prevent the immediate seizure of the goods of the bankrupt on his adjudication.

Notice of
adjudication and
statutory sitting.
(1857, ss. 129, 130
in pt., cf. s. 353)

17.—(1) This section shall have effect— 5

(a) in the case of a creditor's petition where cause has not been shown to the satisfaction of the Court for annulling the adjudication within the time for showing cause, on the expiration of that time;

(b) in the case of a debtor's petition under *section 15* or the adjudication of an arranging debtor under *section 105*, on adjudication. 10

(2) The Court shall cause notice of the adjudication to be given as soon as may be in the prescribed manner in *Iris Oifigiúil* and in at least one daily newspaper. 15

(3) The Court shall appoint a statutory sitting to be held within three weeks of the publication of the notice at which the bankrupt shall attend and make full disclosure of his property to the Court, and his creditors may prove their debts and choose and appoint a creditors' assignee. 20

(4) The Court, on adjourning an application to show cause under *section 16 (1)*, may stay publication of notice of the adjudication on security being given by the bankrupt or on such other conditions as the Court thinks fit.

Creditors' assignee.
(1857, ss. 64, 265)

18.—(1) At the statutory sitting referred to in *section 17 (3)* the creditors may choose and appoint a person (in this Act referred to as the "creditors' assignee") to represent them in the administration of the bankrupt's estate. 25

(2) All creditors shall be entitled to vote in such choice in person or by an agent authorised in writing in that behalf, and the choice and appointment shall be made by the major part in value of the creditors. 30

(3) The Court may reject any person so chosen who appears to the Court unfit to be a creditors' assignee or may remove a creditors' assignee and in the event of a vacancy, however arising, a new choice and appointment may be made in like manner. 35

(4) The Court shall appoint the solicitor to act for the assignees in the proceedings.

(5) For the purposes of appointing a creditors' assignee a creditor may prove his debt.

Duties of bankrupt.
(1857, s. 132 in pt.)

19.—The bankrupt shall— 40

(a) unless the Court otherwise directs, forthwith deliver up to the Official Assignee such books of account or other papers relating to his estate in his possession or control as the Official Assignee may from time to time request and

disclose to him such of them as are in the possession or control of any other person;

- 5 (b) deliver up possession of any part of his property which is divisible among his creditors under this Act, and which is for the time being in his possession or control, to the Official Assignee or any person authorised by the Court or otherwise under the provisions of this Act to take possession of it;
- 10 (c) unless the Court otherwise directs, within the prescribed time file in the Central Office a statement of affairs in the prescribed form and deliver a copy thereof to the Official Assignee;
- (d) give every reasonable assistance to the Official Assignee in the administration of the estate;
- 15 (e) disclose to the Official Assignee any after-acquired property.

20 **20.—(1)** A bankrupt shall forthwith notify the Official Assignee in writing of any change in his name or address which occurs during his bankruptcy.

Change of name or address, etc. (New)

(2) For the purposes of *subsection (1)* a change in the name of a bankrupt shall be deemed to occur if the bankrupt in fact assumes the use of a different name or an additional name.

25 (3) A bankrupt shall, whenever required by the Official Assignee to do so, forthwith notify the Official Assignee in writing of the nature of any profession, vocation, business or employment in which he is engaged.

30 **21.—(1)** The Court may summon before it a bankrupt or any person who is known or suspected to have in his possession or control any property of the bankrupt or to have disposed of any property of the bankrupt or who is supposed to be indebted to the bankrupt, or any person whom the Court deems capable of giving information relating to the trade, dealings, affairs or property of the bankrupt.

Examination of bankrupt and other persons. (1857, ss. 305 in pt., 306, 307, 308, 310; cf. 33/1963, s. 245)

(2) The Court may examine him on oath concerning the matters aforesaid, either orally or on written interrogatories, and may reduce his answers to writing and require him to sign them.

35 (3) The Court may require him to produce any books of account and papers in his possession or control relating to the matters aforesaid but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien and the Court may determine all questions in relation to the lien.

40 (4) A bankrupt or other person who is examined under this section shall not be entitled to refuse to answer any question put to him on the ground that his answer might incriminate him but none of his answers shall be admissible in evidence against him in any other proceedings, civil or criminal, except in the case of any criminal
45 proceedings for perjury in respect of any such answer.

22.—If any person on examination appears to be indebted to the bankrupt or to have in his possession or control any property of the bankrupt, the Court, on the application of the Official Assignee, may

Admission of debt due to bankrupt. (cf. 1857, s. 311)

order him to pay to the Official Assignee, at such time and in such manner as the Court thinks fit, the amount or any part thereof or to deliver to the Official Assignee such property or any part thereof at such time and in such manner and on such terms as the Court may direct. 5

Arrest of bankrupt, etc.
(cf. 1857, ss. 124, 125)

23.—(1) Where it appears to the Court, at any time after making an adjudication order, on proof of probable cause for believing that a bankrupt is about to leave the State or otherwise to abscond or has removed or concealed or is about to remove or conceal any of his property with a view to avoiding payment of his debts or avoiding examination in respect of his affairs, or is keeping out of the way and cannot be served with a summons, the Court may cause him to be arrested and brought before it for examination. 10

(cf. 1857, s. 305 in pt.)

(2) Where a bankrupt has been summoned before the Court pursuant to *section 21* and he does not come at the time appointed, not having an excuse (made known to the Court at the time of its sitting and allowed by it) the Court may cause him to be arrested and brought before it for examination. 15

(cf. 1857, s. 308 in pt.)

(3) Where any person summoned before the Court pursuant to *section 21* after being tendered a reasonable sum for his expenses, does not come at the time appointed, not having an excuse (made known to the Court at the time of its sitting and allowed by it), the Court may cause him to be arrested and brought before it for examination. 20

(4) The provisions of *subsections (2) and (3)* are without prejudice to the powers of the Court in relation to contempt or enforcement of the attendance of witnesses. 25

Committal to prison.
(1857, s. 385)

24.—Where the bankrupt or any person summoned or brought before the Court refuses to be sworn or refuses or fails to answer any lawful question put by the Court or does not fully answer any such question or refuses to sign and subscribe his examination when reduced to writing (not having any lawful excuse allowed by the Court) or to comply with any order of the Court under this Act, the Court may order that such person be committed to prison to await the further order of the Court. 30
35

Examination of persons in custody.
(1872, s. 73)

25.—Where the bankrupt or any person is in prison pursuant to an order of the Court under *section 24*, the Court may by warrant directed to the governor of the prison order that he be brought before the Court. Where such person satisfies the Court that he has complied with its lawful requirements the Court shall order his release from custody. In any other case he may be taken back to prison without any further order. 40

Release of bankrupt from prison.
(New)

26.—If a bankrupt is in prison by virtue of *section 6* of the Enforcement of Court Orders Act, 1940, in respect of a debt incurred before adjudication, the Court may order his release. 45

Warrant of seizure.
(1857, s. 72 in pt.)

27.—(1) The Court may by warrant direct the Bankruptcy Inspector or any of his assistants to seize any property of the bankrupt.

(2) An official acting under the warrant may seize any part of the bankrupt's property in the possession or control of the bankrupt and, for the purpose of seizing any such property, may enter and if 50

necessary break open any house, building, room or other place belonging to the bankrupt where any part of his property is believed to be.

28.—Where it appears to the Court that there is reason to believe that any property of the bankrupt is concealed in any house, building, room or other place not belonging to the bankrupt, the Court may grant a search warrant to the Bankruptcy Inspector or any of his assistants, or other person appointed by the Court, who may execute the warrant according to the tenor thereof.

Search warrant.
(cf. 1857, s. 326)

29.—The Bankruptcy Inspector or his assistants or other person appointed by the Court shall not be liable for anything done *bona fide* pursuant to any warrant of the Court.

Indemnity for persons acting under warrant.
(1857, s. 327)

Partnership Cases

30.—Where a member of a partnership is adjudicated bankrupt the Court may authorise the Official Assignee to commence and prosecute any action in the names of the Official Assignee and of the bankrupt's partner to recover any debt due to or any property of the partners, 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 the bankrupt's partner 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. If the partner does not claim any benefit from the action he shall be indemnified against costs in respect thereof as the Court directs.

Actions by Official Assignee and bankrupt's partners.
(cf. 1857, s. 278)

31.—(1) Any creditor whose debt is sufficient to entitle him to present a petition for adjudication against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

Petition against one or more partners.
(cf. 1857, s. 122)

(2) Where a petition for adjudication is presented against more than one person the Court may make an order of adjudication against one or more of them and dismiss the petition as to the remainder.

32.—Where a member of a partnership is adjudicated bankrupt the Official Assignee may require the other partner or partners to deliver to the Official Assignee such accounts and information relating to the partnership estate and the bankrupt's interest therein (duly verified by affidavit if necessary) as the Official Assignee may deem necessary.

Furnishing of partnership accounts to Official Assignee.
(New)

33.—Where a member of a partnership is adjudicated bankrupt he shall deliver to the Official Assignee within the prescribed time a separate statement of affairs in respect of the partnership in the prescribed form.

Duty of bankrupt partner.
(New)

34.—(1) In the case of partners the joint property shall be applicable in the first instance in payment of their joint debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts.

Joint and separate properties.
(New)

(2) Where there is a surplus of the joint property, it shall be dealt

with as part of the respective separate properties in proportion to the right and interest of each partner in the joint property.

(3) Where there is a surplus of any separate property it shall be dealt with as part of the joint property so far as necessary to meet any deficiency in the joint property. 5

Actions on joint contracts.
(New)

35.—Where a bankrupt is a party to a contract jointly with any other person, that other person may sue or be sued in respect of the contract without joining the bankrupt.

Proceedings in partnership name.
(New)

36.—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 to be disclosed in such manner, and verified on oath or otherwise, as the Court may direct. 10

Limited partnerships.
(33/1963, s. 345 (8))

37.—Subject to such modifications as may be made by rules of court, 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 adjudicated bankrupt, the assets of the limited partnership shall vest in the Official Assignee. 15
20

Composition after Bankruptcy

Stay on realisation of estate.
(New)

38.—The Court may, on the application of a bankrupt, grant a stay on the realisation of his estate, for such time and under such conditions as it thinks fit, to enable him or any persons acting on his behalf to make an offer of composition to his creditors under *section 39*. 25

Offer of composition.
(*cf.* 1857, ss. 149, 150 in pt.; 1872, s. 61)

39.—(1) Where a stay on the realisation of the estate of a bankrupt has been granted under *section 38*, the bankrupt shall call a meeting of his creditors before the Court for the purpose of making an offer of composition to them.

