

NO INTEREST

EXTRAORDINARY



25
BUITENGEWONE

THE UNION OF SOUTH AFRICA
Government Gazette

Staatskoerant
VAN DIE UNIE VAN SUID-AFRIKA

PUBLISHED BY AUTHORITY

UITGEGEE OP GESAG

Vol. CIII.]

PRICE 6d.

CAPE TOWN, 20TH JANUARY, 1936.
KAAPSTAD, 20 JANUARIE 1936.

PRYS 6d.

[No. 2325.]

The undermentioned Bill, which will be introduced into Parliament during its coming session, is hereby published for general information. The Bill is a consolidation of the provisions of the existing Insolvency Law, amended in accordance with the views of a select Committee of the House of Assembly, which considered the matter at length during the last session of Parliament.

Insolvency Bill, 1936

PAGE

.. .. . ii

Die onderstaande Wetsontwerp wat gedurende die aanstaande sessie by die Parlement ingedien sal word, word hiermee vir algemene inligting gepubliseer. Die Wetsontwerp is 'n samevatting van die bepalinge van die bestaande Insolvensiewet, gewysig ooreenkomstig die sienswyse van 'n Gekose Komitee van die Volksraad wat die saak gedurende die laaste Parlementsitting grondig oorweeg het.

Insolvensiewetsontwerp, 1936

BLADSY

.. .. . iii

BILL

To consolidate and amend the law relating to insolvent persons and to their estates.

(To be introduced by the MINISTER OF JUSTICE).

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

Repeal of laws.

1. The Insolvency Act, 1916 (Act No. 32 of 1916), the Insolvency Act, 1916, Amendment Act, 1926 (Act No. 29 of 1926) (except the title and preamble thereof and sections *one, seventy-one, seventy-two and seventy-four* thereof) and section *twenty* of the Land Bank Amendment Act, 1934 (Act No. 58 of 1934) are hereby repealed; provided that if an estate was sequestrated or assigned before the commencement of this Act the sequestration or assignment and all proceedings in connection therewith shall be completed, and a person whose estate was sequestrated or assigned before such commencement and any matter relating to such sequestration, assignment or person shall be dealt with as if this Act had not been passed; and provided further that if, before the said commencement, any action was taken under the said Act No. 16 of 1932 with a view to the surrender or sequestration of an estate but the surrender or sequestration was not effected before the said commencement, such action shall, after such commencement, be deemed to have been taken under this Act, in so far as this Act makes provision therefor.

Definitions.

2. In this Act unless inconsistent with the context—

“account”, in relation to a trustee, means a liquidation account or a plan of distribution or of contribution, or any supplementary liquidation account or plan of distribution or contribution, as the case may require;

“Court” or “the Court”, in relation to any matter, means the provincial or local division of the Supreme Court which has jurisdiction in that matter or any judge of that division; and in relation to any offence under this Act or in section *eight, twenty-six, twenty-nine, thirty, thirty-one, thirty-two, seventy-two, seventy-three, seventy-six, seventy-eight* or *one hundred and forty-five* the expression “Court” or “the Court” includes a magistrate's court which has jurisdiction in regard to the offence or matter in question;

“debtor”, in connection with the sequestration of the debtor's estate, means a person who, or a partnership or the estate of a person or partnership which is a debtor in the usual sense of the word, except a body corporate or a company or other association of persons which may be placed in liquidation under the law relating to companies;

“disposition” means any transfer or abandonment of rights to property and includes a sale, lease, mortgage, pledge, delivery, payment, release, compromise, donation or any contract therefor, but does not include a disposition in compliance with an order of the Court;

“free residue”, in relation to an insolvent estate, means that portion of the estate which is not subject to any right of preference by reason of any special mortgage, legal hypothec, pledge or right of retention; provided that for the purpose of this definition the expression “special mortgage” includes a notarial bond passed and registered in terms of section *one* of the Notarial Bonds (Natal) Act, 1932 (Act No. 18 of 1932) but does not include any other notarial bond which was executed after the first day of October, 1926, and

WETSONTWERP

Tot samevatting en wysiging van die wette op insolvente persone en op hulle boedels.

(Ingedien te word deur die MINISTER VAN JUSTISIE.)

DIT WORD BEPAAL deur Sy Majesteit die Koning, die Senaat en die Volksraad van die Unie van Suid-Afrika, as volg:—

1. Die „Insolventiewet, 1916” (Wet No. 32 van 1916), Wetsherroeping.
 5 die „Insolventiewet, 1916, Wijzigingswet, 1926” (Wet No. 29 van 1926) (behalwe die titel en die aanhef en artikels *een, een-en-twintig, twee-en-sewentig* en *vier-en-sewentig* daarvan) en artikel *twintig* van die Landbank-wysigingswet, 1934 (Wet No. 58 van 1934) word hiermee herroep: Met dien verstande
 10 dat as 'n boedel voor die invoering van hierdie Wet gesekwestreer of afgestaan is, dan word die sekwestrasie of boedelafstand en alle verrigtings in verband daarmee voltooi en word met 'n persoon wie se boedel voor daardie invoering gesekwestreer of afgestaan is en met alle sake in verband met bedoelde sekwestrasie, boedelafstand of persoon gehandel asof hierdie
 15 Wet nie ingevoer was nie; en met dien verstande voorts dat as voor bedoelde invoering stappe gedaan is kragtens voormelde Wet No. 32 van 1916, tot oorgawe of sekwestrasie van 'n boedel, maar die oorgawe of sekwestrasie nie voor bedoelde invoering
 20 bewerkstellig is nie, daardie stappe na bedoelde invoering geag word kragtens hierdie Wet gedaan te wees, vir sover as wat hierdie Wet daarvoor voorsiening maak.
2. Tensy uit die samehang anders blyk, het onderstaande Woordomskrywing.
 uitdrukkings in hierdie Wet die volgende betekenisse:
 25 „rekening”, met betrekking tot 'n kurator, beteken na gelang van die geval 'n likwidasierekening of 'n distribusierekening of 'n kontribusierekening of 'n aanvullende likwidasierekening of distribusierekening of kontribusierekening;
 30 „Hof” of „die Hof”, met betrekking tot een of ander aangeleentheid, beteken die provinsiale of plaaslike afdeling van die Hooggeregshof wat kragtens artikel *honderd-sewe-en-veertig* of *honderd nege-en-veertig* in daardie aangeleentheid bevoeg is, of 'n regter van
 35 daardie afdeling; en met betrekking tot 'n misdryf volgens hierdie Wet of in artikel *agt, ses-en-twintig, nege-en-twintig, dertig, een-en-dertig, twee-en-dertig, twee-en-sewentig, drie-en-sewentig, ses-en-sewentig, agt-en-sewentig* of *honderd-vyf-en-veertig* omvat die uitdrukking „Hof” of „die Hof” 'n magistratshof wat
 40 ten opsigte van die betrokke misdryf of aangeleentheid bevoeg is;
 „skuldenaar”, in verband met die sekwestrasie van 'n skuldenaar se boedel, beteken 'n persoon of vennootskap of die boedel van 'n persoon of vennootskap wat
 45 'n skuldenaar volgens die gewone betekenis van die woord is, met uitsondering van 'n maatskappy of ander vereniging van persone wat kragtens die Wet op maatskappye gelikwedeer kan word;
 50 „vervreemding” of „vervreem” beteken 'n oordrag of afstand van regte op goed en omvat 'n verkoop, huur, verband, pand, lewering, betaling, kwytskelding, skikking, skenking of 'n kontrak in die sin, maar omvat nie 'n vervreemding tot voldoening aan 'n
 55 order van die Hof nie;
 „vrye oorskot”, met betrekking tot 'n insolvente boedel, beteken daardie deel van die boedel wat nie aan 'n preferente reg onderhewig is nie op grond van 'n spesiale verband, stilswygende hipoteek, pand of
 60 retensiereg: Met dien verstande dat by die toepassing van hierdie omskrywing die uitdrukking „spesiale verband”, wel insluit 'n notariële verband, wat volgens artikel *een* van die Wet op Notariële Verbande (Natal) 1932 (Wet No. 18 van 1932), gepasseer en
 65 geregistreer is, maar nie insluit nie 'n ander notariële verband wat na die eerste dag van Oktober 1926

which purports to pledge as security for a debt, movable property which has not been delivered to and retained by the pledgee;

"good faith", in relation to the disposition of property, means the absence of any intention to prejudice creditors in obtaining payment of their claims or to prefer one creditor above another;

"immovable property" means land and every right or interest in land or minerals which is registrable in any office in the Union intended for the registration of title to land or the right to mine;

"insolvent" when used as a noun, means a debtor whose estate is under sequestration and includes such a debtor before the sequestration of his estate, according to the context;

"insolvent estate" means an estate under sequestration;

"magistrate" includes an additional magistrate and an assistant magistrate;

"Master" in relation to any matter, means the Master of the Supreme Court within whose area of jurisdiction that matter is to be dealt with and includes an Assistant Master;

"messenger" means a messenger of a magistrate's court and includes a deputy-messenger;

"movable property" means every kind of property and every right or interest which is not immovable property;

"preference", in relation to any claim against an estate under sequestration, means the right to payment of that claim out of the assets of the estate in preference to other claims; and "preferent" has a corresponding meaning;

"property" means movable or immovable property wherever situate within the Union, and includes contingent interests in property;

"security", in relation to the claim of a creditor of an insolvent estate, means property of that estate over which the creditor has a preferent right by virtue of any special mortgage, landlord's legal hypothec, pledge or right of retention, but does not include property over which the creditor has, or claims to have, a preferent right by virtue of a mortgage or pledge of all the assets of the estate or of all the assets of any business belonging to the estate;

"sequestration order" means any order of Court whereby an estate is sequestrated and includes a provisional order, when it has not been set aside;

"sheriff" includes a deputy sheriff;

"trader" means any person (other than a person carrying on farming operations as his sole or principal means of livelihood) who carries on any trade, business, industry or undertaking in which property is sold, or is bought, exchanged or manufactured for purpose of sale or exchange, or in which building operations of whatever nature are performed, or an object whereof is public entertainment, or who carries on the business of an hotel keeper or boarding-house keeper, or who acts as a broker or agent of any person in the sale or purchase of any property or in the letting or hiring of immovable property; and any person shall be deemed to be a trader for the purpose of this Act (except for the purposes of sub-section (10) of section *twenty-one*) unless it is proved that he is not a trader as hereinbefore defined.

"trustee" means the trustee of an estate under sequestration, and includes a provisional trustee.

Petition for acceptance of surrender of estate.

3. (1) An insolvent debtor or his agent or a person entrusted with the administration of the estate of a deceased insolvent debtor or of an insolvent debtor who is incapable of managing his own affairs, may petition the Court for the acceptance of the surrender of the debtor's estate for the benefit of his creditors.

(2) All the members of a partnership (other than partners en commandite or special partners as defined in the Special Partnerships Limited Liability Act, 1861 (Act No. 24 of 1861) of the Cape of Good Hope or in Law No. 1 of 1865 of Natal) who reside in the Union, or their agent, may petition the Court for the acceptance of the surrender of the estate of the partnership and of the estate of each such member.

- verly is en luidens sy inhoud as sekuriteit vir 'n skuld verpand roerende goed wat nie aan die pandhouer oorhandig is en deur hom in besit gehou word nie ;
- 5 „te goeder trou”, met betrekking tot die vervreemding van goed, beteken sonder bedoeling om skuldeisers by die verkryging van betaling van hulle vorderings te kort te doen of om een skuldeiser bo 'n ander voor te trek ;
- 10 „onroerende goed”, beteken grond en elke reg op grond of minerale wat geregistreer kan word in 'n kantoor in die Unie wat bestem is vir die registrasie van grondtitels of die reg om te myn ;
- 15 „insolvent”, indien as 'n selfstandige naamwoord gebesig, beteken 'n skuldenaar wie se boedel onder sekwestrasie is en omvat, na gelang van die samehang, ook so 'n skuldenaar voor die sekwestrasie van sy boedel ;
- „insolvente boedel”, beteken 'n boedel wat onder sekwestrasie is ;
- 20 „magistraat”, omvat 'n addisionele magistraat en 'n assistent-magistraat ;
- „Meester”, met betrekking tot een of ander aangeleentheid, beteken die Meester van die Hooggeregshof binne wie se ampsgebied daardie aangeleentheid behandel moet word en omvat 'n Assistent-Meester ;
- 25 „geregsbode”, beteken 'n geregsbode van 'n magistraatshof en omvat 'n adjunk-geregsbode ;
- „roerende goed”, beteken elke soort goed en elke reg wat nie onroerende goed is nie ;
- 30 „preferensie”, met betrekking tot 'n vordering teen 'n boedel wat onder sekwestrasie is, beteken die reg op betaling van daardie vordering uit die bate van die boedel met voorkeur bo ander vorderings, en „preferent” het 'n daarmee ooreenstemmende betekenis ;
- 35 „goed”, beteken roerende goed of onroerende goed, waar ook al in die Unie geleë en omvat voorwaardelike regte op goed ;
- „sekuriteit”, met betrekking tot die vordering van 'n skuldeiser van 'n insolvente boedel, beteken goed van daardie boedel waarop die skuldeiser 'n preferente reg het kragtens 'n spesiale verband, stilswygende hipoteek van 'n verhuurder, pand of retensiereg maar omvat nie goed waarop die skuldeiser 'n preferente reg het of beweer te hê kragtens 'n verband of pand op al die bate van die boedel of op al die bate van 'n besigheid wat aan die boedel behoort ;
- 40 45 „sekwestrasiëorder”, beteken 'n order van die Hof waardeur 'n boedel gesekwestreer word en omvat 'n voorlopige order wat nie vernietig is nie ;
- 50 „balju”, omvat 'n adjunk-balju ;
- „handelaar” beteken iemand (behalwe iemand wat die boerdery beoefen as sy enigste of vernaamste nering) wat 'n handel, besigheid, bedryf of onderneming dryf waarin goed verkoop word of gekoop, ingeruil of vervaardig word om verkoop of verruil te word of waarin bouwerk van watter aard ook al verrig word of wat openbare vermaaklikheid of onthaal beoog, of wat die besigheid van 'n hotelhouer of losieshuishouer dryf, of wat as makelaar of agent van 'n ander optree by die verkoop of koop van enige goed of by die huur of verhuur van onroerende goed ; en elkeen word by die toepassing van hierdie Wet (behalwe by die toepassing van sub-artikel (2) van artikel een-en-twintig) as 'n handelaar beskou tensy bewys word dat hy nie 'n handelaar is soos in die voorgaande omskrywe nie ;
- 60 65 „kurator” beteken die kurator van 'n boedel wat onder sekwestrasie gesit is en omvat 'n voorlopige kurator.
3. (1) 'n Insolvente skuldenaar of sy verteenwoordiger of iemand belas met die beredding van die boedel van 'n oorlede insolvente skuldenaar of van 'n insolvente skuldenaar wat nie in staat is om sy eie sake te beheer nie, kan die Hof versoek om aanname van die oorgawe van die skuldenaar se boedel ten bate van sy skuldeisers.
- 70 Versoek om aanname van boedeloorgawe.
- (2) Al die lede van 'n vennootskap (behalwe kommanditêre vennote of „special partners” soos omskrywe in die „Special Partnership Limited Liability Act, 1861” (Wet No. 24 van 1861) van die Kaap die Goeie Hoop of in Wet No. 1 van 1865 van Natal) wat in die Unie woon, of hulle verteenwoordiger kan die Hof versoek om aanname van die oorgawe van die boedel van die vennootskap en van die boedel van elke sodanige lid.
- 75 80

(3) Before accepting or declining the surrender, the Court may direct the petitioner or any other person to appear and be examined before the Court.

Notice of surrender and lodging at Master's office of statement of debtor's affairs.

4. (1) Before presenting a petition mentioned in section *three* the petitioner shall cause to be published in the *Gazette* and in a newspaper circulating in the district in which the debtor resides, or, if the debtor is a trader, in the district in which his principal place of business is situate, a notice of surrender in a form corresponding substantially with Form A in the First Schedule to this Act. The said notice shall be published not more than thirty days and not less than fourteen days before the date stated in the notice of surrender as the date upon which application will be made to the Court for acceptance of the surrender of the estate of the debtor.

(2) The petitioner shall lodge at the office of the Master a statement in duplicate of the debtor's affairs, framed in a form corresponding substantially with Form B in the First Schedule to this Act, containing the particulars for which provision is made in the said Form and verified by an affidavit (which shall be free from stamp duty) in the form set forth therein.

(3) Upon receiving the said statement, the Master may direct the petitioner to cause any property set forth therein to be valued by a sworn appraiser or by any person designated by the Master for the purpose.

(4) If the debtor resides, or carries on business as a trader in any district (other than the district of Wynberg, Simonstown or Bellville in the Province of the Cape of Good Hope) wherein there is no Master's office, the petitioner shall also lodge a copy of the said statement at the office of the magistrate of the district.

(5) The said statement shall be open to the inspection of any creditor of the debtor during office hours for a period of fourteen days from a date to be mentioned in the notice of surrender.

Prohibition of sale in execution of property of estate after publication of notice of surrender and appointment of *curator bonis*.