(2) At least ten days before the meeting a notice of the meeting specifying the precise offer of composition to be made shall be inserted in *Iris Oifigiúil* and shall also be sent by post to each creditor at his last known address. 30

(3) If an offer of composition is made by or on behalf of the bankrupt and three-fifths in number and value of the creditors voting at the meeting, either in person or by an agent authorised in writing in that behalf, accept the offer or any modification of it, it shall be deemed to be accepted, and when approved by the Court shall be binding on all creditors of the bankrupt. 35

(4) A creditor whose debt is less than £100 shall not be entitled to vote. 40

(5) If for any reason the bankrupt has not filed a statement of his affairs as required by *section 19 (c)*, he shall do so at or before the meeting.

(6) Debts may be proved at the meeting. 45

40.—(1) Any composition shall be payable—

Payment of
composition.

(a) in cash, within one month from the approval by the Court of the offer of composition or within such further time as the Court may allow, or

(New)

5 (b) by instalments, all of which shall be secured to the satisfaction of the creditors, or

(c) partly in cash and partly by instalments payable or secured as aforesaid.

10 (2) In no case shall any instalment be secured by a bill, note or other security signed by or enforceable against the bankrupt alone.

(3) The Court shall have discretion to refuse to approve of an offer payable wholly or partly by instalments if the final instalment is not payable within two years.

15 41.—The Court, on the application of the bankrupt or his personal representatives, shall, on the report of the Official Assignee and in the absence of fraud, discharge the adjudication order—

Discharge of
adjudication order.
(New)

20 (a) in the case of a composition payable in cash, upon lodgment with the Official Assignee of the necessary amount to pay the composition, expenses, fees, costs, such further sums as the Court may direct and the preferential payments;

25 (b) in the case of a composition payable by instalments which are secured to the satisfaction of the creditors, upon lodgment with the Official Assignee of the completed bills, notes or other securities, the necessary amount to pay expenses, fees, costs, such further sums as the Court may direct and the preferential payments;

30 (c) in the case of a composition payable partly in cash and partly by instalments which are secured to the satisfaction of the creditors, upon lodgment with the Official Assignee of the necessary amount to pay the cash composition, expenses, fees, costs, such further sums as the Court may direct and the preferential payments.

Bankrupt Dying after Adjudication

35 42.—If a bankrupt dies the Court may proceed in the bankruptcy as if he were living.

Bankrupt dying
after adjudication.
(1857, s. 137)

Subsequent Bankruptcy

40 43.—(1) Where a bankrupt is again adjudicated, all after-acquired property unclaimed by the Official Assignee at the date of the subsequent bankruptcy shall, if claimed by the Official Assignee, vest in him for the credit of the subsequent bankruptcy.

Subsequent
bankruptcy.
(New)

45 (2) Any after-acquired property or the proceeds thereof in the possession of the Official Assignee at the date of the subsequent bankruptcy shall be transferred by the Official Assignee (after deducting his costs and expenses) to the credit of the subsequent bankruptcy.

(3) Any surplus arising on the subsequent bankruptcy shall be transferred to the credit of the former bankruptcy.

PART III

ADMINISTRATION OF PROPERTY

Effect of Adjudication on Bankrupt's Property 5

Vesting of property
in Official Assignee.
(1857, ss. 267, 268,
273)

44.—(1) Where a person is adjudicated bankrupt, then, subject to the provisions of this Act, all property belonging to that person shall on the date of adjudication vest in the Official Assignee for the benefit of the creditors of the bankrupt.

(2) Subject to the provisions of this Act, the title of the Official Assignee to any property which vests in him by virtue of *subsection (1)* shall not commence at any date earlier than the date of adjudication. 10

(3) The property to which *subsection (1)* applies includes—

(a) all powers vested in the bankrupt which he might legally exercise in relation to any property immediately before the date of adjudication; 15

(b) the right to all such property as may be acquired by or devolve on him before the discharge or annulment of the adjudication order (in this Act called "after-acquired property"), provided that no part of such property shall vest in the Official Assignee unless and until he claims it; 20

(c) all property which was the subject of any conveyance or transfer which *sections 57, 58 and 59* declare void as against the Official Assignee, subject to the rights of any persons which are preserved by those sections. 25

(4) The property to which *subsection (1)* applies does not include—

(a) property held by the bankrupt in trust for any other person, or

(b) any sum which vests in the Official Assignee under *section 7 (1) (a)* of the Auctioneers and House Agents Act, 1967, or *section 30 (i)* of the Central Bank Act, 1971. 30

Excepted articles.
(1857, ss. 298, 299)

45.—(1) A bankrupt shall be entitled to retain, as excepted articles, such articles of clothing, household furniture, bedding, tools or equipment of his trade or occupation or other like necessities for himself, his wife, children and dependent relatives residing with him, as he may select, not exceeding in value £1,000 or such further amount as the Court on an application by the bankrupt may allow. 35

(2) Where a bankrupt, after selecting the items constituting the excepted articles, requests the Official Assignee, in writing, not to dispose of the remainder of any such articles as are referred to in *subsection (1)* the Official Assignee shall not dispose thereof except in accordance with an order of the Court. 40

(3) The Court may, on the application of the bankrupt or the Official Assignee, in relation to the remainder of such articles— 45

- (a) postpone the removal and sale thereof;
- (b) permit them to remain in the use of the bankrupt;
- (c) at any time, order them to be taken by or on behalf of the Official Assignee and to be sold for the benefit of the creditors.

5

46.—(1) Where, according to law, any conveyance or transfer of property is required to be registered and such property vests in the Official Assignee under this Part, a certificate under the seal of the Court may be issued to him as evidence of the vesting and he shall cause the certificate to be registered as soon as may be as if it were a conveyance or transfer, and registration of the certificate shall have the like effect to all intents and purposes as registration of a conveyance or transfer would have had.

10

Certificate of vesting of property in Official Assignee.
(cf. 1857, s. 269)

(2) The title of any purchaser of any such property for valuable consideration, in good faith and without notice of the adjudication, who had duly registered the conveyance or transfer before the registration of the certificate shall not be invalidated by reason of the adjudication unless the certificate is registered within two months after the date of the adjudication.

15

47.—Notwithstanding any provision in any other enactment—

20

(a) money in the Post Office Savings Bank or in a trustee savings bank to which a bankrupt is entitled, or

(b) securities issued through the Post Office by the Minister for Finance under his statutory borrowing powers and to which a bankrupt is entitled,

25

Vesting in Official Assignee of certain money and securities.
(New)

shall, on the adjudication of the bankrupt, vest in the Official Assignee in the same manner as any other property.

30

48.—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 royalties or a share of the profits in respect thereof—

(a) the Official Assignee shall not be entitled to sell or authorise the sale of any copies of the work, or to perform or authorise 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, and

35

(b) he shall not be entitled to assign the right or transfer the interest or to grant any interest in the right by licence, except with the consent of the author or of the Court and 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.

40

Limitation of Official Assignee's powers in relation to copyright.
(New)

49.—(1) Every covenant or provision for forfeiture of a lease on the bankruptcy of the lessee shall be void as against the Official Assignee.

45

Restrictive clause in agreement or lease.
(New)

(2) A clause in a hire purchase agreement which purports to terminate the agreement on the bankruptcy of the hirer shall be void as against the Official Assignee.

Execution against
debtor's property
before adjudication.
(cf. 1872, s. 54)

50.—(1) Where goods or a leasehold interest in land belonging to a debtor have been seized under an execution order and sold, or where money has been paid in part or full satisfaction of the execution either to the sheriff or county registrar or to the execution creditor in order to avoid seizure or sale under such execution, the sheriff, county registrar or execution creditor shall retain the proceeds of sale or the money so paid, for a period of twenty-one days. 5

(2) If within that period the sheriff, county registrar or execution creditor receives notice of the adjudication of the debtor, he shall surrender the property, or pay over the proceeds of sale thereof or any money paid in satisfaction of the execution, to the Official Assignee who shall be entitled to retain the property, proceeds or money, as the case may be, as against the execution creditor. 10

(3) An execution levied by seizure of any such property belonging to the debtor shall not be invalid by reason only of its being an act of bankruptcy and a person who purchases the property in good faith under a sale by the sheriff or county registrar shall, as against the Official Assignee, acquire a good title thereto. 15

(4) Where a sheriff or county registrar, without notice of the adjudication of the debtor, pays the proceeds of sale or other money retained by him pursuant to *subsection (1)* to the execution creditor after the expiration of twenty-one days, he shall not be liable to the Official Assignee in respect of the payment. 20

(5) Where property is surrendered or proceeds of sale or other money paid over to the Official Assignee, the costs of the execution shall be a first charge thereon and the Official Assignee may sell the whole or part of the property for the purpose of satisfying the charge. 25

Priority of judgment
mortgage.
(1857, s. 331)

51.—(1) A judgment creditor who registers an affidavit of his judgment in accordance with sections 6 and 7 of the Judgment Mortgage (Ireland) Act, 1850, shall not, by reason of such registration, be entitled to any priority or preference over simple contract creditors in the event of the person against whom such affidavit is registered being adjudicated bankrupt, unless the affidavit is registered at least three months before the date of the adjudication. 30

(2) *Subsection (1)* shall apply in the winding up of an insolvent company under the Companies Act 1963 and accordingly the reference in that subsection to the date of the adjudication shall be read as a reference to the presentation of a petition for the winding up of the company by the court or the passing of a resolution for voluntary winding up, as the case may be, and where, before the presentation of a petition for the winding up of the company by the court, a resolution has been passed by the company for voluntary winding up, shall be read as a reference to the passing of the resolution. 35
40

Order to put
purchaser in
possession.
(1872, s. 75)

52.—Where land belonging to a bankrupt or arranging debtor has been sold under the provisions of this Act or by or under the direction of the Court, the Court may, on the application of the purchaser, issue an order directing the appropriate sheriff or county registrar to put the purchaser into possession of all the land not in the occupation of lessees, under-lessees or tenants, subject to whose interests the sale has been made and who have attorned to the purchaser within a time to be limited in the order, and the order shall be executed in like manner as an order for the delivery of possession. 45
50

53.—The mortgagee of any property of a bankrupt or arranging debtor may, with the leave of the Court, bid and purchase at the sale of the property.

Permission to mortgagee to bid at sale.
(1857, s. 316)

54.—A person—

5 (a) from whom the Official Assignee recovers any property of a bankrupt, or

Discharge of persons delivering property, etc., to Official Assignee.