5. (1) After the publication of a notice of surrender in the *Gazette* in terms of section *four*, it shall not be lawful to sell any property of the estate in question, which has been attached under writ of execution or other process, unless the person charged with the execution of the writ or other process could not have known of the publication: Provided that the Master, if in his opinion the value of any such property does not exceed five hundred pounds, or the Court, if it exceeds that amount, may order the sale of the property attached and direct how the proceeds of the sale shall be applied.

(2) After the publication of a notice of surrender as aforesaid in the *Gazette* the Master may appoint a *curator bonis* to the debtor's estate, who shall take the estate into his custody and take over the control of any business or undertaking of the debtor, as if he were the debtor, as the Master may direct.

Acceptance by Court of surrender of estate.

6. (1) If the Court is satisfied that the provisions of section *four* have been complied with and that the debtor in question owns realizable property of a sufficient value to defray all costs of the sequestration which will in terms of this Act be payable out of the free residue of his estate, it may accept the surrender of the debtor's estate and make an order sequestrating that estate.

(2) If the Court does not accept the surrender or if the notice of surrender is withdrawn in terms of section *seven*, or if the petitioner fails to make the application for the acceptance of the surrender of the debtor's estate before the expiration of a period of fourteen days as from the date specified in the notice of surrender, as the date upon which application will be made to the Court for the acceptance of the surrender of the debtor's estate, the notice of surrender shall lapse and if a *curator bonis* was appointed, the estate shall be restored to the debtor as soon as the Master is satisfied that sufficient provision has been made for the payment of all costs incurred under sub-section (2) of section *five*.

Withdrawal of notice of surrender.

7. (1) A notice of surrender published in the *Gazette* may not be withdrawn without the written consent of the Master.

(2) A person who has published a notice of surrender in the *Gazette* may apply to the Master for his consent to the with-

(3) Alvorens die boedel-oorgawe aan te neem of af te wys, kan die Hof die versoeker of 'n ander persoon gelas om te verskyn en in die Hof ondervra te word.

4. (1) Alvorens 'n versoek bedoel in artikel drie, in te dien, moet die versoeker in die *Staatskoerant* en in 'n nuusblad in omloop in die distrik waarin die skuldenaar woon of, as die skuldenaar 'n handelaar is, in die distrik waarin sy vernaamste besigheidsplek geleë is, 'n kennisgewing van boedeloorgawe laat gepubliseer in 'n vorm wat in hoofsaak ooreenkom met Formulier A in die Eerste Bylae tot hierdie Wet. Bedoelde kennisgewing moet gepubliseer word nie meer as dertig dae en nie minder as veertien dae nie voor die dag in die kennisgewing van boedeloorgawe vermeld as die dag waarop in die Hof aansoek gedaan sal word om aanname van die oorgawe van die boedel van die skuldenaar.

Kennisgewing van oorgawe en indiening op Meesterkantoor van staat van skuldenaar se sake.

(2) Die versoeker moet by die kantoor van die Meester twee eksemplare indien van 'n vermoëstaat van die skuldenaar opgestel in 'n vorm wat in hoofsaak ooreenkom met Formulier B in die Eerste Bylae tot hierdie Wet, waarin aangegee word die gegewens in daardie formulier vermeld en bevestig deur 'n beëdigde verklaring (wat vry van seëlreg is) in die daarin-aangegewe vorm.

(3) Na ontvangs van bedoelde staat kan die Meester die versoeker gelas om een of ander daarin aangegewe goed te laat waardeur deur 'n beëdigde taksateur of deur iemand wat die Meester daarvoor aangewys het.

(4) As die skuldenaar woon of as 'n handelaar besigheid dryf in 'n ander distrik as Wynberg, Simonstad of Bellville in die Provinsie Kaap die Goeie Hoop, waarin daar geen Meesterskantoor is nie, dan moet die versoeker ook een eksemplaar van bedoelde staat by die kantoor van die magistraat van die distrik indien.

(5) Bedoelde staat is veertien dae lang vanaf 'n dag wat in die kennisgewing van boedeloorgawe aangegee moet word, gedurende kantoorure aan elke skuldeiser van die skuldenaar ter insage beskikbaar.

5. (1) Na die publikasie in die *Staatskoerant*, ingevolge artikel vier, van 'n kennisgewing van boedeloorgawe, mag geen goed van die betrokke boedel wat in beslag geneem is kragtens 'n lasbrief tot eksekusie of 'n ander prosesstuk, verkoop word nie, tensy die persoon belas met die tenuitvoerlegging van die lasbrief of ander prosesstuk van die publikasie nie kon geweet het nie: Met dien verstande dat die Meester, as die waarde van sodanige goed na sy mening nie meer as vyfhonderd pond bedra nie, of die Hof, as die waarde meer bedra, die verkoop van die in beslag-genome goed kan gelas en kan beveel hoe die opbrings van die verkoping bestee moet word.

Staking van eksekutoriale verkoping van goed van boedel na publikasie van kennisgewing van boedeloorgawe. Aanstelling van *curator bonis*.

(2) Na die publikasie in die *Staatskoerant* van 'n kennisgewing van boedeloorgawe, soos voormeld, kan die Meester 'n *curator bonis* oor die skuldenaar se boedel aanstel. Daarop neem die *curator bonis* die boedel in sy bewaring en neem die beheer oor van elke besigheid of onderneming van die skuldenaar, asof hy die skuldenaar was, soos die Meester mog voorskryf.

6. (1) As die Hof oortuig is dat aan die bepalinge van artikel vier voldoen is en dat die betrokke skuldenaar goed wat te gelde gemaak kan word besit, van 'n voldoende waarde om al die koste van die sekwestrasie te dek wat volgens hierdie Wet uit die vrye oorskot van sy boedel sal betaal moet word, dan kan die Hof die oorgawe van die skuldenaar se boedel aanneem en 'n order uitvaardig waardeur daardie boedel gesekwestreer word.

Aanname deur hof van boedel-oorgawe.

(2) As die Hof die boedeloorgawe nie aanneem nie of as die kennisgewing van boedeloorgawe volgens artikel sewe ingetrek word of as die versoeker in gebreke bly om die aanname van die oorgawe van die skuldenaar se boedel te versoek voor verloop van 'n tydperk van veertien dae vanaf die dag in die kennisgewing van boedeloorgawe aangegee as die dag waarop die Hof versoek sal word om die oorgawe van die boedel van die skuldenaar aan te neem, dan verval die kennisgewing van boedeloorgawe en as 'n *curator bonis* aangestel is, dan word die boedel aan die skuldenaar teruggegee sodra die Meester oortuig is dat voldoende voorsiening gemaak is vir die betaling van al die koste wat kragtens sub-artikel (2) van artikel vyf gemaak is.

7. (1) 'n Kennisgewing van boedeloorgawe wat in die *Staatskoerant* gepubliseer is, kan nie sonder skriftelike toestemming van die Meester ingetrek word nie.

Intrekking van kennisgewing van boedeloorgawe.

(2) Iemand wat 'n kennisgewing van boedeloorgawe in die *Staatskoerant* gepubliseer het, kan die Meester versoek om sy

drawal of the notice, and if it appears to the Master that the notice was published in good faith and that there is good cause for its withdrawal, he shall give his written consent thereto. Upon the publication, at the expense of the applicant, of a notice of withdrawal and of the Master's consent thereto, in the *Gazette* and in the newspaper in which the notice of surrender appeared, the notice of surrender shall be deemed to have been withdrawn. 5

Acts of insolvency. 8. A debtor commits an act of insolvency—

- (a) if, owning any property within the Union, he departs therefrom, or being out of the Union remains absent therefrom, or departs from his dwelling or otherwise absents himself, with intent by so doing to evade or delay the payment of his debts; 10
- (b) if a Court has given judgment against him and he fails, upon the demand of the officer whose duty it is to execute that judgment, to satisfy it or to indicate to that officer disposable property sufficient to satisfy it, or if it appears from the return made by that officer that he has not found sufficient property to satisfy the judgment; 15
- (c) if he makes any disposition of any of his property which has the effect of prejudicing his creditors or of preferring one creditor above another; 20
- (d) if he removes any of his property with intent to prejudice his creditors or to prefer one creditor above another; 25
- (e) if he makes or offers to make any arrangement with his creditors for releasing him wholly or partially from his debts; 30
- (f) if, after having published a notice of surrender of his estate which has not lapsed or been withdrawn in terms of section *six* or *seven*, he fails to comply with the requirements of sub-section (2) of section *four* or lodges, in terms of that sub-section, a statement which is incorrect or incomplete in any material respect or fails to apply for the acceptance of the surrender of his estate on the date mentioned in the aforesaid notice as the date on which such application is to be made; 35 40
- (g) if he gives notice to any of his creditors that he has suspended or is about to suspend payment of his debts or if he has suspended payment of his debts; 45
- (h) if, being a trader, he gives notice in the *Gazette* in terms of sub-section (1) of section *thirty-four*, and is there after unable to pay all his debts. 45

Petition for sequestration of estate.

9. (1) A creditor (or his agent) who has a liquidated claim for not less than fifty pounds, or two or more creditors (or their agent) who in the aggregate have liquidated claims for not less than one hundred pounds against a debtor who has committed an act of insolvency, may petition the Court for the sequestration of the estate of the debtor. 50

(2) A liquidated claim which has accrued but which is not yet due on the date of hearing of the petition, shall be reckoned as a liquidated claim for the purposes of sub-section (1). 55

(3) Such a petition shall set forth the amount, cause and nature of the claim in question, shall state whether the claim is or is not secured and if it is, the nature and value of the security and shall set forth the debtor's act of insolvency upon which the petition is based. The facts stated in the petition shall be confirmed by affidavit and the petition shall be accompanied by a certificate of the Master or a magistrate that sufficient security has been given for the payment of all fees and charges necessary for the prosecution of all sequestration proceedings and of all costs of administering the estate until a trustee has been appointed, or if no trustee is appointed of all fees and charges necessary for the discharge of the estate from sequestration. 60 65

(4) Before such a petition is presented to the Court, a copy of the petition and of every affidavit confirming the facts stated in the petition shall be lodged with the Master, or, if there is no Master at the seat of the Court, with an officer in the public service designated for that purpose by the Master by notice in the *Gazette*, and the Master or such officer may report to the 70

toestemming tot intrekking van die kennisgewing en as dit aan die Meester voorkom dat die kennisgewing te goeder trou gepubliseer is en dat daar 'n gegronde rede vir sy intrekking bestaan, dan gee hy sy skriftelike toestemming daartoe. Na die publikasie, op koste van die versoeker, van 'n kennisgewing van intrekking en van die Meester se toestemming daartoe, in die *Staatskoerant* en in die nuusblad waarin die kennisgewing van boedeloorgawe verskyn het, word die kennisgewing van boedeloorgawe geag ingetrek te wees.

10 8. 'n Skuldenaar begaan 'n daad van insolvensie—

Dade van insolvensie:

- (a) as hy goed in die Unie besit en daaruit vertrek of as hy buite die Unie is en daaruit wegbly, of as hy van sy woning vertrek of andersins weggaan met die bedoeling om daardeur die betaling van sy skulde te ontduik of te vertraag;
- 15 (b) as 'n Hof 'n vonnis teen hom gevel het en hy in gebreke bly om, op verlange van die beamppte belas met die tenuitvoerlegging van die vonnis, aan die vonnis te voldoen of om aan daardie beamppte vervreembare goed aan te wys wat voldoende is om aan die vonnis te voldoen of as uit die relaas van daardie beamppte blyk dat hy nie genoeg goed gevind het nie om aan die vonnis te voldoen;
- 20 (c) as hy sy goed op so 'n wyse vervreemd dat sy skuldeisers daardeur benadeel word of aan een skuldeiser daardeur bo 'n ander voorkeur verleen word;
- 25 (d) as hy van sy goed wegvoer met die bedoeling om sy skuldeisers te benadeel of om een skuldeiser bo 'n ander voor te trek;
- 30 (e) as hy 'n ooreenkoms met sy skuldeisers aangaan of so 'n ooreenkoms aan hul voorstel dat hulle hom sy skulde geheel of gedeeltelik kwyt skeld;
- 35 (f) as hy, nadat hy 'n kennisgewing van oorgawe van sy boedel gepubliseer het, wat nie volgens artikel ses of sewe verval het of ingetrek is nie, in gebreke bly om aan die vereistes van sub-artikel (2) van artikel vier te voldoen of ingevolge daardie sub-artikel 'n staat indien wat in een of ander belangrike opsig onjuis of onvolledig is, of in gebreke bly om die aanname van die oorgawe van sy boedel te versoek op die dag in voormelde kennisgewing aangegee as die dag waarop die versoek sal geskied;
- 40 (g) as hy aan een van sy skuldeisers kennis gee dat hy die betaling van sy skulde gestaak het of op die punt staan om dit te staak of as hy die betaling van sy skulde gestaak het;
- 45 (h) as hy 'n handelaar is en in die *Staatskoerant* volgens sub-artikel (1) van artikel vier-en-dertig kennis gee en hy daarna nie in staat is om al sy skulde te betaal nie.
- 50

9. (1) 'n Skuldeiser (of sy verteenwoordiger) wat 'n gelikwideerde vordering van nie minder as vyftig pond of twee of meer skuldeisers (of hulle verteenwoordiger) wat gesamentlik gelikwideerde vorderings van nie minder as honderd pond
55 het teen 'n skuldenaar wat 'n daad van insolvensie begaan het, kan die Hof versoek om die sekwestrasie van die boedel van die skuldenaar.

Versoek tot sekwestrasie van boedel.

(2) 'n Gelikwideerde vordering wat ontstaan het maar wat nog nie invorderbaar is nie op die dag van verhoor van die
60 versoek, word by die toepassing van sub-artikel (1) as 'n gelikwideerde vordering aangemerkt.

(3) So 'n versoekskrif moet vermeld die bedrag, regsgrond en aard van die betrokke vordering en of al dan nie sekuriteit daarvoor gegee is en indien van wel, die aard en waarde van die
65 sekuriteit, en moet aangee die skuldenaar se daad van insolvensie waarop die versoek steun. Die bewerings in die versoekskrif moet deur 'n beëdigde verklaring bevestig word en die versoekskrif moet vergesel gaan van 'n sertifikaat van die Meester of 'n magistraat dat voldoende sekuriteit gestel is vir die betaling van alle fooie en koste wat nodig is om alle
70 sekwestrasieverrigtings te volvoer en van alle koste van beredding van die boedel totdat 'n kurator aangestel is, of as geen kurator aangestel word nie, van alle fooie en koste wat nodig is om die boedel van die sekwestrasie te onthef.

(4) Voordat so 'n versoekskrif aan die Hof voorgelê word, moet 'n afskrif van die versoekskrif en van elke beëdigde
75 verklaring tot bevestiging van die bewerings in die versoekskrif ingedien word by die Meester of as daar geen Meester is nie waar die Hof sy setel het, dan by 'n amptenaar in die staatsdiens
80 wat die Meester daarvoor by kennisgewing in die *Staatskoerant*

Court any facts ascertained by him which would appear to him to justify the Court in postponing the hearing or in dismissing the petition. The Master or the said officer shall transmit a copy of that report to the petitioning creditor or his agent.

(5) The Court, on consideration of the petition, the Master's or the said officer's report thereon and of any further affidavit which the petitioning creditor may have submitted in answer to that report, may act in terms of section *ten* or may dismiss the petition, or postpone its hearing or make such other order in the matter as in the circumstances appears to be just.

Provisional sequestration.

10. If the Court to which the petition for the sequestration of the estate of a debtor has been presented is of the opinion that *prima facie*—

- (a) the petitioning creditor has established against the debtor a claim such as is mentioned in sub-section (1) of section *nine*; and
- (b) the debtor has committed an act of insolvency or is insolvent; and
- (c) it would be to the advantage of the creditors of the debtor if his estate were placed under sequestration,

it may make an order sequestrating the estate of the debtor provisionally.

Service of rule *nisi* upon the debtor.

11. (1) If the Court sequestrates the estate of a debtor provisionally it shall simultaneously grant a rule *nisi* calling upon the debtor upon a day mentioned in the rule to appear and to show cause why his estate should not be sequestrated finally.

(2) If the debtor has been absent during a period of twenty-one days from his usual place of residence and of his business (if any) within the Union, the Court may direct that it shall be sufficient service of that rule if a copy thereof is affixed to or near the outer door of the buildings where the Court sits and published in the *Gazette*, or may direct some other mode of service.

(3) Upon the application of the debtor the Court may anticipate the return day for the purpose of discharging the order of provisional sequestration if twenty-four hours' notice of such application has been given to the petitioning creditor.

Final sequestration or dismissal of petition for sequestration.

12. (1) If at the hearing pursuant to the aforesaid rule *nisi* the Court is satisfied that—

- (a) the petitioning creditor has established against the debtor a claim such as is mentioned in sub-section (1) of section *nine*; and
- (b) the debtor has committed an act of insolvency or is insolvent,

it may sequestrate the estate of the debtor, unless it is satisfied that it is not to the advantage of the creditors of the debtor that his estate be sequestrated.