(cf. 1857, s. 281)

(b) who, without legal proceedings, in good faith delivers up to the Official Assignee possession of any such property, or

10 (c) who pays any debt owed to a bankrupt and claimed by the Official Assignee,

shall, notwithstanding that the adjudication is subsequently annulled or discharged, be released from all claims by the bankrupt in respect of such property or debt.

15 55.—The title to any property sold in bankruptcy shall not be invalidated by the bankrupt or any person claiming under him by reason only of any defect in any proceedings under this Act.

Title to property sold not to be invalidated.

(1857, s. 323)

20 56.—(1) Subject to *subsections* (2) and (5), where any of the property (other than after-acquired property) of a 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 which is unsaleable or not readily saleable by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the Official Assignee, notwithstanding that he has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the date of adjudication or such extended period as may be allowed by the Court, disclaim the property.

Disclaimer of onerous property.

(1872, ss. 97 and 98; 33/1963, s. 290)

30 (2) Where any such property as aforesaid has not come to the knowledge of the Official Assignee within one month after the date of the adjudication, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed
35 by the Court.

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

45 (4) The Court, before or on granting leave to disclaim, may require the Official Assignee to give such notices to persons interested and impose such terms as a condition of granting leave, and make such other order in the matter as the Court thinks just.

(5) The Official Assignee shall not be entitled to disclaim any

property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the Official Assignee has not, within a period of twenty-eight days after the receipt of the application or such further period as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim; and, in the case of a contract, if the Official Assignee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(6) The Court may, on the application of any person who is, as against the Official Assignee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person shall be deemed to be a debt proved and admitted in the bankruptcy.

(7) Subject to *subsection (8)*, the Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any person entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court may think just, and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

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

(a) subject to the same liabilities and obligations as those to which the bankrupt was subject under the lease in respect of the property at the date of the adjudication; 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 estate and interest of the bankrupt 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, encumbrances and interests created therein by the bankrupt.

(9) Any person damaged by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the amount of the damages, and may accordingly prove the amount as a debt in the bankruptcy.

Fraudulent and Voluntary Conveyances

57.—(1) Every conveyance or transfer of property or charge made thereon, 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, incurring, taking or suffering the same is adjudicated bankrupt within six months after the date of making, incurring, taking or suffering the same, be deemed fraudulent and void as against the Official Assignee; but 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.

Avoidance of fraudulent preferences.

(1872, s. 53; 33/1963, sch. 11, para. 1.)

15 (2) (a) Where a person is adjudicated bankrupt and anything made or done is void under *subsection (1)* or was void under the corresponding provisions of the law in force immediately before the commencement of this Act as a fraudulent preference of a person interested in property mortgaged or charged to secure the bankrupt's debt, then (without prejudice to any rights or liabilities arising apart from this section) the person preferred shall be subject to the same liabilities and shall have the same rights as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

20 (b) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the bankrupt's debt was then subject.

25 (c) On any application made to the Court in relation to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court shall have jurisdiction to determine any questions relating to the payment arising between the person to whom the payment was made and the surety or guarantor, and to grant relief in respect thereof notwithstanding that it is not necessary so to do for the purposes of the bankruptcy, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid.

30 (d) *Paragraph (c)* shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies to payments.

58.—(1) If within three months before he is adjudicated bankrupt a debtor commits an act of bankruptcy and thereafter either sells any of his property at a price which, in the opinion of the Court, is substantially below its market value or enters into or is a party to any other transaction which, in the opinion of the Court, has the effect of substantially reducing the sum available for distribution to the creditors, such transaction shall be void as against the Official Assignee,

Avoidance of certain transactions. (New)

unless the transaction was *bona fide* entered into and the other party had not at the time of the transaction notice of any prior act of bankruptcy committed by the bankrupt.

(2) *Subsection (1)* shall not affect the rights of any person making title in good faith and for valuable consideration through or under a person (other than the bankrupt) who is party to a transaction mentioned therein. 5

(3) *Subsection (1)* shall not apply to any transaction mentioned in *section 57 (1)* or *59*.

Avoidance of certain settlements. (1857, s. 314; 1872, s. 52)

59.—(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 spouse or children of the settlor of property which has accrued to the settlor after marriage in right of the spouse, shall— 10 15

(a) if the settlor is adjudicated bankrupt within two years after the date of the settlement, be void as against the Official Assignee, and

(b) if the settlor is adjudicated bankrupt at any subsequent time within ten years after the date of the settlement, be void as against the Official Assignee unless the parties claiming under the settlement 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. 20 25

(2) A covenant or contract made by any person (in this section called the settlor) in consideration of his or her marriage, either for the future payment of money for the benefit of the settlor's spouse or children, or for the future settlement, on or for the settlor's spouse 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 spouse, shall, if the settlor is adjudicated bankrupt and the covenant or contract has not been executed at the date of the adjudication, be void as against the Official Assignee, 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 the claims of the other creditors for valuable consideration in money or money's worth have been satisfied. 30 35 40

(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 a covenant or contract to which *subsection (2)* applies shall be void as against the Official Assignee in the settlor's bankruptcy, unless the persons to whom the payment or transfer was made prove that: 45

(a) the payment or transfer was made more than two years before the date of the adjudication of the settlor, or

- (b) 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
- 5 (c) 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;
- 10 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 date of the adjudication.
- 15 (4) In this section "settlement" includes any conveyance or transfer of property.

Management Provisions

60.—(1) The Official Assignee shall have and exercise such powers and authorities and perform such duties and functions as are from time to time conferred on or assigned to him by statute (including this
20 Act) or rules of court. Office of the Official Assignee.

(2) There shall be employed in the Office of the Official Assignee an inspector (in this Act referred to as "the Bankruptcy Inspector") and paragraph 22 of the Eighth Schedule to the Courts (Supplemental Provisions) Act, 1961, shall apply accordingly.

25 (3) The person who, immediately before the commencement of this Act, held office as Messenger of the Court shall, on such commencement, become and be the Bankruptcy Inspector.

61.—(1) This section applies to every bankruptcy matter and vesting arrangement. Functions of Official Assignee in bankruptcy and vesting arrangements. (New)

30 (2) The functions of the Official Assignee are to get in and realise the property, to ascertain the debts and liabilities and to distribute the assets in accordance with the provisions of this Act.

(3) In the performance of his functions the Official Assignee shall, in particular, have power—

35 (a) to sell the property by public auction or private contract, with power to transfer the whole thereof to any person or to sell the same in lots and for the purpose of selling land to carry out such sale by fee farm grant, sub fee farm grant, lease, sub-lease or otherwise and to sell any rent reserved on any such grant or any reversion expectant
40 upon the determination of any such lease,

(b) to make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim present or future, certain or contingent, ascertained or sounding only in damages whereby the bankrupt or arranging debtor may be rendered liable,
45

- (c) to compromise all debts and liabilities capable of resulting in debts and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the bankrupt or arranging debtor and any debtor and all questions in any way relating to or affecting the assets or the proceedings on such terms as may be agreed and take any security for the discharge of any debt, liability or claim, and give a complete discharge in respect thereof, 5
 - (d) to institute, continue or defend any proceedings relating to the property, 10
 - (e) to refer any dispute concerning the property to arbitration under the terms of section 11 of the Arbitration Act, 1954,
 - (f) to mortgage or pledge any property to raise any money requisite, 15
 - (g) to take out in his official name without being required to give security, letters of administration to any estate on the administration of which the bankrupt or arranging debtor would benefit,
 - (h) to agree costs where he considers that the amount which would be allowed on taxation would not exceed £500, 20
 - (i) to agree the charges of accountants, auctioneers, brokers and other persons,
 - (j) to ascertain and certify to the Court the amount due in respect of a mortgage debt and the due priority thereof with power to the Court to vary such certificate, 25
 - (k) to draw out of the account referred to in *section 84 (1)* any sum not exceeding £100 by way of indemnity in respect of costs incurred by him.
- (4) The Official Assignee may in case of doubt or difficulty seek the directions of the Court in connection with the affairs of any bankrupt or arranging debtor. 30
- (5) The exercise by the Official Assignee of the powers conferred by this section shall be subject to the control of the Court, and any creditor or other person who in the opinion of the Court has an interest may apply to the Court in relation to the exercise or proposed exercise of those powers. 35
- (6) The powers and functions conferred on the Official Assignee by this section may be exercised and performed—
- (a) in the case of an adjudication founded on a petition of a debtor, on adjudication, 40
 - (b) in the case of an adjudication founded on a petition by a creditor, on the expiration of the time for showing cause,
 - (c) in the case of a vesting arrangement, on approval of the proposal by the Court. 45

62.—(1) The Bankruptcy Inspector and his assistants shall follow the instructions of the Official Assignee, subject to the directions and control of the Court.

Bankruptcy Inspector and assistants.

(1857, s. 62)

5 (2) Subject to the provisions of this Act, it shall be the duty of the Bankruptcy Inspector or his assistants—

(a) to seize the property of the bankrupt pursuant to a warrant issued by the Court under *section 27*,

(b) to take an inventory of and report on the bankrupt's property,

10 (c) to take possession of the property of an arranging debtor pursuant to *section 100*, and to take an inventory of and report on the property,

(d) to do such other things as may be directed by the Court or the Official Assignee.

63.—The Official Assignee shall not be liable—

Protection of Official Assignee. (1857, s. 65)

15 (a) by reason of any of the matters on which an adjudication was grounded being insufficient to support the adjudication,

(b) in respect of his receipt of any property, provided he has not dealt with the property otherwise than as directed by the Court or as required by this Act or by rules of court.

20 64.—The Official Assignee may, with the sanction of the Court, deal with any land to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with it had he not been adjudicated; and sections 49 to 61 of the Fines and Recoveries (Ireland) Act, 1834 (so far as they are applicable) shall extend and apply to proceedings in bankruptcy under this Act as if those sections were herein re-enacted and in terms made applicable to those proceedings.

Power of Official Assignee to bar entail.

(1857, s. 340; 1872, s. 50).

30 65.—(1) Notwithstanding any provision to the contrary in any other enactment, whenever a bankrupt, whether self-employed or not, is in receipt of or is entitled to receive any salary, income, emolument or pension, the Court may, from time to time, on the application of the Official Assignee, make such order directed to the bankrupt and any person from whom the bankrupt is entitled to receive any such salary, income, emolument or pension for the payment to the Official Assignee of all or part of such salary, income, emolument or pension, subject to such conditions as to payment as the Court may specify in the order having regard to the family responsibilities and personal situation of the bankrupt.

Power of Official Assignee to appropriate part of bankrupt's income.

(New: cf. 1857, s. 319; 1872, s. 51)

40 (2) The Court may at any time, on the application of any interested person, vary an order under *subsection (1)*, having regard to any changes in the family responsibilities or personal situation of the bankrupt.