(2) If at such hearing the Court is not satisfied—

- (a) that such a claim as aforesaid has been established against the debtor; and
- (b) that the debtor has committed an act of insolvency or is insolvent,

or if at such hearing the Court is satisfied that it is not to the advantage of the creditors of the debtor that his estate be sequestrated, it shall dismiss the petition for the sequestration of the estate of the debtor and set aside the order of provisional sequestration or require further proof of the matters set forth in the petition and postpone the hearing for any reasonable time, but not *sine die*.

Sequestration of partnership estate.

13. If the Court sequestrates the estate of a partnership (whether provisionally or finally), it shall simultaneously sequestrate the estate of every member of that partnership who resides in the Union, other than a partner *en commandite* or a special partner as defined in the Special Partnerships' Limited Liability Act, 1861 (Act No. 24 of 1861) of the Cape of Good Hope or in Law No. 1 of 1865 of Natal, who has not held himself out as an ordinary or general partner of the partnership in question; provided that if the Court is satisfied that a partner is willing and able to satisfy the debts of the partnership within a period to be determined by the Court, the separate estate of that partner shall not be sequestrated by reason only of the sequestration of the estate of the partnership.

aangewys het, en die Meester of bedoelde amptenaar kan aan die Hof verslag doen van alle feite wat hy te wete gekom het wat volgens sy opvatting die Hof sou regverdig om die verhoor uit te stel of om die versoek af te wys. Die Meester of bedoelde

5 amptenaar moet 'n afskrif van daardie verslag aan die petisionerende skuldeiser of sy verteenwoordiger stuur.

(5) Na oorweging van die versoek, die verslag van die Meester of van bedoelde amptenaar daaromtrent en van 'n verdere beëdigde verklaring wat die petisionerende skuldeiser 10 as antwoord op die verslag mag ingedien het, kan die Hof handel volgens artikel *tien* of die versoek afwys of verhoor daarvan uitstel of so 'n ander order in die saak uitvaardig as wat hy onder die omstandighede billik ag.

10. As die Hof tot wie 'n versoek tot sekwestrasie van die Voorlopige boedel van 'n skuldenaar gerig is, van oordeel is dat *prima facie*— sekwestrasie.

- (a) die petisionerende skuldeiser so 'n vordering as bedoel in sub-artikel (1) van artikel *nege* teen die skuldenaar bewys het; en
- 20 (b) die skuldenaar 'n daad van insolvensie begaan het of insolvent is; en
- (c) dit tot voordeel van die skuldeisers van die skuldenaar sou strek as sy boedel gesekwestreer sou word,

dan kan die Hof 'n order uitvaardig wat die boedel van die 25 skuldenaar voorlopig sekwestreer.

11. (1) As die Hof die boedel van 'n skuldenaar voorlopig sekwestreer vaardig hy gelyktydig 'n bevel *nisi* uit waardeur die skuldenaar aangesê word om op 'n dag, in die bevel aangegee, te verskyn en redes aan te toon waarom sy boedel nie finaal 30 gesekwestreer behoort te word nie.

(2) As die skuldenaar gedurende 'n tydperk van een-en-twintig dae van sy gewone woonplek en van sy besigheidsplek (as hy een het) in die Unie afwesig was, dan kan die Hof gelas dat bedoelde bevel geldig gedien kan word deur 'n afskrif 35 daarvan op of in die nabyheid van die buitedeur van die gebou waarin die Hof sit, aan te heg en in die *Staatskoerant* te publiseer, of 'n ander wyse van diening voorskrywe.

(3) Op versoek van die skuldenaar kan die Hof die dienende dag vervroeg ten einde die order van voorlopige sekwestrasie 40 in te trek, mits aan die petisionerende skuldeiser vier-en-twintig uur vooraf van die versoek kennis gegee is.

12. (1) As die Hof by die verhoor na aanleiding van voor- melde bevel *nisi* oortuig is dat— Finale sekwestrasie of afwysing van versoek om sekwestrasie.

- 45 (a) die petisionerende skuldeiser so 'n vordering as bedoel in sub-artikel (1) van artikel *nege* teen die skuldenaar bewys het; en
- (b) die skuldenaar 'n daad van insolvensie begaan het of insolvent is,

dan kan die Hof die boedel van die skuldenaar sekwestreer, 50 tensy hy oortuig is dat dit nie tot voordeel van die skuldeisers van die skuldenaar sou strek nie om sy boedel te sekwestreer.

(2) As die Hof by bedoelde verhoor nie oortuig is nie—

- (a) dat so 'n vordering as voormeld teen die skuldenaar bewys is; en
- 55 (b) dat die skuldenaar 'n daad van insolvensie begaan het of insolvent is,

of as die Hof by daardie verhoor oortuig is dat dit nie tot voordeel van die skuldeisers van die skuldenaar sou strek om sy boedel te sekwestreer nie, dan wys hy die versoek tot 60 sekwestrasie van die boedel van die skuldenaar af en vernietig die order van voorlopige sekwestrasie of skryf verdere bewys voor van die daarin gemaakte bewerings en stel die verhoor vir 'n redelike termyn uit, maar nie *sine die* nie.

13. As die Hof die boedel van 'n vennootskap sekwestreer 65 (hetsy voorlopig of finaal), sekwestreer hy gelyktydig die boedel van elke lid van daardie vennootskap wat in die Unie woon, behalwe 'n kommanditêre vennoot of 'n „special partner” soas omskrywe in die „Special Partnerships Limited Liability Act, 1861” (Wet No. 24 van 1861) van die Kaap die Goeie 70 Hoop of in Wet No. 1 van 1865 van Natal, wat homself nie voorgedoen het as 'n gewone of algemene vennoot van die betrokke vennootskap nie: Met dien verstande dat as die Hof oortuig is dat 'n vennoot die skulde van die vennootskap binne 'n deur die Hof vas te stelle termyn wil en kan vereffen, 75 die afsonderlike boedel van daardie vennoot nie gesekwestreer word nie alleen omdat die boedel van die vennootskap gesekwestreer word.

Sekwestrasie van boedel van vennootskap.

Petitioning creditor to prosecute sequestration proceedings until trustee appointed.

14. (1) The creditor upon whose petition a sequestration order has been made shall, at his own cost, prosecute all the proceedings in the sequestration until a trustee has been appointed.

(2) The trustee shall pay to the said creditor out of the first funds of the estate available for that purpose under section *ninety-seven* his costs, taxed according to the tariff applicable in the Court which made the sequestration order.

(3) In the event of a contribution by creditors under section *one hundred and four*, the petitioning creditor, whether or not he has proved a claim against the estate in terms of section *forty-four*, shall be liable to contribute not less than he would have had to contribute if he had proved the claim stated in his petition.

Compensation to debtor if petition unfounded or vexatious.

15. Whenever the Court is satisfied that a petition for the sequestration of a debtor's estate is unfounded or vexatious, the Court may allow the debtor forthwith to prove any damage which he may have sustained by reason of the provisional sequestration of his estate and award him such compensation as it may deem fit; or the debtor may bring an action to recover compensation for any damage which he may have sustained.

Insolvent must deliver his business records and lodge statement of his affairs with Master.

16. (1) A final order of sequestration shall be served upon the insolvent concerned in manner provided by the rules of the Court which made that order, and when the order has been served upon the insolvent, he shall—

(a) forthwith deliver to the officer who served the order all records relating to his affairs if they have not yet been taken into custody by the deputy-sheriff in terms of paragraph (a) of sub-section (1) of section *nineteen*; and

(b) within seven days of such service lodge with the Master a statement of his affairs, in duplicate, framed in a form corresponding substantially with Form B of the First Schedule to this Act, containing the particulars for which provision is made in the said Form and verified by an affidavit (which shall be free from stamp duty) in the form set forth therein.

(2) The officer to whom the records of the insolvent are delivered in terms of paragraph (a) of sub-section (1) shall issue a detailed receipt therefor.

(3) In the statement referred to in paragraph (b) of sub-section (1) any merchandise mentioned therein shall be valued at its cost price or at its market value, at the time of the making of the said affidavit, whichever is the lower.

Notice of sequestration.

17. (1) The registrar shall without delay transmit—

(a) one original of every sequestration order and of every order relating to an insolvent estate or to a trustee or to an insolvent, made by the Court, to the Master;

(b) one original of every provisional sequestration order or if a final sequestration order was not preceded by a provisional sequestration order, then of that final order, and of every order amending or setting aside any prior order so transmitted, which was made by the Court to—

(i) the deputy-sheriff of every district in which it appears that the insolvent resides or owns property;

(ii) every officer charged with the registration of title to any immovable property in the Union;

(iii) every sheriff and every messenger who or whose deputy holds under attachment any property belonging to the insolvent estate.

(2) Every officer who has received an order transmitted to him in terms of sub-section (1) shall register it and note thereon the day and hour when it was received in his office.

(3) Upon the receipt by any officer referred to in sub-paragraph (ii) of paragraph (b) of sub-section (1) of a sequestration order he shall enter a caveat against the transfer of all immovable property or the cancellation or cession of any bond registered in the name of or belonging to the insolvent or to his or her spouse.

(4) When the Master has received a sequestration order he shall give notice in the *Gazette* of such sequestration.

Appointment of provisional trustee by Master.

18. (1) As soon as an estate has been sequestrated (whether provisionally or finally) or when a person appointed as trustee ceases to be trustee or to function as such, the Master may

14. (1) Die skuldeiser op wie se versoek 'n sekwestrasie-order uitgevaardig is, moet op sy eie koste alle verrigtings in die sekwestrasie volvoer totdat 'n kurator aangestel is.

Petisionerende skuldeiser moet sekwestrasie verrigtings volvoer tot kurator aangestel is.

(2) Die kurator moet uit die eerste gelde van die boedel wat kragtens artikel *sewen-en-negentig* daarvoor beskikbaar is, die koste van bedoelde skuldeiser, getakseer volgens die tarief wat van toepassing is in die Hof wat die sekwestrasie-order uitgevaardig het, aan hom uitbetaal.

(3) In geval die skuldeisers kragtens artikel *honderd-en-vier* moet inbetaal, dan is die petisionerende skuldeiser, onverskillig of hy al dan nie volgens artikel *vier-en-veertig* 'n vordering teen die boedel bewys het, verplig om nie minder in te betaal nie as hy sou moet inbetaal het as hy die vordering wat in sy versoekskrif vermeld word, bewys had.

15. Wanneer die Hof van oordeel is dat die versoek om sekwestrasie van 'n skuldenaar se boedel ongegrond of vexatoor is, dan kan die Hof die skuldenaar veroorloof om dadelik enige skade te bewys wat hy mag gely het as gevolg van die voorlopige sekwestrasie van sy bedoel en aan hom die skadevergoeding toestaan wat die Hof billik ag; of die skuldenaar kan 'n aksie instel tot verhaal van vergoeding van die skade wat hy aldus mog gely het.

Skadevergoeding aan skuldenaar as versoek ongegrond of vexatoor is.

16. (1) 'n Finale sekwestrasie-order word op die betrokke insolvent gedien volgens voorskrif van die reëls van die Hof wat die order uitgevaardig het en as die order op die insolvent gedien is, moet hy—

Insolvent moet sy besigheids-papiere afgee en staat van sy sake by Meester indien.

(a) dadelik alle stukke wat op sy sake betrekking het, oorhandig aan die amptenaar wat die order gedien het, as daardie stukke nie reeds deur die adjunk-balju volgens paragraaf (a) van sub-artikel (1) van artikel *negentien* in bewaring geneem is nie; en

(b) binne sewe dae na die diening by die Meester twee eksemplare indien van 'n vermoëstaats-opgemaak in 'n vorm wat in hoofsaak ooreenkom met Formulier B van die Eerste Bylae tot hierdie Wet, waarin aangegee word die gegewens in daardie formulier vermeld, en bevestig deur 'n beëdigde verklaring (wat vry van seëlreg is) in die daarin aangegewe vorm.

(2) Die amptenaar aan wie die stukke van die insolvent volgens paragraaf (a) van sub-artikel (1) oorhandig word, moet 'n gespesifiseerde kwitansie daarvoor gee.

(3) In die staat bedoel in paragraaf (b) van sub-artikel (1) moet alle daarin vermelde handelsware gewaardeer word teen hulle kosprys of teen hulle markwaarde op die tydstip 45 wanneer die beëdigde verklaring afgelê word, na gelang die een of die ander laer is.

17. (1) Die griffier stuur onverwyld—

Kennisgewing van sekwestrasie.

(a) een eksemplaar van elke sekwestrasie-order en van elke order aangaande 'n insolvente boedel of 'n kurator of 'n insolvent, wat die Hof uitgevaardig het, aan die Meester;

(b) een eksemplaar van elke voorlopige sekwestrasie-order of as 'n finale sekwestrasie-order uitgevaardig is sonder voorafgaande voorlopige sekwestrasie-order, dan van daardie finale order, en van elke order tot wysiging of vernietiging van 'n vorige aldus ingestuurde order, wat die Hof uitgevaardig het, aan—

(i) die adjunk-balju van elke distrik waarin die insolvent blykbaar woon of goed besit;

(ii) elke amptenaar belas met die registrasie van titels van onroerende goed in die Unie;

(iii) elke balju en elke geregsbode wie of wie se adjunk goed, wat aan die insolvente boedel behoort, onder beslag in sy bewaring het.

(2) Elke amptenaar wat 'n order ontvang het wat aan hom ingevolge sub-artikel (1) gestuur is, moet dit registreer en daarop aanteken die dag en uur wanneer dit in sy kantoor ontvang is.

(3) Wanneer 'n amptenaar bedoel in sub-paragraaf (ii) van paragraaf (b) van sub-artikel (1) 'n sekwestrasie-order ontvang het, moet hy 'n caveat aanteken teen die transport van alle onroerende goed of teen die rojering of cessie van elke verband wat op naam van die insolvent of sy vrou of haar man geregistreer is of aan hom of haar behoort.

(4) Wanneer die Meester 'n sekwestrasie-order ontvang het, moet hy van daardie sekwestrasie in die *Staatskoerant* kennis gee.

18. (1) Sodra 'n boedel gesekwestreer is (hetsy voorlopig of 80 finaal) of wanneer iemand wat as kurator aangestel is, ophou om kurator te wees of om as sodanig op te tree, dan kan die

Aanstelling van voorlopige kurator deur Meester.

appoint a provisional trustee to the estate in question who shall give security to the satisfaction of the Master for the proper performance of his duties as provisional trustee and shall hold office until the appointment of a trustee.

(2) At any time before the first meeting of the creditors of an insolvent estate in terms of section *forty*, the Master may, subject to the provisions of sub-section (3) of this section, give such directions to the provisional trustee as could be given to a trustee by the creditors at a meeting of creditors.

(3) A provisional trustee shall have the powers and the duties of a trustee, as provided in this Act, except that without the authority of the Court or for the purpose of obtaining such authority he shall not bring or defend any legal proceedings and that without the authority of the Court or Master he shall not sell any property belonging to the estate in question.

(4) When a meeting of creditors for the election of a trustee has been held in terms of section *forty* and no trustee has been elected, and the Master has appointed a provisional trustee in the estate in question, the Master shall appoint him as trustee on his finding such additional security as the Master may have required.

Attachment of
property by
deputy sheriff.

19. (1) As soon as a deputy-sheriff has received a sequestration order he shall attach, as hereinafter provided and make an inventory of the movable property of the insolvent estate which is in his district and is capable of manual delivery and not in the lawful possession of a pledgee or of a person who is entitled to retain it under a right of retention or under attachment by a messenger—

- (a) he shall take into his own custody all books of account, invoices, vouchers, business correspondence, cash, share certificates, bonds, bills of exchange, promissory notes, and other securities, and remit all such cash to the Master;
- (b) he shall leave movable property other than animals in a room or other suitable place properly sealed up or appoint some suitable person to hold any movable property in his custody;
- (c) he shall hand to the person so appointed a copy of the inventory, with a notice that the property has been attached by virtue of a sequestration order. That notice shall contain a statement of the offence constituted by section *one hundred and forty* and the penalty provided therefor.

(2) Any person interested in the insolvent estate or in the property attached may be present or may authorise another person to be present when the deputy-sheriff is making his inventory.

(3) Immediately after effecting the attachment the deputy-sheriff shall report to the Master in writing the fact of the attachment. He shall mention in his report any property which to his knowledge is in the lawful possession of a pledgee or of a person who is entitled to retain it by virtue of a right of retention, and he shall transmit with the report a copy of his inventory.

(4) A messenger shall transmit to the Master without delay an inventory of all property attached by him which he knows to belong to an insolvent estate.

(5) The deputy-sheriff shall be entitled to fees taxed by the Master according to tariff A in the Second Schedule to this Act.

Effect of seques-
tration on
insolvent's
property.

20. (1) The effect of the sequestration of the estate of an insolvent shall be—

- (a) to divest the insolvent of his estate and to vest it in the Master until a trustee has been appointed, and, upon the appointment of a trustee, to vest the estate in him;
- (b) to stay until the appointment of a trustee, any civil proceedings instituted by or against the insolvent save such proceedings as may, in terms of section *twenty-three*, be instituted by the insolvent for his own benefit or be instituted against the insolvent; provided that if any claim which formed the subject of legal proceedings against the insolvent which were so stayed, has been proved and admitted against the insolvent's estate in terms of section *forty-four* or *seventy-eight*, the claimant may also prove against the estate a claim for his taxed costs, incurred in connection with those proceedings before the sequestration of the insolvent's estate;

Meester 'n voorlopige kurator vir die betrokke boedel aanstel, wat sekuriteit moet stel, waarmee die Meester genoeë neem, dat hy sy pligte as voorlopige kurator behoorlik sal nakom en wat sy betrekking beklee totdat 'n kurator aangestel word.

5 (2) Te eniger tyd voor die eerste byeenkoms van die skuldeisers van 'n insolvente boedel volgens artikel *veertig*, kan die Meester, behoudens die bepalings van sub-artikel (3) van hierdie artikel, aan die voorlopige kurator sulke voorskrifte gee as wat die skuldeisers op 'n byeenkoms van skuldeisers aan 'n kurator
10 sou kan gee.

(3) 'n Voorlopige kurator het die bevoegdhede en verpligtings van 'n kurator, soos in hierdie Wet bepaal, behalwe dat hy sonder magtiging van die Hof geen ander regsding mag instel of verdedig nie as om sodanige verlof te verkry, en dat hy sonder magtiging van die Hof of van die Meester
15 geen goed wat aan die betrokke boedel behoort, mag verkoop nie.

(4) Wanneer 'n byeenkoms van skuldeisers ingevolge artikel *veertig* gehou is om 'n kurator te kies en geen kurator gekies is nie, en die Meester 'n voorlopige kurator van die betrokke
20 boedel aangestel het, dan stel die Meester hom as kurator aan nadat hy die verdere sekuriteit gestel het wat die Meester mog voorgeskryf het.

19. (1) Sodra 'n adjunk-balju 'n sekwestrasie-order ontvang
25 het, moet hy volgens onderstaande voorskrifte beslag lê op, en 'n inventaris maak van die roerende goed van die insolvente boedel wat in sy distrik is en vatbaar is vir lewering van hand tot hand en nie in wettige besit is nie van 'n pandhouer of van iemand wat geregtig is om dit te behou kragtens 'n
30 retensiereg of deur 'n bode in beslag geneem is nie:

Beslaglegging op goed deur adjunk-balju.

(a) Hy moet in sy eie bewaring neem alle rekeningboeke, fakture, bewysstukke, besigheids-korrespondensie, kontante geld, aandeelbewyse, verbande, wissels, promesse en ander handelspapier en daardie kontante
35 geld aan die Meester stuur.

(b) Hy moet roerende goed, buiten diere, in 'n vertrek of ander geskikte plek behoorlik verseël laat of 'n geskikte persoon aanstel om enige roerende goed in sy bewaring te hou.

(c) Hy moet aan die aldus aangestelde persoon 'n afskrif oorhandig van die inventaris met 'n kennisgewing dat die goed kragtens 'n sekwestrasie-order in beslag geneem is. Die kennisgewing moet melding maak van die misdryf tot stand gebring deur artikel
40 *honderd-en-veertig* en die daarop gestelde straf.

(2) Enigeen wat belang het by die insolvente boedel of by die in beslag genome goed mag teenwoordig wees of mag iemand anders magtig om teenwoordig te wees wanneer die adjunk-balju die inventaris opmaak.

(3) Onmiddellik nadat die adjunk-balju goed in beslag geneem het, moet hy die beslaglegging aan die Meester skriftelik meld. In sy melding moet hy gewag maak van alle goedere waarvan hy weet dat hulle in die wettige besit is van 'n pandhouer of van iemand wat kragtens 'n retensiereg geregtig is om hulle
55 te behou, en hy moet met sy melding 'n afskrif van sy inventaris instuur.

(4) 'n Geregsbode moet aan die Meester onverwyld 'n inventaris instuur van alle goedere wat hy in beslag geneem het en waarvan hy weet dat hulle aan 'n insolvente boedel
60 behoort.

(5) Die adjunk-balju is geregtig op fooie deur die Meester getakseer volgens tarief A in die Tweede Bylae tot hierdie Wet en die reëls vir die toepassing van daardie tarief.

20. (1) Die sekwestrasie van die boedel van 'n insolvent het
65 ten gevolge—

Uitwerking van sekwestrasie op insolvent se goedere.

(a) dat die insolvent se boedel ophou om aan hom te behoort en oorgaan op die Meester totdat 'n kurator aangestel is en na aanstelling van 'n kurator, op hom;

(b) dat elke siviele geding, deur of teen die insolvent ingestel, gestaak word, behalwe 'n geding wat kragtens artikel *drie-en-twintig* deur die insolvent tot sy eie voordeel ingestel of teen die insolvent ingestel mag word: Met dien verstande dat wanneer 'n vordering, op grond waarvan 'n geding wat aldus gestaak is, teen die insolvent ingestel was, ingevolge artikel *vier-en-veertig* of *agt-en-sewentig* teen die insolvent se boedel bewys en erken is, die eiser ook 'n vordering vir sy getakseerde koste in verband met daardie geding gemaak voor die sekwestrasie van die insolvent se boedel, teen die boedel kan bewys;

- (c) as soon as any sheriff or messenger, whose duty it is to execute any judgment given against an insolvent, becomes aware of the sequestration of the insolvent's estate, to stay that execution, unless the Court otherwise directs; 5
- (d) to empower the insolvent, if in prison for debt, to apply to the Court for his release, after notice to the creditor at whose suit he is so imprisoned, and to empower the Court to order his release, on such conditions as it may think fit to impose. 10

(2) For the purposes of sub-section (1) the estate of an insolvent shall include—

- (a) all property of the insolvent at the date of the sequestration, including property or the proceeds thereof which are in the hands of a sheriff or a messenger under a writ of attachment; 15
- (b) all property which the insolvent may acquire or which may accrue to him during the sequestration, except as otherwise provided in section *twenty-three*.

Effect of sequestration on property of spouse of insolvent.

21. (1) The additional effect of the sequestration of the separate estate of one of two spouses who are not living apart under a notarial deed of separation or a judicial order of separation shall be to vest in the Master, until a trustee has been appointed, and, upon the appointment of a trustee, to vest in him all the property (including property or the proceeds thereof which are in the hands of a sheriff or a messenger under a writ of attachment) of the spouse whose estate has not been sequestrated (hereinafter referred to as the solvent spouse) as if it were property of the sequestrated estate, and to empower the Master or trustee to deal with such property accordingly, but 20 subject to the following provisions of this section.

(2) The trustee shall release any property of the solvent spouse which is proved—

- (a) to have been the property of that spouse immediately before her or his marriage to the insolvent or before 35 the first day of October, 1926; or
- (b) to have been acquired by that spouse under a marriage settlement; or
- (c) to have been acquired by this spouse during the marriage with the insolvent, by a title valid as against 40 creditors of the insolvent; or
- (d) to be safeguarded in favour of that spouse by section *twenty-eight* of this Act or by the Insurance Act, 1923 (Act No. 37 of 1923); or
- (e) to have been acquired with any such property as 45 aforesaid or with the income or proceeds thereof

(3) Except with the leave of the Court, the trustee shall not realise property which ostensibly belonged to the solvent spouse until the expiry of six weeks' notice of his intention to do so, given to that spouse or to the agent of that spouse. Such 50 notice shall also be published in the *Gazette* and in a newspaper circulating in the district in which the solvent spouse resides or carries on business, and shall invite all separate creditors for value of that spouse to prove their claims as provided in sub-section (5). 55

(4) The solvent spouse may apply to the Court for an order releasing any property vested in the trustee of the insolvent estate under sub-section (1) or for an order staying the sale of such property or, if it has already been sold, but the proceeds thereof not yet distributed among creditors, for an order 60 declaring the applicant to be entitled to those proceeds; and the Court may make such order on the application as it thinks just.

(5) Subject to any order made under sub-section (4) any property of the solvent spouse realised by the trustee shall bear 65 a proportionate share of the costs of the sequestration as if it were property of the insolvent estate but the separate creditors for value of the solvent spouse having claims which could have been proved against the estate of that spouse if it had been the estate under sequestration, shall be entitled to 70 prove their claims against the estate of the insolvent spouse in the same manner and, except as in this Act is otherwise provided, shall have the same rights and remedies and be

- (c) dat, tensy die Hof anders gelas, die tenuitvoerlegging van 'n vonnis teen die insolvent gevel, gestaak word, sodra die balju of geregsbode wat met daardie tenuitvoerlegging belas is, van die sekwestrasie van die insolvent se boedel te wete kom;
- (d) dat die insolvent, as hy weens skuld in die gevangenis is, bevoeg word om die Hof om sy ontslag te versoek, na kennisgewing aan die skuldeiser wat hom in die gevangenis laat sit het, en dat die Hof bevoeg word om sy ontslag te gelas, en wel op die voorwaardes wat die Hof wenslik ag.
- (2) Vir die toepassing van sub-artikel (1) omvat die boedel van 'n insolvent—
- (a) alle goedere van die insolvent op die dag van die sekwestrasie, met inbegrip van goedere of die opbrings daarvan, wat op grond van 'n lasbrief tot beslaglegging in hande van 'n balju of geregsbode is;
- (b) alle goedere wat gedurende die sekwestrasie deur die insolvent mag verkry word of aan hom mag verval, ver sover artikel *drie-en-twintig* nie anders bepaal nie.
21. (1) Die sekwestrasie van die afsonderlike boedel van een van twee eggenote wat nie geskeie leef nie kragtens 'n notariële akte van skeiding of 'n regterlike skeidingsbevel, het verder ten gevolge dat alle goedere (met inbegrip van goedere of die opbrings daarvan, wat op grond van 'n lasbrief tot beslaglegging in hande van 'n balju of geregsbode is) van die eggenoot wie se boedel nie gesekwestreer is nie (hieronder die solvente eggenoot genoem) oorgaan op die Meester totdat 'n kurator aangestel is en na aanstelling van 'n kurator, op hom, asof dit goedere van die gesekwestreerde boedel was, en dat die Meester of kurator bevoeg word om met daardie goedere dienoreënkomstig te handel, behoudens die volgende bepalings van hierdie artikel.
- (2) Die kurator moet alle goedere van die solvente eggenoot vrygee waarvan bewys word—
- (a) dat hulle die eiendom van daardie eggenoot was onmiddellik voor haar of sy huwelik met die insolvent of voor die eerste dag van Oktober 1926; of
- (b) dat hulle deur daardie eggenoot verkry is kragtens 'n huwelikskontrak; of
- (c) dat hulle deur daardie eggenoot gedurende die huwelik met die insolvent verkry is kragtens 'n titel wat regsgeldig is teenoor die skuldeisers van die insolvent; of
- (d) dat hulle ten behoeve van daardie eggenoot gevrywaar is deur artikel *agt-en-twintig* van hierdie Wet of deur die „Verzekeringwet, 1923” (Wet No. 37 van 1923); of
- (e) dat hulle met sodanige goedere as voormeld, of met die inkomste of opbrings daarvan verkry is.
- (3) Sonder verlof van die Hof mag die kurator nie goedere, wat blykbaar aan die solvente eggenoot behoort het, te gelde maak nie binne ses weke na kennisgewing aan daardie eggenoot of aan die verteenwoordiger van daardie eggenoot, van sy voorneme om dit te doen. Bedoelde kennisgewing moet ook gepubliseer word in die *Staatskoerant* en in 'n nuusblad in omloop in die distrik waarin die solvente eggenoot woon of besigheid dryf, en daarin moet alle afsonderlike skuldeisers vir waarde van daardie eggenoot uitgenodig word om hulle vorderings volgens voorskrif van sub-artikel (5) te bewys.
- (4) Die solvente eggenoot kan die Hof versoek om 'n order tot vrygawe van goed wat kragtens sub-artikel (1) op die kurator van die insolvente boedel oorgegaan het of om 'n order tot opskorting van die verkoping van sodanige goed of as dit reeds verkoop maar die opbrings daarvan nog nie onder skuldeisers verdeel is nie, om 'n order waarin verklaar word dat die versoeker op daardie opbrings geregtig is; en die Hof kan na aanleiding van daardie versoek die order uitvaardig wat hy billik ag.
- (5) Behoudens 'n kragtens sub-artikel (4) uitgevaardigde order, kom 'n eweredige deel van die koste van die sekwestrasie ten laste van die solvente eggenoot se goed wat deur die kurator te gelde gemaak is, asof dit goed van die insolvente boedel was, dog die afsonderlike skuldeisers vir waarde van die solvente eggenoot met vorderings wat teen die boedel van daardie eggenoot sou kon bewys geword het as dit die gesekwestreerde boedel gewees het, is geregtig om hulle vorderings teen die boedel van die insolvent te bewys op dieselfde wyse en hulle het (behalwe vir sover hierdie Wet anders bepaal) dieselfde regte, regsmiddels en verpligtings asof hulle skuldeisers van

Uitwerking van sekwestrasie op goedere van insolvent se vrou of man.

(12) If the trustee has in accordance with the preceding provisions of this section released any property alleged to belong to the solvent spouse, he shall not be debarred thereby from proving that it belongs to the insolvent estate and from recovering accordingly.

(13) In this section the word "spouse" means not only a wife or husband in the legal sense, but also a wife or husband by virtue of a marriage according to any law or custom, and also a woman living with a man as his wife or a man living with a woman as her husband, although not married to one another.

Payment of debts after sequestration.

22. Every satisfaction in whole or in part of any obligation the fulfilment whereof was due or the cause of which arose before the sequestration of the creditor's estate shall, if made to the insolvent after such sequestration, be void, unless the debtor proves that it was made in good faith and without knowledge of the sequestration.

Rights and obligations of insolvent during sequestration.

23. (1) Subject to the provisions of this section and of section *twenty-four*, all property acquired by an insolvent shall belong to his estate.

(2) The fact that a person entering into any contract is an insolvent, shall not affect the validity of that contract: Provided that the insolvent does not thereby purport to dispose of any property of his insolvent estate; and provided further that an insolvent shall not, without the consent in writing of the trustee of his estate, enter into any contract whereby his estate or any contribution towards his estate which he is obliged to make, is or is likely to be adversely affected.

(3) An insolvent may follow any profession or occupation or enter into any employment, but he may not, during the sequestration of his estate without the consent in writing of the trustee of his estate, either carry on, or be employed or engaged in any capacity in, the business of a trader: Provided that any of the creditors of the insolvent's estate or the insolvent himself may, if the trustee gives or refuses such consent, appeal to the Master, whose decision shall be final.

(4) The insolvent shall keep a detailed record of all assets received by him from whatever source, and of all disbursements made by him in the course of his profession, occupation or employment, and, if required thereto by the trustee, shall transmit to the trustee in the first week of every month a statement verified by affidavit of all assets received and of all disbursements made by him during the preceding month. The trustee may inspect such record at all reasonable times and may demand the production of reasonable vouchers in support of any item in such accounts and of the expenditure of the insolvent for the support of himself and those dependent upon him.

(5) The trustee shall be entitled to any moneys received or to be received by the insolvent in the course of his profession, occupation or other employment which in the opinion of the Master are not or will not be necessary for the support of the insolvent and those dependent upon him, and if the trustee has notified the employer of the insolvent that the trustee is entitled, in terms of this sub-section, to any part of the insolvent's remuneration due to him at the time of such notification, or which will become due to him thereafter, the employer shall pay over that part to the trustee.

(6) The insolvent may sue or may be sued in his own name without reference to the trustee of his estate in any matter relating to status or personal right in so far as it does not affect his estate or in respect of any claim due to or against him under this section, but no cession of his earnings after the sequestration of his estate, whether made before or after the sequestration shall be of any effect so long as his estate is under sequestration.

(7) The insolvent may for his own benefit recover any pension to which he may be entitled for services rendered by him.

(8) The insolvent may recover any compensation for any loss or damage which he may have suffered, whether before or after the sequestration of his estate, by reason of any defamation or personal injury: Provided that he shall not without the leave of the Court, institute an action against the trustee of his estate on the ground of malicious prosecution or defamation.

(9) Subject to the provisions of sub-section (5) the insolvent may recover for his own benefit, the remuneration or reward for work done or for professional services rendered by or on his behalf after the sequestration of his estate.

(12) As die kurator volgens die voorgaande bepalings van hierdie artikel goed, wat beweer word aan die solvente eggenoot te behoort, vrygegee het, dan belet dit hom nie om te bewys dat dit aan die insolvente boedel behoort en om dit dienooreenkomstig op te vorder.

(13) In hierdie artikel beteken „eggenoot” nie alleen ’n eggenote of eggenoot in die wettige sin nie maar ook ’n eggenote of eggenoot kragtens ’n huwelik volgens enige regsstelsel of gebruik en ook ’n vrou wat met ’n man as sy eggenote leef of ’n man wat met ’n vrou as haar eggenoot leef, hoewel hulle nie met mekaar getroud is nie.

22. As ’n verbintenis waarvan die vervulling verskuldig was of waarvan die oorsaak ontstaan het voor die sekwestrasie van die skuldenaar se boedel, na die sekwestrasie aan die insolvent voldaan word, dan is die voldoening ongeldig, tensy die skuldenaar bewys dat dit te goeder trou geskied is en sonder kennis van die sekwestrasie.