66.—Every person shall, on request, deliver up to the Official Assignee all money or securities for money in such person's possession

Delivery of property to Official Assignee.

(cf. 1857, s. 324)

or control which he is not by law entitled to retain as against the bankrupt or the Official Assignee.

Right of Official Assignee to transfer stocks or shares.

(cf. 1857, s. 320)

67.—Where any part of the property of a bankrupt, or of an arranging debtor under a vesting arrangement, consists of stocks or shares, the Official Assignee may exercise the right to transfer them to the same extent as the bankrupt or arranging debtor could have exercised it but for the adjudication or vesting arrangement. 5

Right of Official Assignee to inspect goods pawned or pledged.

(New)

68.—Where any goods of a bankrupt are held by any person by way of pledge, pawn or other security, the Official Assignee may give notice in writing to the holder of his intention to inspect the goods and, where such notice has been given, the holder shall not be entitled to realise his security until he has given the Official Assignee a reasonable opportunity of inspecting the goods and of exercising his right of redemption if he thinks fit to do so. 10

Receipt of property of bankrupt.

(cf. 1857, ss. 60, 61)

69.—(1) The Official Assignee shall be assignee of each bankrupt's estate and act with the creditors' assignee, if any. 15

(2) Except where otherwise directed by the Court, the property of every bankrupt, and the income and proceeds thereof, shall be possessed and received by the Official Assignee.

(3) All money received by the Official Assignee, being part of a bankrupt's estate, shall be forthwith paid by him into a prescribed bank and shall be kept there to the credit of the Official Assignee subject to the provisions of this Act and rules of court and to the directions of the Court. 20

(4) Subject to *section 84*, all money and securities which, immediately before the commencement of this Act, stood to the credit of bank accounts in bankruptcy or arrangement matters shall be dealt with pursuant to rules of court. 25

(5) The Official Assignee, with the leave of the Court, may from time to time invest the whole or any part of any money or securities referred to in this section, and any interest thereon shall be paid into the appropriate bank accounts. 30

Claim to property in possession of bankrupt.

(New)

70.—(1) Where a person claims any property which is in the possession of the bankrupt at the date of adjudication he shall file with the Official Assignee a claim verified by affidavit. 35

(2) The Official Assignee may give notice in writing to any person to prove his claim to property which is in the possession of the bankrupt at the date of adjudication and, unless within one month after the service of the notice that person files with the Official Assignee a claim verified by affidavit, the Official Assignee may, with the sanction of the Court, sell or dispose of the property free of any right or interest therein of that person. 40

Allowances to bankrupt.

(cf. 1857, s. 301)

71.—The Court may make to the bankrupt out of his estate such allowances as the Court thinks proper in the special circumstances of the case. 45

Redirection of letters, etc., addressed to bankrupt.

(1857, s. 312)

72.—Where a debtor is adjudicated bankrupt the Court, on the application of the Official Assignee, may from time to time order that for such time, not exceeding three months, as the Court thinks fit letters, telegrams and postal packets addressed to the bankrupt at any place mentioned in the order shall, on such terms and subject to such 50

conditions as the Court thinks fit, be redirected, sent or delivered to the Official Assignee as the Court directs.

5 73.—The Court may, at any time after adjudication or after the granting of an order for protection, appoint a receiver or manager of the whole or part of the property of the bankrupt or arranging debtor and may direct that the receiver or manager take immediate possession of such property or any part thereof.

Appointment of receivers and managers.

(1872, s. 68)

10 74.—If one or more of the partners of a firm is a bankrupt, any creditor of the firm shall be entitled to prove his debt or be admitted as a creditor for the purpose of voting in the choice and appointment of a creditors' assignee but such creditor shall not receive any dividend out of the separate estate of the bankrupt until all the separate creditors shall have received the full amount of their respective debts.

Joint and separate dividends.
(cf. 1857, s. 266)

15 75.—(1) Debts and liabilities, present or future, certain or contingent, by reason of any obligation incurred by the bankrupt or arranging debtor before the date of adjudication or order for protection and claims in the nature of unliquidated damages for which the bankrupt or arranging debtor is liable at that date by reason of a wrong within the meaning of the Civil Liability Act, 1961, shall be provable in the bankruptcy or arrangement.

Debts provable in bankruptcy and arrangements.

(cf. 1857, ss. 247, 249, 252 to 258; 1872, ss. 45-47)

20 (2) Where interest or any pecuniary consideration in lieu of interest is reserved or agreed for on a debt which is overdue at the date of adjudication, the creditor shall be entitled to prove or be admitted as a creditor for such interest or consideration up to the date of adjudication.

30 (3) Where all necessary parties agree, an order for assessment of damages or contribution under section 61 (2) of the Civil Liability Act, 1961, may be made by the Court, notwithstanding that it may not be the court by or before which the claim for damages or contribution falls to be determined.

(4) An estimate may be made by the Court of the value of any debt which, by reason of it being subject to any contingency or for any other reason, does not bear a certain value and the amount of the estimate shall be proved as a debt.

35 76.—The provisions of the *First Schedule* shall apply in relation to the proof of debts.

Proof of debts.

(cf. 1857, s. 246 in pt.)

40 77.—Section 12 (2) of the Factors Act, 1889 (which regulates the rights of an owner of goods in the case of the bankruptcy of a mercantile agent to whom they have been entrusted) shall have effect with the substitution for the reference to a trustee in bankruptcy of a reference to the Official Assignee.

Bankruptcy of mercantile agent.
(New)

45 78.—Where a party to any cause or matter has obtained a judgment or order against a person who is afterwards adjudicated bankrupt or is granted an order for protection for any debt for which he proves or is admitted a creditor, he shall also be entitled to prove or be admitted a creditor for the costs of the judgment or order, whether or not the costs have been taxed or ascertained at the date of the adjudication or order for protection.

Proof for costs of judgment.

(1857, s. 261)

Disallowance of debts already proved.

(1857, s. 263)

79.—The Court may, on the application of the Official Assignee or any creditor or the bankrupt or arranging debtor, disallow, in whole or in part, any debt already proved or admitted.

Distribution of Estate

Priority of expenses, etc.
(New)

80.—The expenses, fees and costs of the bankruptcy shall be payable in priority to the liabilities of the bankrupt in such order as may be prescribed. 5

Preferential payments.

(1889, ss. 4, 6;
33/1963, s. 285)

81.—(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 order of adjudication, and having become due and payable within twelve months next before that date, and all property or income tax assessed on the bankrupt up to the 5th day of April next before the date of the order of adjudication, and not exceeding in the whole one year's assessment; 10 15
- (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 the four months next before the date of the order of adjudication not exceeding £2,500; 20
- (c) all wages not exceeding £2,500 of any labourer or workman (whether payable for time or for piece work) in respect of services rendered to the bankrupt during the four months next before the date of the order of adjudication: provided that, where any farm labourer has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year or other shorter term 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 order of adjudication; 25 30
- (d) all accrued holiday remuneration becoming payable to any clerk, servant, workman or labourer (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the adjudication order; 35
- (e) all sums due to any employee pursuant to any scheme or arrangement for the provision of payments to the employee while he is absent from employment owing to ill health; 40
- (f) any payments due by the bankrupt pursuant to any scheme or arrangement for the provision of superannuation benefits to or in respect of employees of the bankrupt whether such payments are due in respect of the bankrupt's contribution to that scheme or under that arrangement or in respect of such contributions payable by the employees to the bankrupt under any such scheme or arrangement which have been deducted from the wages or salaries of employees. 45 50

5 (g) any debt, payment or contribution which by virtue of any provision in any enactment in operation before the commencement of this Act was included in the debts to which section 4 of the Preferential Payments in Bankruptcy (Ireland) Act, 1889, gave priority; and any reference to the said section 4 in any such enactment shall be construed as a reference to this subsection.

10 (2) The foregoing debts shall rank equally between themselves and 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.

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

20 (4) In the event of a landlord or other person distraining or having distrained on any goods or effects of the bankrupt within three months next before the date of the order of adjudication, 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 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 the payment is made.

25 (5) Any remuneration in respect of a period of holiday or absence from work through good cause shall be deemed to be wages in respect of services rendered to the bankrupt during that period.

30 (6) Notwithstanding *section 4*, this section shall not apply where the order of adjudication was made before the commencement of this Act, and in such a case, the provisions relating to preferential payments which would have applied if this Act had not been passed shall be deemed to remain in full force.

35 (7) *Subsections (1), (2), (3), (5) and (6)* shall apply in the case of an arranging debtor under the provisions of this Act as if he were a bankrupt, and as if the date of the filing of the petition for arrangement were substituted for the date of the order of adjudication.

40 (8) Any creditor who, in the case of an arrangement, votes in respect of any debt to which priority is given by this section for or against the acceptance of the debtor's proposal or any modification thereof or, in the case of a composition after bankruptcy, votes in respect of any such debt for or against the acceptance of the bankrupt's offer of composition or any modification thereof shall by so voting be deemed to have abandoned any rights under *subsection (1)* and shall be remitted to such rights (if any) in respect of any of the debts therein mentioned as such creditor would have had apart from that subsection.

45 (9) 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 order of adjudication.

50 (10) Nothing in this section shall alter the effect of section 3 of the Partnership Act, 1890, or shall prejudice the provisions of section 14 of the Trustee Savings Banks Act, 1863, or the provisions of the Friendly Societies Act, 1896.

82.—(1) As soon as convenient after the receipt by him of sufficient funds to meet expenses, fees, costs and preferential payments and to pay a dividend to creditors in any bankrupt's estate the Official

Distribution of
estate.
(*cf.* 1857, ss. 286,
288, 289, 290, 292,
293)

Assignee shall place on the Court file a list of creditors admitted by him or by the Court, a copy of the relevant account of the bankrupt in his books, particulars of expenses, fees, costs, preferential payments and dividend payable to creditors and his report on the realisation of the estate. 5

(2) The Official Assignee shall present the documents and the report filed in accordance with *subsection (1)* to the Court at a sitting to be held not less than twenty-one days after notice of the filing and of the sitting has been given in the prescribed manner.

(3) At the sitting the Court may make such order as it thinks fit for 10 distribution of the estate or any part thereof by payment of the expenses, fees, costs and preferential payments as well as the relevant dividend.

(4) The file referred to in *subsection (1)* shall be open to public 15 inspection on payment of a prescribed fee but no fee shall be charged to creditors inspecting the file.

(5) If for any reason the estate of the bankrupt is not fully distrib- 20 uted at such sitting, second and subsequent distributions shall be made as soon as convenient after the realisation of the residual estate. The procedure shall be the same as for the first distribution.