Betaling van
skulde na
sekwestrasie.

23. (1) Behoudens die bepalings van hierdie artikel en artikel vier-en-twintig, behoort alle goedere, wat ’n insolvent verkry, aan sy boedel.

Regte en
verplichtings van
insolvent
gedurende
sekwestrasie.

(2) Die feit dat iemand wat ’n kontrak aangaan, insolvent is, doen geen afbreuk aan die geldigheid van daardie kontrak nie, mits die insolvent daardeur nie voorgee om goed van sy insolvente boedel te vervreem nie: Met dien verstande dat ’n insolvent nie sonder skriftelike toestemming van die kurator sy boedel ’n kontrak mag aangaan nie wat ’n nadelige uitwerking het of waarskynlik sou hê op sy boedel of op ’n bydrae tot sy boedel waartoe hy verplig is.

(3) ’n Insolvent kan enige professie of beroep beoefen of in enige diens tree, maar hy mag nie gedurende die sekwestrasie van sy boedel sonder die skriftelike toestemming van die kurator van sy boedel die besigheid van ’n handelaar dryf of daarin in diens wees of in welke hoedanigheid ook daarin werksaam wees nie: Met dien verstande dat as die kurator sodanige toestemming gee of weier, enigeen van die skuldeisers van die insolvent se boedel of die insolvent self hom kan beroep op die Meester, wie se beslissing finaal is.

(4) Die insolvent moet uitvoerig aantekening hou van alle bate wat hy uit watter bron ook al ontvang en van al sy uitgawe in sy professie, beroep of diens en as die kurator dit verlang, moet hy aan die kurator in die eerste week van elke maand ’n staat instuur, bevestig deur ’n beëdigde verklaring, van alle bate wat hy ontvang het en van al sy uitgawe gedurende die voorafgaande maand. Die kurator kan daardie aantekeninge op alle redelike tye insien en kan oorlegging vorder van redelike bewysstukke tot staving van een of ander sodanige aantekening en van die uitgawe van die insolvent tot onderhoud van homself en diegenes wat van hom afhanklik is.

(5) Die kurator is geregtig op alle gelde wat die insolvent ontvang het of sal ontvang in sy professie, beroep of diens wat volgens die Meester se oordeel nie nodig is of sal wees nie om homself en diegenes wat van hom afhanklik is, te onderhou nie, en as die kurator aan die werkgewer van die insolvent kennis gegee het dat die kurator kragtens hierdie sub-artikel geregtig is op enige deel van die insolvent se besoldiging wat op die tydstip van die kennisgewing aan hom verskuldig is of wat daarna, aan hom verskuldig sal word, dan moet die werkgewer daardie deel aan die kurator oorbetal.

(6) Die insolvent kan in sy eie naam in regte aanspreek of aangespreek word sonder tussenkoms van die kurator van sy boedel in enige saak aangaande status of ’n persoonlike reg, vir sover sy boedel nie daarmee gemoei is nie, of weens enige vordering wat kragtens hierdie artikel deur of op hom verhaal kan word, maar geen cessie van sy verdienste na die sekwestrasie van sy boedel, hetsy voor of na die sekwestrasie gedaan, is regsgeldig solank sy boedel onder sekwestrasie is.

(7) Die insolvent kan ’n pensioen, waarop hy geregtig mag wees weens dienste deur hom bewys, tot sy eie voordeel invorder.

(8) Die insolvent kan vergoeding van verlies of skade wat hy hetsy voor of na die sekwestrasie van sy boedel mag gely het weens belasting of persoonlike letsel, tot sy eie voordeel invorder: Met dien verstande dat hy nie sonder toestemming van die Hof ’n aksie teen die kurator van sy boedel kan instel nie op grond van kwaadwillige vervolging of laster.

(9) Behoudens die bepalings van sub-artikel (5) kan die insolvent die besoldiging vir werk of die vergoeding vir professionele dienste wat hy of iemand anders namens hom na die sekwestrasie van sy boedel verrig het, tot sy eie voordeel invorder.

(10) The insolvent may be sued in his own name for any delict committed by him after the sequestration of his estate, and his estate shall not be liable therefor.

(11) Any property claimable by the trustee from the insolvent under this section may be recovered from the insolvent by writ of execution to be issued by the registrar upon the production to him of a certificate by the Master that an amount stated therein is so claimable. 5

(12) The insolvent shall at any time before the second meeting of the creditors of his estate held in terms of section 10 *forty*, at the request of the trustee assist the trustee to the best of his ability in collecting, taking charge of or realising any property belonging to the estate: Provided that the trustee shall, during the period of such assistance, give to the insolvent out of the estate such an allowance in money or 15 goods as is, in the opinion of the Master, necessary to support the insolvent and his or her spouse and minor children.

(13) The insolvent shall keep the trustee of his estate informed of his residential and postal addresses.

(14) Any notice or information which is to be conveyed to 20 an insolvent in terms of this Act, may be delivered to him personally or may be delivered at or sent in a registered letter by post to an address given by the insolvent to the trustee in terms of sub-section (13).

Provisions relating to property in possession of insolvent after sequestration.

24. (1) If an insolvent purports to alienate, for valuable 25 consideration, without the consent of the trustee of his estate any property which he acquired after the sequestration of his estate (and which by virtue of such acquisition became part of his sequestrated estate) or any right to any such property to a person who proves that he was not aware and 30 had no reason to suspect that the insolvent had no right to alienate such property or right, the alienation shall nevertheless be valid.

(2) Whenever an insolvent has acquired the possession of any property, such property shall, if claimed by the trustee 35 of the insolvent's estate, be deemed to belong to that estate unless the contrary is proved; but if a person who became the creditor of the insolvent after the sequestration of his estate, alleges (whether against the trustee or against the insolvent) that any such property does not belong to the said 40 estate and claims any right thereto, the property shall be deemed not to belong to the estate, unless the contrary is proved.

Estate to remain vested in trustee until composition or rehabilitation.

25. (1) The estate of an insolvent shall remain vested in the trustee until the insolvent is reinvested therewith pursuant 45 to a composition as in section *one hundred and seventeen* provided, or until the rehabilitation of the insolvent in terms of section *one hundred and twenty-five*: Provided that any property which immediately before the rehabilitation is vested in the trustee shall remain vested in him after the rehabilitation 50 for the purposes of realization and distribution.

(2) When a trustee has vacated his office or has been removed from office or has resigned or died the estate shall vest in the remaining trustee, if any; otherwise it shall vest in the Master until another trustee has been appointed. 55

Dispositions without value.

26. (1) Every disposition of property not made for value may be set aside by the Court if such disposition was made by an insolvent—

- (a) more than two years before the sequestration of his estate, and it is proved that, immediately after the 60 disposition was made, the liabilities of the insolvent exceeded his assets;
- (b) within two years of the sequestration of his estate, and the person claiming under or benefited by the disposition is unable to prove that, immediately 65 after the disposition was made, the assets of the insolvent exceeded his liabilities:

Provided that if it is proved that the liabilities of the insolvent at any time after the making of the disposition exceeded his assets by less than the value of the property disposed of, it 70 may be set aside only to the extent of such excess.

(2) A disposition of property not made for value, which was set aside under this section or which was uncompleted by the insolvent, shall not give rise to any claim in competition with the creditors of the insolvent's estate. 75

(10) Die insolvent kan in sy eie naam in regte aangespreek word weens 'n onregmatige daad wat hy na die sekwestrasie van sy boedel begaan het, en sy boedel is nie daarvoor aanspreeklik nie.

5 (11) Alle goedere wat die kurator kragtens hierdie artikel van die insolvent kan invorder kan op hom verhaal word deur middel van 'n lasbrief tot eksekusie wat die griffier moet uitreik op vertoon aan hom van 'n sertifikaat van die Meester dat 'n daarin vermelde bedrag aldus invorderbaar is.

10 (12) Die insolvent moet te eniger tyd voor die tweede byeenkoms van die skuldeisers van sy boedel, gehou volgens artikel *veertig*, op versoek van die kurator so goed as hy kan die kurator help om goedere wat tot die boedel behoort, bymekaar te maak, in bewaring te neem of te gelde te maak:

15 Met dien verstande dat die kurator so lang as wat die insolvent hom aldus help, aan die insolvent so 'n toelae in geld of goedere uit die boedel moet gee as wat volgens die Meester se oordeel nodig is om die insolvent en sy vrou of haar man en minderjarige kinders te onderhou.

20 (13) Die insolvent moet die kurator van sy boedel in kennis hou van sy pos- en woonadresse.

(14) Elke kennisgewing of meedeling aan 'n insolvent volgens hierdie Wet kan aan hom persoonlik oorhandig word of kan afgegee word aan 'n adres wat die insolvent aan die kurator

25 volgens sub-artikel (13) aangegee het of kan in 'n aangetekende brief deur die pos na daardie adres gestuur word.

24. (1) As 'n insolvent voorgee om teen vergoeding van waarde, sonder toestemming van die kurator van sy boedel, goed wat hy na die sekwestrasie van sy boedel verkry het

30 (en wat deur daardie verkryging deel van sy gesekwestreerde boedel geword het) of 'n reg op sodanige goed te vervreemd aan iemand wat bewys dat hy nie geweet het en geen rede gehad het om te vermoed dat die insolvent geen reg had om daardie goed of reg te vervreemd nie, dan is die vervreemding

35 desnietemin regseldig.

(2) Wanneer 'n insolvent die besit van enige goed verkry het, dan word daardie goed, as die kurator van die insolvent se boedel dit opeis, geag tot daardie boedel te behoort, tensy die teendeel bewys word; maar as iemand wat die skuldeiser

40 van die insolvent geword het na die sekwestrasie van sy boedel, beweer (hetsy teenoor die kurator of teenoor die insolvent) dat sodanige goed nie tot bedoelde boedel behoort nie en aanspraak maak op een of ander reg daartoe, dan word die goed geag nie tot die boedel te behoort nie, tensy die teendeel

45 bewys word.

25. (1) Die boedel van 'n insolvent bly onder die beheer van die kurator totdat dit weer op die insolvent oorgaan ingevolge 'n akkoord, volgens die bepalings van artikel *honderd-en-sewentien* of totdat die insolvent gerehabiliteer

50 word, volgens artikel *honderd-vyf-en-twintig*: Met dien verstande dat alle goedere wat onmiddellik voor die rehabilitasie onder beheer van die kurator val, na die rehabilitasie onder sy beheer bly om te gelde gemaak en verdeel te word.

(2) Wanneer 'n kurator sy amp ontruim het of afgesit is of

55 afgetree het of oorlede is, dan gaan die boedel oor op die orige kurator, as daar een is; anders gaan dit op die Meester oor totdat 'n ander kurator aangestel is.

26. (1) Elke vervreemding van goed sonder teenwaarde kan deur die Hof tot niet gemaak word as daardie vervreemding

60 gedaan is deur 'n insolvent—

(a) meer as twee jaar voor die sekwestrasie van sy boedel en bewys gelewer word dat onmiddellik na die vervreemding die skulde van die insolvent sy bate te bo gegaan het;

65 (b) binne twee jaar voor die sekwestrasie van sy boedel en die persoon wat kragtens die vervreemding 'n vordering inbring of wat daardeur bevoordeel is, nie kan bewys nie dat onmiddellik na die vervreemding die bate van die insolvent sy skulde te bo gegaan het:

70 Met dien verstande dat as bewys word dat die skulde van die insolvent te eniger tyd na die vervreemding sy bate te bo gegaan het met minder as die waarde van die vervreemde goed, die vervreemding slegs tot die hoogte van daardie oorskot

75 tot niet gemaak kan word.

(2) 'n Vervreemding van goed sonder teenwaarde wat kragtens hierdie artikel tot niet gemaak is of wat nie deur die insolvent volvoer is nie, gee aan die bevoordeelde nie die reg om met die skuldeisers van die insolvent se boedel te

80 konkureer nie.

Bepalings omtrent goedere in besit van insolvent na die sekwestrasie.

Insolvente boedel bly onder kurator tot akkoord of rehabilitasie.

Beskikking oor goed sonder teenwaarde.

Antenuptial
contracts.

27. (1) No immediate benefit under a duly registered antenuptial contract given in good faith by a man to his wife or any child to be born of the marriage shall be set aside as a disposition without value, unless that man's estate was sequestrated within two years of the registration of that antenuptial contract. 5

(2) In sub-section (1) the expression "immediate benefit" means a benefit given by a transfer, delivery, payment, cession, pledge, or special mortgage of property completed before the expiration of a period of three months as from the date of 10 the marriage.

Life insurance
policies.

28. (1) When a man before or during his marriage has effected in favour of or ceded to or for the benefit of his wife any policy or policies of life insurance, the policy or policies to an amount not exceeding two thousand pounds, and any 15 bonus claimable in respect thereof, shall be excluded from her estate, if her estate is sequestrated.

(2) When a man before or during his marriage, but more than two years before the sequestration of his estate, has in good faith effected in favour of or ceded to or for the benefit 20 of his wife or child or both a policy or policies of life insurance, the policy or policies, if it does not or they do not constitute an immediate benefit as defined in sub-section (2) of section *twenty-seven*, whether to the wife or child or both, shall to an amount not exceeding two thousand pounds, and any bonus 25 claimable in respect thereof, be excluded from his insolvent estate, and, if he is married in community of property, from the joint estate of himself and his wife:

Provided that—

(a) any policy which, at the time of the sequestration 30 of the estate, had been ceded or pledged to any person (other than the wife or child of the insured, or a trustee for such wife or child) shall not, to the extent of the interest ceded or received by the pledgee, be excluded as aforesaid; 35

(b) when any policy is excluded as aforesaid as to a part only, the person entitled to the part which has not been included, may demand from the insurer by whom such policy was issued, the issue of two policies, in substitution of such policy: one for the part which 40 has not been excluded and the other for the excluded part, in favour of the parties respectively entitled thereto. The insurer shall thereupon issue such policies at the expense of the applicant, and the original policy shall thereupon become void. 45

(3) In this section the expression, "policy of life insurance" or "policy" includes a contract for securing an insurance endowment, bonus, or annuity upon the death of the insured, or on the expiration of any period, or on the happening of an event, as well as a fully paid-up policy granted for the 50 surrender or exchange of a policy of an equivalent value, but shall not include any other property acquired in consideration of the surrender, pledge, or cession of a policy.

Voidable
preferences.

29. (1) Every disposition of his property made by a debtor not more than six months before the sequestration of his estate, 55 which has had the effect of preferring one of his creditors above another, may be set aside by the Court if immediately after the making of such disposition the liabilities of the debtor exceeded his assets, unless the person in whose favour the disposition was made proves that the disposition was made 60 in the ordinary course of business and that it was not intended thereby to prefer one creditor above another.

(2) Every disposition of property made under a power of attorney whether revocable or irrevocable, shall for the purposes of this section and of section *thirty* be deemed to be made at 65 the time at which the transfer or delivery or mortgage of such property takes place.

Undue preference
to creditors.

30. (1) If a debtor made a disposition of his property at a time when his liabilities exceeded his assets, with the intention of preferring one of his creditors above another, and 70 his estate is thereafter sequestrated, the Court may set aside the disposition.

(2) For the purposes of this section and of section *twenty-nine* a surety for the debtor and a person in a position by law analogous to that of a surety shall be deemed to be a creditor 75 of the debtor concerned.

27. (1) Geen onmiddellike bevoordeling kragtens behoorlik
 geregistreerde huweliksvoorwaardes, deur 'n man aan sy vrou
 of aan 'n kind wat uit die huwelik gebore sal word, te goeder
 trou verleen, word as vervreemding sonder teenwaarde tot
 5 niet gemaak nie, tensy daardie man se boedel gesekwestreer
 is binne twee jaar na die registrasie van daardie huweliks-
 voorwaardes.

(2) In sub-artikel (1) beteken die uitdrukking „onmiddellike
 bevoordeling” 'n bevoordeling verleen deur transport, oordrag,
 10 betaling, cessie, verpanding of verlening van 'n spesiale ver-
 band op goed, wat voltooi is voor die verloop van 'n tydperk
 van drie maande vanaf die dag van die huwelik.

28. (1) As 'n man voor of gedurende sy huwelik een of
 meer lewensassuransie-polisse ten gunste van sy vrou aangegaan
 15 het of aan haar of ten behoeve van haar gecedeer het, dan word
 die polis of polisse tot 'n bedrag van nie meer as twee duisend
 pond, benewens een of ander bonus wat in verband daarmee
 verskuldig mag wees, van haar boedel uitgesluit, as haar
 boedel gesekwestreer word.

20 (2) Wanneer 'n man voor of gedurende sy huwelik, dog
 meer as twee jaar voor die sekwestrasie van sy boedel, te goeder
 trou een of meer lewensassuransie-polisse ten gunste van sy
 vrou of kind of albei aangegaan het of aan of ten behoeve van
 haar of die kind of albei gecedeer het, dan word die polis of
 25 polisse as hy of hulle nie 'n onmiddellike bevoordeling, soas
 omskrywe in sub-artikel (2) van artikel *sewen-en-twintig*,
 uitmaak nie, hetsy van die vrou of kind of beide, tot 'n bedrag
 van nie meer as twee duisend pond, benewens een of ander
 bonus wat in verband daarmee verskuldig mag wees, uitgesluit
 30 van sy insolvente boedel en as hy in gemeenskap van goedere ge-
 trou is, van die gemeenskaplike boedel van hom en sy vrou :

Met dien verstande dat—

(a) 'n polis wat op die tydstip van die sekwestrasie van
 die boedel gecedeer of verpand was aan 'n ander
 35 persoon as die vrou of kind van die versekerde of 'n
 trustee vir die vrou of kind tot die mate van die
 belang wat gecedeer is of deur die verpanding verseker
 is, nie soos voormeld uitgesluit word nie ;

(b) wanneer 'n polis slegs gedeeltelik soas voormeld
 40 uitgesluit is, dan kan die persoon wat geregtig is
 op die deel wat nie uitgesluit is nie, van die ver-
 sekeraar wat die polis uitgereik het, verlang dat hy
 twee polisse uitreik tot vervanging van daardie polis :
 een vir die deel wat nie uitgesluit is nie en die ander
 45 vir die uitgeslote deel, ten gunste van die partye
 wat onderskeidelik daarop geregtig is ; die ver-
 sekeraar moet daarop daardie polisse uitreik op koste
 van die versoeker en die oorspronklike polis verval
 daarop.

50 (3) In hierdie artikel omvat die uitdrukking „lewensassu-
 ransie-polis” of „polis” 'n kontrak tot verkryging van 'n
 uitkeringspolis, bonus of jaargeld na die dood van die ver-
 sekerde of na verloop van 'n tydperk of na 'n sekere gebeurtenis
 sowel as 'n ten volle inbetaalde polis, verleen teen oorgawe
 55 van of in ruil vir 'n gelykwaardige polis, dog omvat nie ander
 goed wat verkry is as vergoeding vir die oorgawe, verpanding
 of cessie van 'n polis nie.

29. (1) Elke vervreemding van sy goed, deur 'n skuldenaar
 nie meer as ses maande voor die sekwestrasie van sy boedel
 60 geslaan, waarvan die gevolg is dat aan een van sy skuldeisers
 bo 'n ander voorkeur verleen is, kan deur die Hof vernietig
 word, as die skulde van die skuldenaar onmiddellik na die
 vervreemding sy bate te bo gegaan het, tensy die persoon ten
 bate van wie die vervreemding gedaan is, bewys dat die ver-
 vreemding in die gewone loop van besigheid gedaan is en dat
 65 daarmee nie bedoel was om aan een skuldeiser bo 'n ander
 voorkeur te verleen nie.

(2) Elke vervreemding van goed kragtens 'n prokurasie,
 hetsy herroepbaar of onherroepbaar, word vir die toepassing
 70 van hierdie artikel en artikel *dertig* geag gedaan te word op die
 tydstip wanneer die transport of lewering of beswaring met
 verband van daardie goed plaasvind.

30. (1) As 'n skuldenaar sy goed vervreemd het op 'n tydstip
 toe sy skulde sy bate te bo gegaan het, met die bedoeling om
 75 aan een van sy skuldeisers bo 'n ander voorkeur te verleen
 en sy boedel word daarna gesekwestreer, dan kan die Hof die
 vervreemding tot niet maak.

(2) By die toepassing van hierdie artikel en van artikel *negen-
 en-twintig* word 'n borg vir die skuldenaar en iemand wat 'n
 80 posisie inneem wat regtens van gelyke aard is as die van 'n
 borg, beskou as 'n skuldeiser van die betrokke skuldenaar.

Huweliks-
 voorwaardes.

Lewensassuran-
 siepolisse.

Vernietigbare
 voorkeur.

Onbehoorlike
 voorkeur aan
 skuldeisers.

Collusive dealings
before sequestra-
tion.

31. (1) After the sequestration of a debtor's estate the Court may set aside any transaction entered into by the debtor before the sequestration, whereby he, in collusion with another person, disposed of property belonging to him in a manner which had the effect of prejudicing his creditors or of preferring one of his creditors above another. 5

(2) Any person who was a party to such collusive disposition shall be liable to make good any loss thereby caused to the insolvent estate in question and shall pay for the benefit of the estate, by way of penalty, such sum as the Court may adjudge, not exceeding the amount by which he would have benefited by such dealing if it had not been set aside; and if he is a creditor he shall also forfeit his claim against the estate. 10

(3) Such compensation and penalty may be recovered in any action to set aside the transaction in question, and, if no such action has been instituted, the trustee may recover such compensation and penalty by action. 15

Proceedings to set
aside improper
disposition.

32. (1) Proceedings to set aside any disposition of property under section *twenty-six, twenty-nine, thirty or thirty-one*, or for the recovery of compensation or a penalty under section *thirty-one*, shall be taken by the trustee. If the trustee fails to take any such proceedings they may be taken by any creditor in the name of the trustee upon his indemnifying the trustee against all costs thereof. 20

(2) In any such proceedings the insolvent may be compelled to give evidence on a subpoena issued on the application of any party to the proceedings or he may be called by the Court to give evidence. When giving such evidence he may not refuse to answer any question on the ground that the answer may tend to incriminate him or on the ground that he is to be tried on a criminal charge and may be prejudiced at such a trial by his answer. 25 30

(3) When the Court sets aside any disposition of property under any of the said sections, it shall declare the trustee entitled to recover any property alienated under the said disposition or in default of such property the value thereof at the date of the disposition. 35

Improper disposi-
tion does not affect
certain rights.

33. (1) A person who, in return for any disposition which is liable to be set aside under section *twenty-six, twenty-nine, thirty or thirty-one*, has parted with any property or security which he held or who has lost any right against another person, shall, if he acted in good faith, not be obliged to restore any property or other benefit received under such disposition, unless the trustee has indemnified him for parting with such property or security or for losing such right. 40 45

(2) Section *twenty-six, twenty-nine, thirty or thirty-one* shall not affect the rights of any person who acquired property in good faith and for value from any person other than a person whose estate was subsequently sequestered.

Voidable sale of
business.

34. (1) If a trader has alienated any business belonging to him or the goodwill or any property belonging to such a business (except goods sold in the ordinary course of that business), and his estate is sequestered within six months of such alienation, the alienation shall be void as against the trustee of his estate, unless, not less than ten days and not more than thirty days before such alienation, he published a notice of such intended alienation in two issues of the *Gazette* and in two issues of a newspaper circulating in the district in which that business was carried on. 50 55

(2) As soon as any such notice is published, every liquidated liability of the said trader in connection with the said business, which would become due at some future date, shall fall due forthwith, if the creditor concerned demands payment of such liability: Provided that if such liability bears no interest, the amount of such liability which would have been payable at such future date if such demand had not been made, shall be reduced at the rate of six per cent. per annum of that amount, over the period between the date when payment is made and that future date. 60 65

(3) If any person who has any claim against the said trader in connection with the said business, has before such alienation, issued a summons against such trader for the purpose of enforcing his claim, the alienation shall be void as against him for the purpose of such enforcement. 70

immovable, any amount paid in respect thereof to the State or for the benefit of a provincial administration or to a body established by or under the authority of any law, in discharge of a liability to make such payments periodically, which liability is an incident of the ownership of that property, if the said amount was due and the payment thereof was necessary to enable the trustee to give transfer of the property, shall form part of the costs of realization. 5

(2) If a secured creditor (other than a secured creditor upon whose petition the estate in question was sequestrated) states in his affidavit submitted in support of his claim against the estate that he relies for the satisfaction of his claim solely on the proceeds of the property which constitutes his security, he shall not be liable for any costs of sequestration other than the costs specified in sub-section (1), and other than costs for which he may be liable under paragraph (a) or (b) of the proviso to section *one hundred and four*. 10 15

(3) Any interest due on a secured claim in respect of any period not exceeding two years immediately preceding the date of sequestration shall be likewise secured as if it were part of the capital sum. 20

(4) Notwithstanding the provisions of any law which prohibits the transfer of any immovable property unless payment has been made of any amount payable periodically in respect of that property to the State or for the benefit of a provincial administration, or to a body established by or under the authority of any law, in discharge of a liability to make such payments periodically, which liability is an incident of the ownership of that property, the non-payment of any such amount payable in respect of any immovable property belonging to an insolvent estate, which has been due for a period of more than two years, shall not debar the trustee of that estate from transferring the said property for the purpose of liquidating the estate. 25 30

Land Bank not affected by this Act.

90. The provisions of this Act shall not affect the provisions of any other law which confer powers and impose duties upon the Land and Agricultural Bank of South Africa in relation to any property belonging to an insolvent estate. 35

Liquidation account and plan of distribution or contribution.

91. Subject to the provisions of sections *one hundred and three* and *one hundred and eight*, a trustee shall— 40

- (a) within a period of six months as from the date of his appointment, if the value of the assets in the estate in question amounts to two hundred and fifty pounds or more; or
- (b) within a period of three months as from the date of his appointment, if the value of the assets in the estate amounts to less than two hundred and fifty pounds, 45

submit to the Master a liquidation account and a plan of distribution of the proceeds of the property in the estate available for payment to creditors, or, if all realizable property in the estate has been realized and brought to account and the proceeds are insufficient to cover the costs and charges mentioned in sections *ninety-six* and *ninety-seven*, a plan of contribution apportioning the liability for the deficiency among the creditors who are liable to contribute. 50 55

Manner of framing liquidation account.

92. (1) A liquidation account shall contain an accurate record of all moneys received and of all moneys disbursed by the trustee otherwise than in the course of a business which he carried on for the insolvent estate in question. 60

(2) The record of each such receipt and disbursement shall set forth the amount and date thereof and sufficient particulars to explain its nature. 65

(3) The liquidation account shall be accompanied by the trustee's bank pass book and by vouchers in support of the record of receipts and disbursements. 70

(4) If a liquidation account is not the final liquidation account, the trustee shall further set forth therein—

- (a) all property still unrealized;
- (b) all outstanding debts due to the estate;
- (c) the reasons why that property has not been realized or those debts have not been collected. 75

In that event the trustee shall, from time to time and as the Master may direct, but at least once in every six months, unless he has received an extension of time as provided in section *one hundred and seven*, frame and submit to the Master periodical accounts in form and in all other respects similar to the account mentioned in sub-sections (1) and (2). 80

die bedrag wat ingevolge die ooreenkoms nog aan hom verskuldig is, verseker word. Die kurator van die skuldenaar se insolvente boedel moet, indien die skuldeiser dit verlang, die goed aan hom oorhandig en daarop word die skuldeiser 5 geag daardie goed te besit as sekuriteit vir sy vordering en is die bepalings van artikel *drie-en-tagtig* van toepassing.

(2) As die skuldenaar die goed binne een maand voor die sekwestrasie van sy boedel aan die skuldeiser teruggegee het, dan kan die kurator van die skuldeiser verlang dat hy daardie 10 goed of die waarde daarvan op die dag toe dit aldus aan die skuldeiser teruggegee is, aan hom moet oorhandig, mits die kurator die verskil tussen die totale bedrag wat ingevolge die ooreenkoms verskuldig is en die bedrag wat werklik ingevolge daarvan betaal is, al na die geval, aan die skuldeiser betaal 15 of van voormelde waarde aftrek. As die goed aan die kurator oorhandig word, is die bepalings van sub-artikule (1) van toepassing.

85. (1) 'n Stilswygende of wettelike hipoteek (behalwe die stilswygende hipoteek van die verhuurder) verleen geen 20 preferente reg teenoor 'n insolvente boedel nie.

Uitsluiting of beperking van preferensie kragtens stilswygende hipoteek.

(2) Die stilswygende hipoteek van 'n verhuurder verleen 'n preferensie ten opsigte van 'n voorwerp wat aan daardie hipoteek onderworpe is weens huurloon wat verskuldig is vir 'n tydperk onmiddellik voor en tot op die dag van die 25 sekwestrasie dog vir nie langer nie as—

(a) drie maande, as die huur by die maand of by korter termyne as een maand verskuldig is;

(b) ses maande, as die huur by termyne van langer as een maand maar nie langer as drie maande verskuldig 30 is nie;

(c) nege maande, as die huur by termyne van langer as drie maande maar nie langer as nege maande verskuldig is nie;

(d) vyftien maande in elke ander geval.

35 (3) Die huurgeld vir goed, gehuur deur 'n huurder wie se boedel later gesekwestreer is, verskuldig vir die tydperk vanaf en met inbegrip van die dag van die sekwestrasie tot op die dag waarop die gehuurde goed aan die verhuurder teruggegee word, maak deel uit van die sekwestrasiekoste.

40 86. Geen algemene verband wat na die een-en-dertigste dag van Desember 1916 geregistreer is, verleen enige preferensie met betrekking tot onroerende goed en geen algemene klousule in 'n spesiale verband wat na voormelde dag geregistreer is, verleen enige preferensie met betrekking tot onroerende goed 45 of met betrekking tot roerende goed wat nie aan die verbandhouer op die tydstip toe die verband gepasseer is of eerder oorhandig is nie en gedurende die tydperk van die verband in sy besit gebly het: Met dien verstande dat die voorgaande bepalings van hierdie artikel geen inbreuk maak op 'n pre-

Regskrag van algemene verband en algemene klousule.

50 ferensie verleen in 'n algemene klousule in 'n verband deur 'n wewenaar of weduwee ten gunste van die Meester gepasseer tot versekering van die betaling aan sy of haar kind, van 'n som geld wat aan die kind verskuldig is uit die boedel van die wewenaar of weduwee se oorlede eggenote of eggenoot.

55 87. Die voorrang verleen deur 'n verband tot versekering van die betaling van toekomstige skulde hang af van die dag van die registrasie van daardie verband en nie van die dag waarop so 'n skuld tot stand kom nie.

Rangorde van verbande vir toekomstige skulde.

60 88. 'n Verband (onverskillig of dit spesiaal dan wel algemeen is), gepasseer tot versekering van die betaling van 'n voorheen onversekerde skuld wat aangegaan is meer as twee maande voor die registrasie van die verband, of tot versekering van die betaling van 'n skuld wat aangegaan is as 'n novasie of tot vervanging van so 'n eersbedoelde skuld, verleen geen 65 preferensie nie as die boedel van die verband-skuldenaar gesekwestreer word binne 'n tydperk van ses maande na daardie registrasie.

Sekere verbande is ongeldig.

70 89. (1) Die koste van instandhouding, bewaring en tegelasmaking van goed wat aan 'n spesiale verband, stilswygende hipoteek van 'n verhuurder, pandreg of retensiereg onderhewig is, word betaal uit die opbrings van daardie goed, as dit voldoende is, en as dit onvoldoende is, deur dié skuldeisers, *pro rata*, wat geregtig sou gewees het, met voorrang bo ander persone, tot betaling van hulle vordering uit daardie opbrings 75 as dit voldoende gewees het om voormelde koste en daardie vorderings te dek. Die kurator se vergoeding met betrekking tot daardie goed en 'n eweredige aandeel in die koste deur die kurator gemaak om sekuriteit te gee vir sy behoorlike beredering van die boedel, bereken volgens die opbrings van die 80 verkoping van die goed, die Meester se fooie in verband daarmee,

Koste wat ten laste van sekuriteit kom.

still due to him under the agreement is secured. The trustee of the debtor's insolvent estate shall, if required by the creditor deliver the property to him, and thereupon the creditor shall be deemed to be holding that property as security for his claim and the provisions of section *eighty-three* shall apply.

5

(2) If the debtor returned the property to the creditor within a period of one month prior to the sequestration of the debtor's estate, the trustee may demand that the creditor deliver to him that property or the value thereof at the date when it was so returned to the creditor, subject to payment to the creditor by the trustee or to deduction from the value (as the case may be) of the difference between the total amount payable under the said agreement and the total amount actually paid thereunder. If the property is delivered to the trustee the provisions of sub-section (1) shall apply.

15

Exclusion or limitation of preference under legal hypothec.

85. (1) A tacit or legal hypothec (other than a landlord's legal hypothec) shall not confer any preferent right against an insolvent estate.

(2) A landlord's legal hypothec shall confer a preference with regard to any article subject to that hypothec for any rent due in respect of any period immediately prior to and up to the date of sequestration but not exceeding—

20

(a) three months, if the rent is payable monthly or at shorter intervals than one month;

(b) six months, if the rent is payable at intervals exceeding one month but not exceeding three months;

25

(c) nine months, if the rent is payable at intervals exceeding three months but not exceeding six months;

(d) fifteen months in any other case.

(3) The rent for any property hired by a lessee whose estate was subsequently sequestrated, due in respect of the period commencing upon and including the date of sequestration and ending upon the date upon which the leased property is returned to the lessor, shall be included in the cost of sequestration.

30

Effect of general bond and general clause.

86. No general mortgage bond registered after the 31st day of December, 1916, shall confer any preference in respect of immovable property, and no general clause in a special mortgage bond registered after the said date shall confer any preference in respect of immovable property or in respect of movable property which was not delivered to the mortgagee at the time of or prior to the passing of the mortgage bond and retained by him during the term thereof: Provided that the preceding provisions of this section shall not affect any preference conferred by a general clause in any mortgage bond passed by a widower or widow in favour of a Master, for the purpose of securing the payment to his or her child of any sum of money due to the child from the estate of the widower's or widow's deceased spouse.