(6) In any case where there are no funds, or in the opinion of the Official Assignee insufficient funds, available for distribution to the creditors the Court may order the payment of expenses, fees and costs in that order so far as the funds extend. Where a balance remains, it shall be transferred to the account referred to in *section 84 (1)*. 25

Accounts and audit.
(New)

83.—Rules of court shall provide for the keeping of accounts by the Official Assignee and for the audit of these accounts.

Official Assignee—
Unclaimed
Dividend Account.

(1857, ss. 61, 295,
296; 1872, s. 77;
1888, c. 44; LCR,
1888, r. 125)

84.—(1) The Official Assignee shall cause to be opened in a pre- 30 scribed bank an account, to be called the “Official Assignee—Unclaimed Dividend Account”, and all money and securities which, immediately before the commencement of this Act, stood to the credit of The Unclaimed Dividend Account or The Unclaimed Dividend Account, Cork, shall be carried into that Account.

(2) The Official Assignee shall pay into that Account all unclaimed 35 dividends and all money unclaimed, being part of any bankrupt’s estate.

(3) (a) The Official Assignee shall be entitled to pay out of that Account all dividends lawfully claimed as well as the sums provided for by *section 61 (3) (k)*.

(b) In order to provide temporarily for payments for which no 40 funds are immediately available in the particular estate against which they are chargeable, there may be paid out of that Account to the credit of the Official Assignee in a separate account in the said bank such sums, subject to such conditions, as may be prescribed. 45

(4) The Official Assignee, with the leave of the Court, may from time to time invest the whole or any part of the money standing to the credit of the Account, and the interest on the investments shall be paid into it.

5 (5) The Court may order that the Official Assignee shall be paid out of the Account such sum by way of indemnity in respect of any damages, costs or expenses payable or incurred or to be payable or incurred by him for or by reason of any act or matter done by him while acting in his official capacity as the Court thinks just, including
10 the costs of any proceedings taken by the Official Assignee with the leave of the Court where there are insufficient funds in the matter.

(6) The Account shall not be available for any purpose other than (New) the purposes of this section.

15 85.—(1) Any bankruptcy subsisting at the commencement of this Act where the order of adjudication in respect thereof was made before 1st January, 1960, is hereby discharged. Discharge and annulment. (New)

(2) Where an adjudication order is discharged by virtue of the provisions of *subsection (1)* any property of the bankrupt which remains vested in the Official Assignee shall after provision has been
20 made for the payment of the expenses, fees, costs and preferential payments be returned to the bankrupt and shall be deemed to be re-vested in him as and from the commencement of this Act.

(3) A bankrupt shall be entitled to a discharge from bankruptcy—

25 (a) when provision has been made for payment of the expenses, fees and costs due in the bankruptcy, as well as the preferential payments, and

(i) he has paid one pound in the pound, with such interest as the Court may allow, or

(ii) he has obtained the consent of all his creditors; or

30 (b) in a case to which *section 41* applies. (1857, s. 149)

(4) A bankrupt whose estate has, in the opinion of the Court, been fully realised shall be entitled to a discharge from bankruptcy when provision has been made for payment of the expenses, fees and costs due in the bankruptcy, as well as the preferential payments, and— (cf. 1872, s. 56)

35 (a) his creditors have received fifty pence or more in the pound, or

(b) he or his friends have paid to his creditors such additional sums as will together with the dividend paid make up fifty pence in the pound, or

40 (c) the bankruptcy has subsisted for twelve years:

provided that in any application under *paragraph (c)* the Court shall be satisfied that all after-acquired property has been disclosed and that it is reasonable and proper to grant the application.

(5) A person shall be entitled to an annulment of his adjudication—

- (1857, s. 129) (a) where he has shown cause pursuant to *section 16*, or
- (b) in any other case where, in the opinion of the Court, he ought not to have been adjudicated bankrupt.
- (New) (6) An order of discharge or annulment shall provide that any property of the bankrupt then vested in the Official Assignee shall be re-vested in or returned to the bankrupt, and that order shall for all purposes be deemed to be a conveyance, assignment or transfer of that property to the bankrupt and, where appropriate, may be registered accordingly. 5
- (cf. 1872, s. 56) (7) A person who is entitled to a discharge or annulment may apply to the Court to obtain a certificate of discharge or annulment, as the case may require, under the seal of the Court. 10
- (8) In this section "bankrupt" includes personal representatives and assigns.
- Surplus. 86.—(1) If the estate of any bankrupt is sufficient to pay one pound in the pound, with such interest as the Court may allow, and to leave a surplus the Court shall order such surplus to be paid or delivered to or vested in the bankrupt, his personal representatives or assigns. 15
(1857, s. 304)
- (2) The order shall for all purposes be deemed to be a conveyance, assignment or transfer of property and, where appropriate, may be registered accordingly. 20

PART IV

ARRANGEMENTS UNDER CONTROL OF COURT

- Petition for protection. 87.—(1) Any debtor unable to meet his engagements with his creditors and wishing to place the state of his affairs before them with a view to making a proposal for the composition of his debts, under the control of the Court, and to subject himself to the jurisdiction of the Court as provided by this Part may present a petition to the Court setting out the reason for his inability to pay his debts and requesting that his person and property may be protected until further order from any action or other process. 25
(1857, s. 343)
- (2) The Court, on such petition, may by order grant such protection and renew the same from time to time as it thinks fit.
- (3) The Court may refuse to grant protection to any debtor who is a member of a partnership, unless all the partners join in the petition. 35
- (1872, s. 62) (4) In this section "process" includes a bankruptcy summons and the registration of an affidavit of a judgment under the Judgment Mortgage (Ireland) Act, 1850.
- (5) While an order for protection is in force a creditor shall not be entitled to register any affidavit referred to in *subsection (4)* and any purported registration shall be of no effect. 40
- (New) (6) If a debtor, at the time of his petition, is in prison by virtue of

section 6 of the Enforcement of Court Orders Act, 1940, the Court, on granting protection, may order his release.

5 **88.**—After an order for protection has been granted and so long as it is in force the arranging debtor shall not, without the prior sanction of the Court, pledge, part with or dispose of his property or any part thereof, save in the ordinary course of trade or business. Restriction on dealing with property. (New)

10 **89.**—(1) An order for protection may be granted notwithstanding that there is an execution order in the hands of a sheriff or county registrar and the order shall operate to protect against execution save as provided by this section. Effect of protection on execution orders. (New)

(2) The order for protection shall not affect an execution order on foot of which the sheriff or county registrar has made a seizure or gone into possession, and in such case the execution creditor may recover such amount of his debt as may be realised by the execution.

15 (3) In any case when the sheriff or county registrar has not made a seizure or gone into possession on foot of an execution order, the order for protection shall protect the debtor from further process in respect thereof and the execution creditor shall be bound by the arrangement.

20 **90.**—On the granting of an order for protection— Procedure on grant of protection. (New)

(a) the Court shall direct the arranging debtor to call a preliminary meeting of his creditors at which meeting the arranging debtor shall present a statement of his assets and liabilities and keep a minute of the proceedings;

25 (b) the Court shall direct a private sitting before the Court (to be held at a date specified in the order) for the purpose of considering his proposal;

(c) the arranging debtor shall deliver forthwith to the Official Assignee a memorandum containing:

- 30 (i) the date of the order for protection,
 (ii) his name and address,
 (iii) the amount of liabilities secured, partly secured and unsecured,
 (iv) the amount of assets,

35 and shall deliver a duplicate of the said memorandum to the Central Office.

91.—The arranging debtor shall file in the Official Assignee's Office at least two days before the private sitting referred to in *section 90*— Filing of statements. (1857, s. 345 in pt.)

40 (a) a statement of affairs in the prescribed form, which shall have endorsed thereon such proposal as he is able to make for the future payment or compromise of the debts or engagements set out therein, and

(b) a copy of the statement submitted at the preliminary meeting

and of the minute of the proceedings with any proposal made thereat or at any adjournment thereof.

Acceptance of proposal.
(1857, s. 346, in pt., s. 348)

92.—(1) (a) If, at the private sitting referred to in *section 90* or any adjournment thereof, three-fifths in number and value of the creditors voting at such sitting either in person or by an agent authorised in writing in that behalf accept the proposal or any modification thereof, it shall be deemed to be accepted by the creditors, subject to the approval of the Court. 5

(1857, s. 347)

(b) If approved by the Court, the proposal or any modification thereof shall be binding on the arranging debtor and on all persons who were creditors at the date of the petition and who had notice of the sitting. 10

(2) A creditor whose debt is less than £100 shall not be entitled to vote. 15

(3) The arranging debtor shall attend the sitting and the Court shall have power to examine him on oath or any witness produced by him or any creditor or person claiming to be a creditor.

(4) The Court may require any person so examined to sign a transcript of his evidence. 20

(1857, ss. 346, 347)

(5) Debts may be proved at the sitting.

Vesting in Official Assignee.

93.—(1) If the proposal provides for the vesting of all or part of the arranging debtor's property in the Official Assignee either as security for an offer or for realisation and distribution, that property shall vest in the Official Assignee, if he consents, in accordance with the terms of the proposal on the approval of the proposal by the Court. 25

(2) Where all or part of the property is vested in the Official Assignee for realisation and distribution, the Official Assignee shall have for that purpose all such powers in relation to the property as he has in a bankruptcy matter. A proposal under which property is so vested is referred to in this Act as a "vesting arrangement". 30

(New)

(3) *Section 46* (which relates to a certificate of vesting) shall apply to property which vests in the Official Assignee under this section.

Distribution of property in vesting arrangement.

(New)

94.—(1) When the Official Assignee has sufficient funds to implement the terms of a vesting arrangement he shall present to the Court for approval a list of creditors admitted by him or by the Court, a copy of the relevant account of the arranging debtor in his books, particulars of expenses, fees, costs, preferential payments and dividend payable to creditors and his report on the realisation of the estate. 35
40

(2) The Court may make such order as it thinks fit for the distribution of the estate or any part thereof by payment of the expenses, fees, costs and preferential payments as well as the relevant dividend.

(3) The report and the account, together with the order of the Court, shall then be filed in the Central Office and shall be open to inspection by each creditor to whom notice of filing has been given in such form as may be prescribed. No fee shall be charged for inspecting the file. 45

(4) If for any reason the estate of the arranging debtor is not fully distributed by such order, second and subsequent distributions shall be made as soon as convenient after the realisation of the residual estate. The procedure shall be the same as for the first distribution.

5 (5) In any case where there are no funds, or in the opinion of the Official Assignee insufficient funds, available for distribution to the creditors, the Court may order the payment of expenses, fees and costs, in that order so far as the funds extend. Where a balance remains, it shall be transferred to the account referred to in *section 84*
10 (1).

95.—(1) Where a proposal has been approved and the Court considers it necessary and desirable so to do, the Court may on the application of the arranging debtor cause a special private sitting to be held.

Special private sitting.

(cf. 1857, ss. 351, 353 in pt.)

15 (2) At this sitting the majority in number and value of the creditors who have proved debts of not less than £100 may confirm, alter or annul the proposal.

(3) If, however, one-third in number and value of such creditors do not attend the sitting, the decision at the sitting shall not be valid
20 unless it is approved by the Court.

96.—A proposal shall be considered to be carried into effect—

Carrying proposal into effect.

(a) in the case of a vesting arrangement, on the approval thereof by the Court, and

(New)

(b) in any other case, at such time as may be prescribed.

25 97.—Where the proposal of an arranging debtor (not being a proposal providing for the vesting of all or part of his property in the Official Assignee for realisation and distribution) has been approved, the arranging debtor shall, within the prescribed period, lodge with the Official Assignee for purposes of distribution the necessary
30 amount to pay expenses, fees, costs and the preferential payments, together with the cash, bills or promissory notes (if any) provided for in the proposal.

Lodgment with Official Assignee.

(New)

35 98.—Where the proposal of the arranging debtor has been carried into effect, the Court shall, on the report of the Official Assignee and in the absence of fraud, grant to the arranging debtor a certificate under the seal of the Court, and the certificate shall operate as a discharge to the arranging debtor from the claims of creditors who received notice of the arrangement.

Certificate of arranging debtor. (New: cf. 1872, s. 64 in pt.)

40 99.—(1) No publication of the affairs of the petitioner or of the proceedings in an arrangement matter shall take place without the sanction of the Court other than the publication in a *bona fide* trade journal of the particulars set out in the documents filed in the Central Office under *section 90*.

Publication in relation to arrangements.

(New)

45 (2) Any person who contravenes *subsection (1)* shall be guilty of an offence.

Taking possession of property by Official Assignee. (cf. 1857, s. 344 in pt.)

100.—The Court may, on the application of the Official Assignee or any creditor, at any time after an order for protection is made (and on sufficient cause shown) direct that the property of the arranging debtor or any part thereof shall be possessed and received by the Official Assignee.

5

Discharge of protection order.

(New)

101.—The Court may, at any time after the private sitting referred to in *section 90*, order that the order for protection be discharged on application to that effect being made by the arranging debtor with the concurrence of every creditor who had notice of the private sitting and whose debt is not less than £100.

10

Surplus.

(cf. 1872, s. 65 in pt.)

102.—(1) Whenever it appears to the Court that there remains vested in or in the possession or control of the Official Assignee any property of an arranging debtor who has obtained the certificate mentioned in *section 98* the Court shall order that it be revested in or returned to, as the case may be, the debtor, his personal representatives or assigns.

15

(2) The order shall for all purposes be deemed to be a conveyance, assignment or transfer of property and, where appropriate, may be registered accordingly.

20

Goods obtained on credit.

(New)

103.—If within fourteen days before an order for protection is made the debtor obtains goods on credit knowing at the time that he will be unable to pay for them the Court, on the application of the creditor, may, if it thinks fit, direct either the return of the goods or payment for them in full.

25

Private sitting for enquiry.

(1857, s. 353 in pt.)

104.—The Court may at any time in an arrangement matter, on the application of the Official Assignee or any person having an interest, appoint a private sitting for enquiry and summon before it the arranging debtor or any other person and examine him upon any matter which the Court considers relevant to the arrangement.

30

Adjudication of arranging debtor.

(New: cf. 1857, s. 353 in pt.)

105.—(1) The Court may, if it thinks fit, adjudicate the debtor bankrupt if—

(a) he does not, in the prescribed manner and within the time specified in *section 91*, file the documents required by that section, or

35

(b) at the private sitting referred to in *section 90* or any adjournment thereof his proposal or any modification thereof is not accepted or approved, or

(c) his proposal is annulled under *section 95 (2)*, or

(d) at any time after the presentation of his petition for arrangement it is shown that the affidavit filed with the petition is wilfully untrue or that he has not made a full disclosure of his property, assets and liabilities, or

40

(e) it appears that he does not wish to make a *bona fide* arrangement with all his creditors, or

45

- (f) his proposal is not reasonable and proper to be executed under the direction of the Court, or
- (g) he does not duly attend the private sitting or any adjournment thereof, or
- 5 (h) he fails to obey any order of the Court affecting him which may be made in the arrangement matter, or
- (i) he is party to any corrupt agreement with his creditors to secure the acceptance of his proposal.

(2) On an adjudication under *subsection (1)* the Court shall proceed
 10 as in bankruptcy and cause notice of the adjudication to be given forthwith in the prescribed manner in *Iris Oifigiúil* and in at least one daily newspaper, and the petitioner shall be subject to the jurisdiction of the Court in the same manner as any other bankrupt, and any
 15 proposal which may have been made or accepted or approved shall be void.

106.—(1) Where two or more members of a partnership obtain the protection of the Court and make proposals to their creditors for the payment or compromise of their joint and several liabilities, the Court shall adjudicate all the members bankrupt if any of the proposals are
 20 not accepted. Partners obtaining protection of the Court.
(New)

(2) On an adjudication under *subsection (1)* the Court shall proceed as in bankruptcy and cause notice of the adjudication to be given forthwith in the prescribed manner in *Iris Oifigiúil* and in at least one daily newspaper, and the petitioner shall be subject to the jurisdiction
 25 of the Court in the same manner as any other bankrupt, and any proposal which may have been made or accepted or approved shall be void.

107.—The procedure for summoning witnesses in an arrangement matter shall be the same as in bankruptcy and the Court shall have
 30 similar powers of enforcing their attendance. Summoning witnesses.
(1857, s. 353 in pt.)

108.—(1) A register shall be maintained in the Central Office for the filing of memoranda delivered to that office under *section 90*. Registration of arrangements.
(New: cf. 1887, c. 57, s. 7; 1890, c. 24, s. 2)

(2) Rules of court may provide for matters ancillary to the keeping of the register.

35 **109.**—The Deeds of Arrangement Act, 1887, shall not apply to an arrangement under this Part. Exclusion of Deeds of Arrangement Act, 1887.
(New)

PART V

ESTATES OF PERSONS DYING INSOLVENT

110.—(1) A petition for the administration under this Part of the
 40 estate of a deceased person may be presented to the Court by— Petition to administer in bankruptcy estate of person dying insolvent.
(New)

(a) any creditor whose debt would have been sufficient to support a bankruptcy petition against the deceased if he had been alive, or

(b) the personal representative of the deceased.

(2) Where the petition is presented by a creditor, notice thereof shall be served on the personal representative of the deceased.

(3) Where there is no known personal representative, the Court may direct service on such person and in such manner as it thinks fit or may dispense with service. 5

(4) A petition for administration under this Part shall not be presented to the Court after proceedings have been commenced in the Circuit Court for the administration of the deceased's estate, but that court may, when satisfied that the estate is insufficient to pay the debts, transfer the proceedings to the Court, and thereupon the Court may make an order for the administration under this Part of the deceased's estate. 10

Effect on personal representative of service of notice of petition.

(New)

111.—(1) After service on the personal representative of notice of the presentation of a petition, no payment or transfer of property made by the personal representative shall operate as a discharge to him as between himself and the Official Assignee. 15

(2) Except as aforesaid, nothing in this Part shall invalidate any payment made or any act or thing done in good faith by the personal representative before the date of the order for the administration under this Part of the deceased's estate. 20

Order for administration under Part V.

(New)

112.—(1) On presentation of a petition the Court may, unless it appears that there is a reasonable probability that the estate will be sufficient for the payment of the deceased's debts, make an order for the administration under this Part of the deceased's estate or may, upon cause shown, dismiss the petition with or without costs. 25

(2) Where the petition is presented by a creditor, he shall prove his debt to the Court before an order is made.

(3) An order may be made under this section notwithstanding that there is no known personal representative of the deceased. 30

Vesting and distribution.

(New)

113.—(1) Upon an order being made for the administration under this Part of the deceased's estate, his property shall vest in the Official Assignee for realisation and distribution.

(2) *Section 46* (which relates to a certificate of vesting) shall apply to property which vests in the Official Assignee under this section. 35

Priority of funeral and testamentary expenses.

(New)

114.—In the administration under this Part of the deceased's estate, the proper funeral and testamentary expenses incurred shall, notwithstanding anything to the contrary in this or any other enactment, be payable in full in priority to all other payments.

Application of Act.

(New)

115.—The provisions of this Act shall, so far as they are applicable and with appropriate modifications, apply in the case of an order for administration under this Part as they apply in the case of an order of adjudication except that *sections 50, 57, 58 and 59* shall not apply. 40

116.—(1) Where, on the administration under this Part of the deceased's estate, any property remains vested in, or in the possession or control of the Official Assignee after providing for the expenses, fees and costs, together with the debts and liabilities and such interest as the Court may allow, the Court shall order the property to be paid or delivered to or vested in the personal representative of the deceased or, if there is no personal representative, in such manner as the Court may direct.

Surplus.

(New)

(2) The order shall for all purposes be deemed to be a conveyance, assignment or transfer of property and, where appropriate, may be registered accordingly.

117.—Where an order is made for administration under this Part, the right of retainer of a personal representative shall not be exercisable but he may prove any debt due to him which would otherwise be provable.

Right of retainer restricted.

(cf. 27/1965, s. 46)

PART VI

OFFENCES

118.—(1) Subject to *subsection (2)*, if a bankrupt or arranging debtor—

Punishment of fraudulent debtors.