35

40

45

Ranking of mortgages for future debts.

87. Priority under any mortgage bond to secure the payment of future debts shall depend on the date of the registration of that mortgage bond, and not on the date upon which any such debt comes into existence.

50

Certain mortgages are invalid.

88. A mortgage bond, whether special or general, passed for the purpose of securing the payment of a debt not previously secured, which was incurred more than two months prior to the registration of the bond, or for the purpose of securing the payment of a debt incurred in novation of or substitution for any such first-mentioned debt, shall not confer any preference if the estate of the mortgage debtor is sequestrated within a period of six months after such registration.

55

60

Costs to which securities are subject.

89. (1) The cost of maintaining, conserving, and realizing any property which is subject to any special mortgage, landlord's legal hypothec, pledge, or right of retention shall be paid out of the proceeds of that property, if sufficient, and if insufficient, by those creditors, *pro rata*, who would have been entitled, in priority to other persons, to payment of their claims out of those proceeds if they had been sufficient to cover the said cost and those claims. The trustee's remuneration in respect of that property and a proportionate share of the costs incurred by the trustee in giving security for his proper administration of the estate, calculated on the proceeds of the sale of the property; the Master's fees thereon, and if the property is

65

70

lewer en in daardie geval is die skuldeiser aanspreeklik vir die onder-balju se koste, soas getakseer en toegestaan deur die Meester. As daardie koste nie op die skuldeiser verhaal kan word nie, word hulle uit die boedel betaal as deel van die sekwestrasiekoste.

(8) Die skuldeiser kan daardie goed op die volgende wyse en voorwaardes te gelde maak, te wete—

- (a) as dit effekte is, kan die skuldeiser dit onverwyld verkoop deur 'n makelaar;
- (b) as dit 'n wissel is, kan die skuldeiser dit langs die gewone besigheidsweg te gelde maak;
- (c) as dit uit 'n regs-vordering bestaan, mag die skuldeiser dit nie sonder goedkeuring van die Meester of die kurator te gelde maak nie;
- (d) as dit uit ander goed bestaan, kan die skuldeiser dit by openbare veiling verkoop nadat hy aan die kurator 'n redelike geleentheid gegee het om dit te besigtig en nadat hy sodanig van die tyd en plek van die verkoping kennis gegee het, as wat die kurator gelas het.

(9) Sodra die kurator 'n skuldeiser volgens paragraaf (d) van sub-artikel (8) gelas het om van 'n verkoping by openbare veiling kennis te gee, moet die kurator aan al die ander skuldeisers van die betrokke boedel skriftelik kennis gee van die tyd en plek van die voorgenome verkoping.

(10) Wanneer 'n skuldeiser sy sekuriteit volgens voorgaande bepalings te gelde gemaak het, moet hy onverwyld die netto-opbrings van die tegeldemaking oorbetal aan die kurator, of as daar geen kurator is nie, aan die Meester en daarop is die skuldeiser geregtig op betaling, uit daardie opbrings, van sy preferente vordering as daardie vordering volgens voorskrif van artikel vier-en-veertig bewys en toegelaat is en die kurator of die Meester van oordeel is dat die vordering inderdaad deur die aldus tegeldegemaakte goed verseker was.

As die kurator die preferensie betwis, dan kan die skuldeiser of volgens artikel honderd-en-nege by die Meester verset teen die kuratorsrekening aanteken, of die Hof versoek, na kennis-gewing van die mosie aan die kurator, om 'n bevel dat die kurator hom onverwyld moet betaal. Op daardie versoek kan die Hof beskik soos hy billik ag.

(11) As 'n skuldeiser by die bewys van sy vordering sy sekuriteit gewaardeer het, dan kan die kurator, indien deur die skuldeisers gemagtig, binne drie maande na die dag van sy aanstelling of na die dag waarop die vordering bewys is (na gelang die een of die ander later is) die goed wat die sekuriteit uitmaak (onverskillig of daardie goed roerend of onroerend is) oorneem teen die bedrag waarop die skuldeiser dit gewaardeer het toe sy vordering bewys is: Met dien verstande dat as twee of meer skuldeisers 'n pandreg of verband op dieselfde goed het, dan word 'n skuldeiser wat sy sekuriteit gewaardeer het, geag slegs sy preferente regte op daardie goed te gewaardeer het en is die kurator geregtig om slegs daardie regte oor te neem en nie die goed self nie. As die kurator nie binne daardie termyn bedoelde goed of sekuriteit oorneem nie, dan moet hy dit te gelde maak ten bate van alle skuldeisers wies vorderings daardeur verseker is, na gelang van hulle respektiewe regte.

(12) As die vordering van 'n versekerde skuldeiser meer bedra as die som wat ten opsigte van sy sekuriteit aan hom verskuldig is, dan is hy geregtig om ten opsigte van daardie meerdere bedrag as 'n onversekerde skuldeiser van die boedel gerangskik te word en as die netto-opbrings van sulke goed meer bedra as alle daardeur versekerde vorderings, dan word die oorskot, na betaling van daardie vorderings gevoeg by die ander vrye oorskot (as daar een is) van die betrokke boedel.

(13) Die bepalings van hierdie artikel is *mutatis mutandis* van toepassing in verband met 'n afsonderlike skuldeiser vir waarde van 'n solvente eggenoot bedoel in artikel een-en-twintig, wies vordering teen daardie eggenoot verseker is deur 'n spesiale verband, stilswygende hipoteek van 'n verhuurder, pand of retensiereg met betrekking tot goed wat aan daardie eggenoot behoort.

84. (1) As goed aan iemand (hieronder die skuldenaar genoem) gelewer is ingevolge 'n ooreenkoms waarin beding word dat die oorgang van die eiendom van daardie goed opgeskort word totdat sekere in die ooreenkoms voorgeskrewe betalings gedaan is, dan word die ooreenkoms by die sekwestrasie van die skuldenaar se boedel geag ten gunste van die ander party tot daardie ooreenkoms (hieronder die skuldeiser genoem) 'n hipoteek op daardie goed te vestig, waardeur

Spesiale bepaling omtrent verkoop van goed met opskortende voorwaarde.

the trustee, and in that case the creditor shall be liable for the deputy-sheriff's costs, as taxed and allowed by the Master. If those costs cannot be recovered from the creditor, they shall be paid out of the estate as part of the costs of the sequestration.

(8) The creditor may realise such property in the manner 5 and on the conditions following, that is to say—

- (a) if it is marketable security the creditor may forthwith sell it through a broker;
- (b) if it is a bill of exchange, the creditor may realise it in the ordinary course of business; 10
- (c) if it consists of a right of action, the creditor shall not realise it except with the approval of the Master or of the trustee;
- (d) if it is any other property, the creditor may sell it by public auction after affording the trustee a reasonable 15 opportunity to inspect it and after giving such notice of the time and place of the sale as the trustee directed.

(9) As soon as the trustee has directed a creditor in terms of paragraph (d) of sub-section (8) to give notice of a sale by public auction, the trustee shall give notice in writing to all the 20 other creditors of the estate in question of the time and place of the proposed sale.

(10) Whenever a creditor has realised his security as hereinbefore provided he shall forthwith pay the nett proceeds of the realisation to the trustee, or if there is no trustee, to the Master 25 and thereafter the creditor shall be entitled to payment, out of such proceeds of his preferent claim if such claim was proved and admitted as provided by section *forty-four* and the trustee or the Master is satisfied that the claim was in fact secured by the property so realised. If the trustee disputes the pre- 30 ference, the creditor may either lay before the Master an objection under section *one hundred and nine* to the trustee's account, or apply to Court, after notice of motion to the trustee, for an order compelling the trustee to pay him forthwith. Upon such application the Court may make such order 35 as to it seems just.

(11) If a creditor has valued his security when proving his claim, the trustee, if authorized by the creditors, may, within three months after the date of his appointment or after the date of the proof of the claim (whichever is the later) take over 40 the property which constitutes the security (whether that property be movable or immovable) at the value placed thereon by the creditor when his claim was proved: Provided that if two or more creditors have a pledge or mortgage of the same property, a creditor who has valued his security shall be deemed 45 to have valued, and the trustee shall be entitled to take over, only the preferent rights of the creditor in respect of the property, and not the property itself. If the trustee does not, within that period, take over the said property or security he shall realise it for the benefit of all creditors whose claims are 50 secured thereby, according to their respective rights.

(12) If the claim of a secured creditor exceeds the sum payable to him in respect of his security he shall be entitled to rank against the estate in respect of the excess, as an unsecured creditor, and if the nett proceeds of any such property exceed 55 all claims secured thereby the balance, after payment of those claims, shall be added to the other free residue (if any) in the estate in question.

(13) The provisions of this section shall apply *mutatis mutandis* in respect of any separate creditor for value of a 60 solvent spouse mentioned in section *twenty-one*, whose claim against that spouse is secured by any special mortgage, landlord's legal hypothec, pledge or right of retention in respect of any property belonging to that spouse.

Special provision in case of sale of goods under a suspensive condition.

84. (1) If any property was delivered to a person (hereinafter 65 referred to as the debtor) under an agreement containing a condition whereby the passing of the ownership of that property is suspended until certain payments prescribed in the agreement have been made, such agreement shall be regarded on the sequestration of the debtor's estate as creating in favour of the 70 other party to the agreement (hereinafter referred to as the creditor) a hypothec over that property whereby the amount

(5) Na die opening van die nuwe inskrywings word geen verdere aanbod vir die betrokke goed in aanmerking geneem nie en tensy die skuldeisers anders gelas het of as hulle geen voorskrifte gegee het nie, tensy die Meester anders gelas het, moet die kurator die beste inskrywing aanneem of alle inskrywings afwys en die goed by publieke veiling verkoop.

(6) Wanneer die skuldeisers gelas dat goed in die boedel (behalwe effekte wat deur 'n makelaar verkoop moet word) uit die hand verkoop moet word, dan moet hulle die minimum-
10 prys vasstel waarvoor die goed verkoop mag word.

(7) Van die verkoping van die roerende goed word uitgesluit die klere en beddegoed van die insolvent en al sy huisraad en gereedskap of soveel daarvan as wat die skuldeisers, of as geen skuldeiser 'n vordering teen die boedel bewys het nie,
15 as wat die Meester mag bepaal, en die insolvent mag alle goed wat aldus van die verkoping uitgesluit is, vir sy eie gebruik behou.

(8) Die kurator of 'n venduafslaer wat belas is met die verkoping van goed van die betrokke boedel, of die eggenote
20 of eggenoot, vennoot, werkgewer, werknemer of verteenwoordiger van die kurator of venduafslaer, mag geen goed van die boedel verkry nie tensy die verkryging deur 'n order van die Hof bekragtig word.

(9) As iemand anders as 'n persoon bedoel in sub-artikel (8)
25 te goeder trou goed uit 'n insolvente boedel gekoop het, wat in stryd met hierdie artikel aan hom verkoop is, of as iemand te goeder trou en vir waarde van 'n persoon boedel in sub-artikel (8) goed verkry het, wat laasbedoelde persoon in stryd met daardie sub-artikel uit 'n insolvente boedel verkry het,
30 dan is die koop of ander verkryging desnietemin geldig, dog die persoon wat die goed verkoop of andersins van die hand gesit het is teenoor die boedel aanspreeklik tot vergoeding van tweemaal die bedrag van die verlies wat die boedel mag gely het as gevolg van die beskikking oor die goed in stryd
35 met hierdie artikel.

83. (1) 'n Skuldeiser van 'n insolvente boedel wat in besit is van roerende goed as sekuriteit vir sy vordering, moet
40 voor die tweede byeenkoms van die skuldeisers van daardie boedel daarvan skriftelik kennis gee aan die Meester en aan die kurator, indien een aangestel is.

Te gelde making van sekuriteite vir vorderings.

(2) As daardie goed bestaan uit effekte of 'n wissel, dan kan die skuldeiser, nadat hy kennis gegee het soas bepaal in sub-artikel (1) en voor die tweede byeenkoms van skuldeisers, die goed te gelde maak op die wyse en voorwaardes bepaal in
44 sub-artikel (8).

(3) As daardie goed nie uit effekte of 'n wissel bestaan nie, dan kan die kurator binne sewe dae na ontvangs van die kennisgewing bedoel in sub-artikel (1) die goed van die skuldeiser oorneem teen 'n waarde deur die kurator en skuldeiser
50 by ooreenkoms bepaal of teen die volle bedrag van die skuldeiser se vordering, en as die kurator nie die goed aldus oorneem nie, dan kan die skuldeiser, na verstryking van bedoelde termyn van sewe dae dog voor bedoelde byeenkoms, die goed te gelde maak op die wyse en voorwaardes bepaal in sub-artikel (8).

55 (4) As voor bedoelde byeenkoms geen kurator aangestel is nie, dan kan die skuldeiser met die skriftelike toestemming van die Meester en voor bedoelde byeenkoms, alle goed wat hy nie kragtens sub-artikel (2) te gelde kan maak nie, op die wyse en voorwaardes bepaal in sub-artikel (8), te gelde maak.

60 (5) Die skuldeiser moet, so spoedig moontlik nadat hy bedoelde goed te gelde gemaak het, die daardeur versekerde vordering volgens artikel vier-en-veertig bewys, en hy moet aan die beëdigde verklaring wat hy tot bewys van sy vordering indien, 'n opgawe heg van die opbrings van die tegeldemaking
65 en van die feite waarop sy preferensie steun.

(6) As hy nie daardie goed voor die tweede byeenkoms van skuldeisers aldus te gelde gemaak het nie, dan moet hy so spoedig moontlik na daardie byeenkoms die goed aan die kurator oorhandig en hy kan daarop sy vordering bewys
70 en die betrokke sekuriteit waardeer, volgens voorskrif van sub-artikel (4) van artikel vier-en-veertig.

(7) As die skuldeiser na verloop van vier weke vanaf bedoelde byeenkoms nie aldus sy vordering bewys het nie, dan kan die kurator van hom afgifte van daardie goed eis en dit
75 te gelde maak, behoudens die skuldeiser se reg om sy vordering te bewys. As die skuldeiser in gebreke bly om aan daardie eis van die kurator te voldoen, dan kan die Meester, op versoek van die kurator en na kennisgewing aan die skuldeiser, die onder-balju in wie se ampsgebied die goed geleë is,
80 gelas om die goed in beslag te neem en dit aan die kurator te

(5) After the opening of the fresh tenders no further offer for the property in question shall be considered and unless the creditors have otherwise directed, or if they have given no directions, unless the Master has otherwise directed, the trustee shall accept the best tender or reject all the tenders and sell the property by public auction. 5

(6) Whenever the creditors direct that property in the estate (other than a marketable security which is to be sold through a broker) is to be sold out of hand, they shall fix the minimum price for which the property may be sold. 10

(7) From the sale of the movable property shall be excepted the wearing apparel and bedding of the insolvent and the whole or such part of his household furniture and tools as the creditors, or if no creditor has proved a claim against the estate, as the Master may determine and the insolvent shall be allowed to retain for his own use any property so excepted from the sale. 15

(8) The trustee or an auctioneer employed to sell property of the estate in question, or the trustee's or the auctioneer's spouse, partner, employer, employee or agent shall not acquire any property of the estate unless the acquisition is confirmed by an order of the Court. 20

(9) If any person other than a person mentioned in sub-section (8) has purchased in good faith from an insolvent estate any property which was sold to him in contravention of this section, or if any person in good faith and for value acquired from a person mentioned in sub-section (8) any property which the lastmentioned person acquired from an insolvent estate in contravention of that sub-section, the purchase or other acquisition shall nevertheless be valid, but the person who sold or otherwise disposed of the property shall be liable to make good to the estate twice the amount of the loss which the estate may have sustained as a result of the dealing with the property in contravention of this section. 25 30

Realization of securities for claims.