(1872, c. 57, s. 11;
33/1963, s. 293)

(a) fails to disclose to the Court, or to the Official Assignee or to such person or persons as the Court from time to time directs, all his property 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, or

(b) fails to deliver up to the Official Assignee, or as he or the Court directs, all such part of his property as is in his possession or under his control, and which he is required by law to deliver up, or

(c) fails to deliver up to the Official Assignee, or as he or the Court directs, all books and papers in his possession or under his control relating to his estate and which he is required by law to deliver up, or

(d) conceals any part of his property to the value of £500 or upwards, or conceals any debt due to or from him, or

(e) fraudulently removes any part of his property to the value of £500 or upwards, or

(f) makes any material omission in any statement relating to his affairs, or

(g) knowing or believing that a false debt has been proved by any person under the bankruptcy or arrangement, fails for the period of a month to inform the Official Assignee thereof, or

(h) prevents the production of any book or paper affecting or relating to his estate, or

- (i) conceals, destroys, mutilates or falsifies or is privy to the concealment, destruction, mutilation or falsification of any book or paper affecting or relating to his estate, or
- (j) makes or is privy to the making of any false entry in any book or paper affecting or relating to his estate, or 5
- (k) fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to his estate, or
- (l) attempts to account for any part of his property by fictitious losses or expenses, or 10
- (m) obtains, by any fraud or false representation, any property on credit, or
- (n) obtains, under the false pretence of carrying on business and, if a trader, of dealing in the ordinary way of his trade, any property on credit, or 15
- (o) pawns, pledges or disposes of any property which he has obtained on credit, unless, in the case of a trader, such pawning, pledging or disposing is in the ordinary way of his trade, or 20
- (p) is guilty of any fraud or false representation for the purpose of obtaining the consent of his creditors or any of them to an agreement with reference to his affairs or the bankruptcy or arrangement;
- he shall be guilty of an offence. 25
- (2) It shall be a good defence to a charge under any of *paragraphs (a), (b), (c), (d), (f), (n) and (o) of subsection (1)* if the accused proves that he had no intent to defraud and to a charge under any of *paragraphs (h), (i) and (j) of that subsection* if he proves that he had no intent to conceal the state of his affairs or to defeat the law. 30
- (3) (a) A person (other than a bankrupt or arranging debtor) who, with intent to defraud his creditors, does any of the acts mentioned in *paragraphs (e), (i), (j), (k), (l), (m), (n) or (o) of subsection (1)*, shall be guilty of an offence and for this purpose references in *paragraphs (e) or (k) to an act* which is fraudulent or is committed fraudulently shall be construed as references to an act done with intent to defraud creditors. 35
- (b) Where a person referred to in *paragraph (a) of this subsection* does an act therein specified within twelve months next before he is adjudicated or granted an order for protection, it shall be presumed until the contrary is proved that the act was done with intent to defraud his creditors. 40
- (4) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under *paragraph (o) of subsection (1) or under subsection (3)*, 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 as aforesaid shall also be guilty of an offence and shall be liable to be punished in the same way as if he had been guilty of an offence under the said *paragraph (o) or subsection (3)*. 50

- 119.—If any person with intent to defraud his creditors leaves the State and takes with him, or attempts or makes preparation to leave the State and take with him, any part of his property to the amount of £500 or upwards, he shall be guilty of an offence. Absconding debtor.
(1872, c. 57, s. 12)
- 5 120.—If any creditor of a bankrupt or an arranging debtor obtains or accepts any property from the bankrupt or arranging debtor or any other person as an inducement for forbearing to oppose or for accepting any offer of composition or proposal or any modification thereof made by or on behalf of the bankrupt or arranging debtor, the claim
10 of the creditor shall be void and irrecoverable and the creditor and such other person (if any) shall each be guilty of an offence. Corrupt agreement
with creditors.

(cf. 1857, s. 150 in
pt.; 1872, s. 76)
- 15 121.—If any creditor, or any person claiming to be a creditor, in any bankruptcy or arrangement with intent to defraud makes any false claim or any proof, declaration or statement of account which is untrue in any material particular, he shall be guilty of an offence. False claim.
(1872, c. 57, s. 14)
- 122.—A bankrupt who fails to disclose to the Official Assignee any after-acquired property shall be guilty of an offence. Non-disclosure of
after-acquired
property.
(New)
- 20 123.—Any person who knowingly and wilfully resists, hinders or obstructs the Bankruptcy Inspector or any of his assistants or any other person in the execution of his duties under this Act shall be guilty of an offence. Obstructing officers.
(cf. 1857, s. 389)
- 25 124.—A bankrupt or an arranging debtor who—
 (a) either alone or jointly with any other person obtains credit to the extent of £500 or upwards from any person without informing that person that he is a bankrupt or an arranging debtor, or
 (b) engages in any trade or business under a name other than that under which he was adjudicated bankrupt or granted protection without disclosing to all persons with whom he enters into any business transactions the name under which he was so adjudicated or granted protection,
30 shall be guilty of an offence. Obtaining credit or
trading under other
name.
(New)
- 35 125.—Any person who wilfully inserts or causes any advertisement under this Act to be inserted in *Iris Oifigiúil* or in any newspaper without authority under this Act, or knowing the same to be false in any material particular, shall be guilty of an offence. Inserting
advertisement
without authority.
(1857, s. 396)
- 40 126.—Where a bankrupt or arranging debtor has been guilty of any offence, he shall not be exempt from being proceeded against for the offence by reason that his bankruptcy has been discharged or annulled or that his proposal has been carried into effect. Criminal liability
after annulment.
(New)
- 127.—(1) Every person guilty of an offence under this Act shall be liable— Punishment of
offences.
(New)

- (a) on summary conviction, to a fine not exceeding £500 or, at the discretion of the Court, to imprisonment for a term not exceeding twelve months or to both the fine and the imprisonment, or
- (b) on conviction on indictment, to a fine not exceeding £1,000 or, at the discretion of the Court, to imprisonment for a term not exceeding five years or to both the fine and the imprisonment.

(2) Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to an offence under this Act as if, in lieu of the penalties provided for in subsection (3) of the said section, there were specified therein the penalties provided for in subsection (1) (a) of this section, and the reference in subsection (2) (a) of the said section 13 to the penalties provided for in the said subsection (3) shall be construed and have effect accordingly.

PART VII

MISCELLANEOUS

- | | | |
|--|--|------------------|
| <p>Limitation of actions.
(New)</p> | <p>128.—The Official Assignee shall not be a trustee for the purposes of the Statute of Limitations, 1957.</p> | <p>15</p> |
| <p>Proceedings in private.
(cf. 1857, s. 354 in pt.)</p> | <p>129.—The Court may direct that the whole or any part of any sitting of the Court or proceeding in any matter under this Act shall be in private.</p> | <p>20</p> |
| <p>Power of Court to review its orders.
(cf. 1872, s. 6; 1897, ss.3, 4)</p> | <p>130.—The Court may review, rescind or vary an order made by it in the course of a bankruptcy matter other than an order of discharge or annulment.</p> | <p>25</p> |
| <p>Effect of adjudication on creditors' remedies.
(cf. 1857, s. 262; 1872, s. 68 in pt.)</p> | <p>131.—(1) On the making of an order of adjudication, a creditor to whom the bankrupt is indebted for any debt provable in bankruptcy shall not have any remedy against the property or person of the bankrupt in respect of the debt apart from his rights under this Act, and he shall not commence any proceedings in respect of such debt unless with the leave of the Court and on such terms as the Court may impose.</p> <p>(2) This section shall not affect the power of a 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.</p> | <p>30
35</p> |
| <p>Power to stay or restrain proceedings against bankrupt.
(New: cf. 33/1963, s. 217)</p> | <p>132.—(1) The Official Assignee may—</p> <ul style="list-style-type: none"> (a) where any proceedings against the bankrupt are pending in the High Court or on appeal in the Supreme Court, apply to the court in which the proceedings are pending for a stay of proceedings therein, and (b) where any other proceedings are pending against the bankrupt, apply to the High Court to restrain further proceedings therein, | <p>40</p> |

and the court to which the application is made may grant the application on such terms and for such period as it thinks fit.

5 (2) Where any proceedings against a bankrupt are stayed or restrained in pursuance of *subsection (1)*, the following provisions shall have effect: (cf. 1857, s. 262 in pt.)

(a) the creditor shall not be liable for any costs incurred by the bankrupt or the Official Assignee in such proceedings;

10 (b) if the proceedings have been instituted against the bankrupt jointly with any other person, the proceedings against that other person shall not thereby be affected.

133.—(1) The Court may, upon giving notice to such persons as it may direct, make such orders and give such directions as it thinks proper for winding up and settling the affairs of any partnership or the estate of a deceased person in which the bankrupt has an interest. (New) Winding up of partnerships and deceaseds' estates.

15 (2) All consequential accounts and enquiries shall be taken and made in such office of the Court as the Court may direct.

134.—No distress shall be levied on the goods of a bankrupt or an arranging debtor after the date of the adjudication or order for protection. (New) Prohibition on distress after adjudication or protection.

20 135.—In the case of the death of any witness who has made a deposition in any proceeding under this Act the deposition, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be evidence of the matters therein deposed to. (1857, s. 365) Evidence of deceased person.

25 136.—A notice published pursuant to this Act in *Iris Oifigiúil* or in any newspaper shall be evidence of the matters contained in the notice. (cf. 1857, ss. 358, 364) Notice in *Iris Oifigiúil* or newspaper.

30 137.—(1) The Court and its officers may act in aid of any court in Northern Ireland, England and Wales, Scotland, the Isle of Man or the Channel Islands, and its officers respectively, at the request of such court, in any bankruptcy matter before such court, and the Court and its officers so acting shall have the like jurisdiction and authority as in the case of a bankruptcy originating under an order of the Court. (1872, s. 71) Acting in aid of other courts.

35 (2) (a) The Government may by order apply *subsection (1)* in relation to any other jurisdiction where the Government are satisfied that reciprocal facilities to that effect will be afforded by that jurisdiction.

(b) An order under this subsection may be made subject to such conditions, exceptions and qualifications as may be specified in the order.

40 (c) The Government may by order amend or revoke an order under this subsection.

(d) An order under this subsection shall have the force of law in accordance with its terms.

45 (e) On the revocation of an order applying *subsection (1)* in relation to any jurisdiction, that subsection shall cease to apply in relation to that jurisdiction.

(f) Every order under this subsection shall be published in *Iris Oifigiúil* as soon as may be.

Alteration of
monetary limits.
(New)

138.—The Minister may by order increase or reduce any of the sums specified in *sections 8 (1) (a) and (2), 11 (1) (a), 15, 39 (4), 45 (1), 61 (3) (h) and (k), 81 (1) (b) and (c), 92 (2), 95 (2), and 101*, but such an order shall not affect any case in which a person was adjudicated bankrupt or granted protection before it came into force. 5

Laying of orders
before Houses of
Oireachtas.

(New)

139.—Every order made under *section 137 (2) or 138* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either House within the next twenty-one days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 10

Section 76.

FIRST SCHEDULE

15

PROOF OF DEBTS

General

(New)

1. Every creditor shall prove his debt and a creditor who does not do so is not entitled to share in any distribution that may be made.

2. (a) A creditor may prove his debt by delivering or sending by post to the Official Assignee particulars of his debt (in this Schedule referred to as a "proof of debt"). 20

(b) *Subparagraph (a)* is without prejudice to the entitlement of a creditor to prove his debt at a sitting of the Court.

3. The Official Assignee may fix a time within which proofs of debt shall be sent to him. A proof submitted thereafter shall not be allowed except by order of the Court. 25

4. Proof of debt may be furnished by way of a detailed statement of account, an affidavit of debt or other prescribed means.

5. The creditor shall specify the vouchers or any other evidence by which the debt can be substantiated. He shall also give particulars of any counterclaim that, to his knowledge, the bankrupt or arranging debtor may have, and he shall indicate whether or not he is a secured creditor. 30

6. Proof of debt in respect of money lent by a moneylender shall have annexed thereto the particulars required by section 16 (2) of the Moneylenders Act, 1933. 35

7. An affidavit shall be required in any case where the debt is disputed or the Court or the Official Assignee thinks fit.

(1857, s. 246)

8. Proof of debt may be given by the oath or affidavit of the creditor himself or by the oath or affidavit of some person authorised by or on behalf of the creditor and, if made by a person so authorised, shall state his authority and means of knowledge. 40

9. Subject to *paragraph 24 (5)*, a creditor may, with the consent of the Official Assignee, amend his proof of debt. 45

10. Every creditor who has lodged a proof of debt is entitled to see and examine the proofs of other creditors.

11. A husband and wife may prove a debt against each other as if they were not married.

5 12. A sole trustee (including a personal representative) who is a (New)
bankrupt or an arranging debtor shall be entitled, without leave of
the Court, to prove in his own bankruptcy or arrangement in respect
of a debt due from him to the trust estate. Any dividend in respect of
such a debt shall be paid to the Accountant of the High Court for
10 credit of the trust estate.

13. If any bankrupt or arranging debtor, at the date of the adju- (1872, s. 48)
dication or order for protection, is liable in respect of distinct con-
tracts, as a member of two or more distinct firms, or as a sole
contractor, and also as member of a firm, the circumstance that such
15 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 such contracts against the properties
respectively liable upon such contracts.

14. On any debt or sum certain, payable at a certain time or (cf. 1857, s. 260)
20 otherwise, whereon interest is not reserved or agreed for, and which
is overdue at the date of the adjudication, the creditor may prove for
interest at a rate not exceeding 6 per cent. per annum to that date
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
25 payable otherwise, then from the time when a demand in writing has
been made, giving notice that interest will be claimed from the date
of the demand until the time of payment.

15. In respect of debts due after the adjudication or order for (cf. 1857, s. 252)
30 protection, the liability for which existed at the date of such adju-
dication or order for protection, a creditor may prove for the value of
the debt at that date.

16. Where a person who is liable to make any periodical payment
(including rent) is adjudicated bankrupt or is granted an order for
protection on a day other than the day on which such payment
35 becomes due, the person entitled to the payment may prove for a
proportionate part of the payment for the period from the date when
the last payment became due to the date of the adjudication or order
for protection as if the payment accrued due from day to day.

17. (1) Where there are mutual credits or debts as between a (1857, s. 251)
40 bankrupt and any person claiming as a creditor, one debt or demand
may be set off against the other and only the balance found owing
shall be recoverable on one side or the other.

(2) Section 36 of the Civil Liability Act, 1961 (which provides for
the set-off of claims), as amended by section 5 of the Civil Liability
45 (Amendment) Act, 1964, shall apply with the substitution in section
36 (3) of a reference to *subparagraph (1)* for the reference to section
251 of the Irish Bankrupt and Insolvent Act, 1857.

18. This Schedule is without prejudice to section 61 of the Civil
50 Liability Act, 1961 (which provides for proof of claims for damages
or contribution in respect of a wrong) and section 62 of the said Act
(which provides for the application of moneys payable under certain
policies of insurance where the insured becomes a bankrupt).

19. A creditor shall, unless the Court otherwise orders, bear his
own costs of proving a debt.

(1857, s. 246)

20. Any person seeking to prove a debt or from whom additional proof is required, or any other person, may be examined by the Court in relation thereto.

21. Where a creditor or other person with intent to defraud makes any false claim or any proof, declaration or statement of account before the Court or in his affidavit which is untrue in any material particular in connection with the proof of debts, the Court may, in addition to any other penalty provided in this Act, disallow the claim in whole or in part. 5

22. Before deciding on a claim, the Official Assignee may require a creditor to furnish additional information or proof or to attend before him. 10

23. The Official Assignee shall deal in the following manner with claims:

(a) He shall prepare a list certified by him of the claims. 15

(b) This list shall record—

(i) the claims allowed by him, which shall be deemed to be admitted, and

(ii) the claims either disallowed by him or which he considers should not be admitted without reference to the Court. 20

(c) He shall refer disputed debts to the Court for adjudication.

(d) The decision of the Official Assignee in regard to a claim shall be confirmed in writing to the creditor.

(e) Any person aggrieved by the decision of the Official Assignee may appeal to the Court. 25

(f) The Official Assignee shall place a copy of the list on the Court file.

(g) The list shall be open to public inspection on payment of a prescribed fee but no fee shall be charged to creditors inspecting the list. 30

Secured Creditors

(1872, s. 21)

24. (1) If a secured creditor realises his security, he may prove for the balance due to him after deducting the net amount realised and receive dividends thereon but not so as to disturb any dividend then already declared. If he surrenders his security for the general benefit of the creditors, he may prove for his whole debt. 35

(2) 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 on which it was given and the value at which he assesses it, and he shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed. 40

(3) A secured creditor shall not be entitled to surrender his security after the time fixed by the Official Assignee for receipt of proofs of debt, except by order of the Court. 45

5 (4) (a) Where a security is valued by the creditor, the Official Assignee may at any time redeem it on payment to the creditor of the assessed value. If the Official Assignee is dissatisfied with the assessed value he may require that the property comprised in any security so valued be offered for sale at such time and on such terms and conditions as may be agreed upon between him and the creditor or, in default of agreement, as the Court may direct. If the sale be by public auction the creditor, or the Official Assignee on behalf of the estate, may bid or purchase.

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

25 (5) Where a creditor has valued his security he may at any time amend the valuation and proof on showing to the satisfaction of the Official Assignee, or the Court, that the valuation and proof were made *bona fide* on a mistaken estimate, 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 Assignee allows the amendment without application to the Court.

30 (6) Where a valuation has been amended in accordance with *sub-paragraph (5)*, 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 has not received 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.

40 (7) If a creditor having valued his security subsequently realises it, or if it is realised under the provisions of *subparagraph (4)*, the net amount realised shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

45 (8) 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, such creditor shall surrender his security to the Official Assignee for the general benefit of the creditors unless the Court on application otherwise orders, and the Court may allow the affidavit to be amended upon such terms as to repayment of any dividend or otherwise as the Court may consider just.

(9) If a secured creditor does not comply with *subparagraph (8)*, he shall be excluded from all share in any dividend.

55 (10) Subject to the provisions of *subparagraph (4)*, the creditor shall in no case receive more than one pound in the pound and interest, where the creditor is entitled to prove for interest.

(11) Where a mortgagee holds as security a policy of assurance on the life of a bankrupt or an arranging debtor which in the event of the non-payment of premiums provides for their automatic discharge out of moneys payable under the policy, the value of the policy for the purpose of proving in the bankruptcy or arrangement shall be taken to be not less than the value as at the date of adjudication or order for protection; provided that, if the bankrupt or arranging debtor dies before the policy is surrendered, the mortgagee may apply to the Court for the purpose of revaluing his security.

Section 6.

SECOND SCHEDULE

REPEALS

Session and Chapter or Year and Number	Short Title	Extent of Repeal
20 and 21 Vict. c. 60	Irish Bankrupt and Insolvent Act, 1857	The whole Act*
35 and 36 Vict. c. 57	Debtors Act (Ireland), 1872	Sections 11 and 12, and 14 to 22
35 and 36 Vict. c. 58	Bankruptcy (Ireland) Amendment Act, 1872	The whole Act
51 and 52 Vict. c. 44	Local Bankruptcy (Ireland) Act, 1888	The whole Act
52 and 53 Vict. c. 60	Preferential Payments in Bankruptcy (Ireland) Act, 1889	The whole Act
53 and 54 Vict. c. 24	Deeds of Arrangement Amendment Act, 1890	The whole Act
1926, No. 27	Court Officers Act, 1926	Section 12
1937, No. 3	Circuit Court (Registration of Judgments) Act, 1937	Section 3
1946, No. 16	Hire-Purchase Act, 1946	Section 17 (1) so far as it refers to section 313 of the Irish Bankrupt and Insolvent Act, 1857
1947, No. 14	Agricultural Credit Act, 1947	Section 32 (3)
1954, No. 26	Arbitration Act, 1954	In section 11: in subsection (1) the words from "and includes" to the end of the subsection; in subsection (2) the words "or trustee in bankruptcy"; in subsection (3) the words from "or, with the consent" to "trustee in bankruptcy"
1961, No. 39	Courts (Supplemental Provisions) Act, 1961	In section 23: subsection (3) and the reference to the Cork Local Bankruptcy Court in subsections (4), (5) and (6)
1963, No. 33	Companies Act, 1963	Section 284 (2) In section 286 (1), the words "the presentation of a bankruptcy petition on which" Section 345 (8)
1971, No. 24	Central Bank Act, 1971	Section 28 (2)
1981, No. 11	Courts Act, 1981	Section 26

ARTICLE I

SECTION 1

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for a Term of six Years; and each Senator shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

Section 4. The Times, Places and Manner of holding the Elections of Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law alter or add to the Rules regulating the same.

Section 5. The Congress shall assemble at least once in every Year, and such Meeting shall begin at Noon on the first Monday in December, unless they shall by Law provide otherwise.

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do chomhdhlúthú maille le leasuithe an dlí a bhaineann le féimheacht agus do dhéanamh socrú i dtaobh nithe gaolmhara.

BILL

(as initiated)

entitled

An Act to consolidate with amendments the law relating to bankruptcy and to provide for related matters.

*An tAire Dlí agus Cirt a thíolaic,
6 Iúil, 1982*

*Presented by the Minister for Justice,
6th July, 1982*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ón Oifig Dhíolta Foilseachán Rialtais, An Stuaara, Ard Oifig an Phoist, Baile Átha Cliath, nó trí aon díoltóir leabhar.

Clóbhuailte ag CAHILL PRINTERS LIMITED.

£1.35

Wt.134478/F/7. 1,325. 7/82. Cahill. (6924). G.16.

DUBLIN:
PUBLISHED BY THE STATIONERY OFFICE

To be purchased through any bookseller, or directly from the Government Publications Sale Office, G.P.O. Arcade, Dublin.

Printed by CAHILL PRINTERS LIMITED.

£1.35