83. (1) A creditor of an insolvent estate who holds as security for his claim any movable property shall, before the second meeting of the creditors of that estate, give notice in writing of that fact to the Master, and to the trustee if one has been appointed. 35

(2) If such property consists of a marketable security or a bill of exchange, the creditor may, after giving the notice mentioned in sub-section (1) and before the second meeting of creditors, realise the property in the manner and on the conditions mentioned in sub-section (8). 40

(3) If such property does not consist of a marketable security or a bill of exchange, the trustee may, within seven days after the receipt of the notice, mentioned in sub-section (1), take over the property from the creditor at a value agreed upon between the trustee and the creditor or at the full amount of the creditor's claim, and if the trustee does not so take over the property the creditor may, after the expiration of the said period of seven days but before the said meeting, realise the property in the manner and on the conditions mentioned in sub-section (8). 45 50

(4) If no trustee has been appointed before the said meeting, the creditor may, with the permission in writing of the Master and before the said meeting, realise in manner and on the conditions mentioned in sub-section (8) any such property which he is not entitled to realise in terms of sub-section (2). 55

(5) The creditor shall, as soon as possible after he has realized such property, prove in terms of section *forty-four* the claim thereby secured and he shall attach to the affidavit submitted in proof of his claim a statement of the proceeds of the realisation and of the facts on which he relies for his preference. 60

(6) If he has not so realized such property, before the second meeting of creditors, he shall as soon as possible after that meeting deliver the property to the trustee and he may thereupon prove his claim and place a value on the security in question, as provided in sub-section (4) of section *forty-four*. 65

(7) If after the expiry of four weeks as from the said meeting, the creditor has not so proved his claim, the trustee may demand from him delivery of such property and realise it subject to the right of the creditor to prove his claim. If the creditor fails to comply with such demand of the trustee, the Master, at the request of the trustee and after notice to the creditor shall direct the deputy-sheriff within whose area of jurisdiction the property is situate to attach the property and to deliver it to 75

op inkomstebelasting) aan die kurator insage verleen van elke opgawe wat deur of namens die betrokke insolvent in verband met inkomstebelasting aan die Kommissaris gedaan is en moet aan die kurator toestaan om 'n afskrif van so 'n 5 opgawe te maak. Op versoek van die kurator moet bedoelde Kommissaris of 'n amptenaar onder hom, in wie se bewaring so 'n opgawe is, so 'n afskrif wat juis is, as juis waarmerk, en as 'n aantekening in so 'n opgaaf relevant is in een of ander geding, hetsy siviël of krimineel, waarby die insolvente boedel 10 of die insolvent betrokke is, dan kan daardie opgawe of 'n afskrif daarvan wat voorgee om soas voormeld gewaarmerk te wees, in daardie geding as getuienis aangevoer word by blote oorlegging deur wie ook al en so 'n gewaarmerkte afskrif het dieselfde regskrag as die oorspronklike opgawe.

15 (3) Die skuldeisers kan aan die kurator voorskrywe watter gedragslyn hy moet volg met betrekking tot 'n aangeleentheid waaromtrent aan hulle verslag gedoen is volgens paragraaf (e), (f), (g), (h) of (i) van sub-artikel (1) en by ontstentenis van sulke voorskrifte, kan die kurator in daardie aangeleentheid 20 volgens goeddunke handel, dog met inagneming van een of ander bepaling van hierdie Wet wat daarop betrekking het.

(4) Die kurator moet die hulp verleen in verband met 'n vervolging of voorgenome vervolging van die insolvent kragtens hierdie Wet, wat die Meester hom mag gelas om te verleen.

25 82. (1) Behoudens die bepalings van artikels *drie-en-* Verkoop van goedere na tagtig en *negentig*, moet die kurator van 'n insolvente boedel tweede byeenkoms en so spoedig doenlik na die tweede byeenkoms van die skuld- byenkoms en eisers van daardie boedel, al die goedere in daardie boedel wyse van verkoop en wel op die wyse en voorwaardes wat die skuld- 30 eisers mag voorskrywe: Met dien verstande dat as bate in daardie boedel bestaan uit regte, kragtens 'n huur, lisensie, koop of toekenning van grond van die Staat verkry, die kurator by sy bereddering van die boedel moet handel volgens die bepalings (as daar bestaan) wat deur die Wet, uit kragte 35 waarvan die regte verkry is, verklaar word van toepassing te wees in geval die boedel van die persoon, wat daardie regte verkry het, gesekwestreer word. Tensy die skuldeisers anders gelas het, moet die kurator die goedere by openbare veiling of openbare inskrywing verkoop. As goed by openbare veiling 40 of openbare inskrywing verkoop word, moet daarvan vooraf kennis gegee word in die *Staatskoerant* en op sodanige ander wyse as wat die Meester mag voorskrywe en as die skuldeisers geen verkoopsvoorwaardes voorgeskrywe het nie, moet die goed verkoop word op die voorwaardes wat die Meester mag 45 voorskrywe.

(2) Wanneer goed by openbare inskrywing verkoop word, moet elkeen wat inskrywe sy inskrywing in tweevoud in 'n verseëelde koevert stuur aan die Meester of as die Meester dit gelas het, aan 'n magistraat deur hom aangegee. Die 50 Meester of bedoelde magistraat moet elke inskrywing ongeopen hou totdat die termyn van inskrywing verstryk is. Dan moet hy die verseëelde koeverte open en as dit die Meester betref, een eksemplaar van elke inskrywing bewaar of as dit die magistraat betref, een eksemplaar van die inskrywing 55 aan die Meester stuur. Die Meester of die magistraat (al na die geval) moet onverwyld die ander eksemplaar van elke inskrywing aan die kurator stuur. Die kurator of sy verteenwoordiger het die reg om teenwoordig te wees wanneer die Meester of die magistraat die inskrywings open.

60 (3) As iemand na die opening van die inskrywings 'n aanbod doen vir die goed waarop die inskrywings betrekking het, moet dit afgewys word alhoewel dit beter is as die beste inskrywing: Met dien verstande dat as bedoelde persoon—

(a) die kurator versoek om nuwe inskrywings te vra en 65 aan hom die koste betaal wat in verband daarmee gemaak sal word; en

(b) belowe om op die betrokke goed in te skrywe en om, as sy inskrywing aangeneem word, nie minder te betaal nie as die bedrag van sy voormelde aanbod; en 70

(c) by die kurator deponeer die som van honderd pond of 'n bankgaransie vir die betaling van daardie som,

dan moet die kurator nuwe inskrywings vra en daarvan en van voormelde aanbod kennis gee aan elkeen wat voorheen 75 ingeskrywe het.

(4) As die persoon wat voormelde aanbod gedaan het, in gebreke bly om 'n inskrywing in te dien wat met voormelde aanbod gelykstaan of dit oortref, dan verval bedoelde som van honderd pond aan die boedel.

the law relating to income tax) permit a trustee to inspect any return rendered to the Commissioner by or on behalf of the insolvent in question in connection with income tax, and shall permit the trustee to make copies of any such return. At the request of the trustee the said Commissioner or any officer 5 under him who is in charge of any such return shall certify as correct any such copy which is correct, and if any entry in such return is relevant in any proceedings, whether civil or criminal, in which the insolvent estate or the insolvent is involved, that return or a copy thereof, purporting to have been 10 certified as aforesaid, shall be admissible in evidence in those proceedings, on its mere production by any person and any such certified copy shall have the same force and effect as the original return.

(3) The creditors may direct what action the trustee shall 15 take in regard to any matter reported to them under paragraph (e), (f), (g), (h) or (i) of sub-section (1) and failing any such directions the trustee may exercise his discretion in any such matter, but subject to any provision of this Act relating thereto

(4) The trustee shall render such assistance in connection 20 with any prosecution or contemplated prosecution of the insolvent, under this Act, as the Master may direct him to render.

Sale of property
after second meet-
ing and manner of
sale.

82. (1) Subject to the provisions of sections *eighty-three* and *ninety* the trustee of an insolvent estate shall, as soon as 25 may be after the second meeting of the creditors of that estate, sell all the property in that estate in such manner and upon such conditions as the creditors may direct: Provided that if any rights acquired from the state under a lease, licence, purchase, or allotment of land is an asset in that estate, the 30 trustee shall, in his administration of the estate, act in accordance with those provisions (if any) which by the law under which the rights were acquired, are expressed to apply in the event of the sequestration of the estate of the person who acquired those rights. Unless the creditors have otherwise directed 35 the trustee shall sell the property by public auction or public tender. A sale by public auction or public tender shall be after notice in the *Gazette* and after such other notices as the Master may direct and in the absence of directions from creditors as to the conditions of sale, upon such conditions as the Master 40 may direct.

(2) When the sale is by public tender, every tenderer shall transmit his tender in duplicate in a sealed envelope to the Master, or if the Master has so directed, to a magistrate specified by him. The Master or such magistrate shall keep each tender 45 unopened until the expiry of the period for the lodging of tenders. He shall then open the sealed envelopes and, in the case of the Master, file one duplicate of each tender or, in the case of the magistrate, transmit one duplicate of each tender to the Master. The Master or the magistrate (as the case may 50 be) shall forthwith transmit the other duplicate of each tender to the trustee. The trustee or his representative shall have the right to be present when the Master or the magistrate opens the tenders.

(3) If, after the opening of the tenders, any person makes an 55 offer for the property to which the tenders relate, it shall be rejected although it may be better than the best tender:

Provided that if such person—

- (a) requests the trustee to call for fresh tenders and pays to him the expenses to be incurred in connection 60 therewith; and
- (b) undertakes to tender for the property in question, and to pay, if his tender is accepted, an amount not less than the amount of the said offer; and
- (c) deposits with the trustee the sum of one hundred pounds 65 or a bank guarantee for the payment of that sum,

the trustee shall call for fresh tenders and notify that fact and the amount of the aforesaid offer to every person who tendered previously.

(4) If the person who made the aforesaid offer, fails to make 70 a tender equal to or better than the said offer, the said sum of one hundred pounds shall be forfeited to the estate.

78. (1) Die kurator kan van 'n skuldenaar van die insolvente boedel wat nie in staat is om sy skuld ten volle te betaal nie, 'n redelike deel van die skuld tot delging van die hele skuld aanneem, of aan 'n skuldenaar van die boedel uitstel van betaling van sy skuld toestaan, vir sover as wat dit bestaanbaar is met die bepalinge van artikel *een-en-negentig*: Met dien verstande dat as die skuld meer as vyftig pond bedra, die kurator nie 'n deel van die skuld tot delging van die hele skuld mag aanneem nie, tensy die skuldeisers, of as geen skuldeiser sy vordering teen die boedel bewys het nie, tensy die Meester hom daartoe gemagtig het.

Skikking omtrent in-skulde van boedel; onderwerping van vorderings teen boedel aan arbitrasie.

(2) As die kurator daartoe gemagtig is deur die skuldeisers, of as geen skuldeiser 'n vordering teen die boedel bewys het nie, deur die Meester, kan hy 'n geskil aangaande die boedel of 'n vordering of eis teen die boedel aan skeidsregters ter beslegting onderwerp, mits die teëparty tot arbitrasie toestem.

(3) As die kurator daartoe gemagtig is deur die skuldeisers, of as geen skuldeiser 'n vordering teen die boedel bewys het nie, deur die Meester, kan hy in verband met 'n vordering of eis teen die boedel, hetsy dit gelikwider of ongelikwider is, 'n skikking aangaan of dit erken. Wanneer aldus 'n skikking in verband met 'n vordering aangegaan is of 'n vordering aldus erken is of dit deur die vonnis van 'n hof besleg is, dan word dit geag volgens voorskrif van artikel *vier-en-veertig* teen die boedel bewys en toegelaat te wees, tensy die skuldeiser aan die kurator binne sewe dae na die skikking, erkenning of vonnis skriftelik meedeel dat hy sy vordering prysgee: Met dien verstande dat die voorgaande bepalinge van hierdie sub-artikel die kurator nie belet nie om teen bedoelde vonnis te appelleer, as die skuldeisers hom daartoe gemagtig het.

79. Te eniger tyd voor die tweede byeenkoms van skuldeisers kan die kurator, met toestemming van die Meester, aan die insolvent so 'n matige som geld of so 'n matige hoeveelheid goedere uit die boedel toestaan as wat volgens die kurator se oordeel nodig mag wees tot onderhoud van die insolvent, sy eggenote of haar eggenoot en minderjarige kinders.

Onderhoudstoelae aan kurator en sy gesin.

80. (1) 'n Kurator mag nie die besigheid of 'n deel van die besigheid van die betrokke insolvent voortset nie, tensy hy daartoe gemagtig is deur die skuldeisers van die insolvente boedel, of by ontstentenis van voorskrifte van die skuldeisers, deur die Meester.

Voortsetting van insolvent se besigheid.

(2) As die kurator gemagtig is om so 'n besigheid voort te sit, moet hy, tensy die skuldeisers hom anders gelas het, goedere, wat hy vir daardie besigheid mag nodig hê, alleen maar teen kontant en alleen maar uit die inkomste van daardie besigheid koop.

81. (1) 'n Kurator moet die sake en regshandelings van die betrokke insolvent voor die sekwestrasie van sy boedel ondersoek en op die tweede byeenkoms of op die verdaagde tweede byeenkoms van die skuldeisers van daardie boedel volledig verslag doen oor daardie sake en regshandelings en oor elke aangeleentheid van belang wat op die insolvent of die boedel betrekking het en vernaamlik omtrent—

Kurator se verslag aan skuldeisers.

- (a) die bate en skulde van die boedel;
- (b) die oorsaak van die skuldenaar se insolvensie;
- (c) die boeke wat op die insolvent se sake betrekking het en die vraag of die insolvent blykbaar van sy regshandelings behoorlik boek gehou het en so nie, in watter opsig die boekhouding onvoldoende, gebrekkig of onjuis is;
- (d) die vraag of die insolvent blykbaar hierdie Wet oortree of 'n ander misdryf begaan het;
- (e) wat hy volgens artikel *nege-en-sewentig* aan die insolvent mag toegestaan het en die rede daarvoor;
- (f) enige besigheid wat hy namens die boedel mag gedryf het, die goedere wat hy vir daardie besigheid mag gekoop het en die gevolge van die drywe van daardie besigheid;
- (g) elke regsgeding deur of teen die insolvent ingestel, wat deur die sekwestrasie van sy boedel opgeskort is of wat teen die boedel aanhangig is of dreig;
- (h) elke aangeleentheid vermeld in artikel *vyf-en-dertig* of *sewe-en-dertig*;
- (i) elke aangeleentheid aangaande die beheer of die tegeldemaking van die boedel wat die voorskrifte van die skuldeisers vereis.

(2) Vir 'n ondersoek vermeld in sub-artikel (1), moet die Kommissaris van Binnelandse Inkomste en die amptenare wat onder hom staan (ondanks die bepalinge van die Wet

Compounding of debts due to estate; admission of claims against estate and arbitration.

78. (1) The trustee may accept from a debtor of the insolvent estate who is unable to pay his debt in full, any reasonable part of the debt in discharge of the whole debt or grant any debtor of the estate an extension of time for the payment of his debt in so far as this is compatible with the provisions of section *ninety-one*: Provided that if the debt exceeds fifty pounds, the trustee shall not accept a part of the debt in discharge of the whole debt, unless he has been authorized thereto by the creditors of the estate, or if no creditor has proved a claim against the estate, by the Master.

(2) If authorized thereto by the creditors, or if no creditor has proved a claim against the estate, by the Master, the trustee may submit to the determination of arbitrators any dispute concerning the estate or any claim or demand upon the estate, when the opposite party consents to arbitration.

(3) If authorized thereto by the creditors or if no creditor has proved a claim against the estate, by the Master, the trustee may compromise or admit any claim or demand against the estate, whether liquidated or unliquidated. When a claim has been so compromised or admitted, or when it has been settled by a judgment of a court, it shall be deemed to have been proved and admitted against the estate in the manner set forth in section *forty-four*, unless the creditor informs the trustee in writing within seven days of the compromise or admission or judgment that he abandons his claim: Provided that the preceding provisions of this sub-section shall not debar the trustee from appealing against such judgment, if authorized thereto by the creditors.

Subsistence allowance for insolvent and family.

79. At any time before the second meeting of creditors the trustee may, with the consent of the Master, allow the insolvent such moderate sum of money or such moderate quantity of goods out of the estate as may appear to the trustee to be necessary for the support of the insolvent, his or her spouse and minor children.

Continuation of insolvent's business.

80. (1) A trustee shall not carry on the business of the insolvent concerned or any part thereof unless authorized thereto by the creditors of the insolvent's estate or, in the absence of instructions from the creditors, by the Master.

(2) If the trustee is authorized to carry on any such business, he shall, unless the creditors have otherwise directed him, purchase for cash only and only out of the takings of that business any goods which he may require for that business.

Trustees report to creditors.

81. (1) A trustee shall investigate the affairs and transactions of the insolvent concerned before the sequestration of his estate and shall, at the second meeting or at an adjourned second meeting of the creditors of that estate, report fully on those affairs and transactions and on any matter of importance relating to the insolvent or the estate, and more especially in regard to—

- (a) the assets and liabilities of the estate;
- (b) the cause of the debtor's insolvency;
- (c) the books relating to the insolvent's affairs, and the question whether the insolvent appears to have kept a proper record of his transactions, and if not, in what respect the record is insufficient, defective or incorrect;
- (d) the question whether the insolvent appears to have contravened this Act or to have committed any other offence;
- (e) any allowance he has made to the insolvent in terms of section *seventy-nine* and the reasons therefor;
- (f) any business which he may have been carrying on on behalf of the estate, any goods he may have purchased for that business, and the result of carrying on that business;
- (g) any legal proceedings instituted by or against the insolvent which were suspended by the sequestration of his estate which may be pending or threatened against the estate;
- (h) any matter mentioned in section *thirty-five* or *thirty-seven*;
- (i) any matter in regard to the administration or realization of the estate requiring the direction of the creditors.

(2) For the purpose of any investigation mentioned in sub-section (1) the Commissioner for Inland Revenue and the officers under him shall (notwithstanding the provisions of

hoogstens tweemaal so groot is as die aldus behoue bedrag of tweemaal so groot is as die waarde van die aldus gebruikte goed.

(2) Die bedrag waarvoor 'n kurator aldus aanspreeklik is, kan afgetrek word van een of ander vordering wat bedoelde kurator teen die betrokke boedel mag hê of kan van hom in regte ingevorder word deur sy mede-kurator, die Meester of 'n skuldeiser van die boedel wat sy vordering bewys het.

(3) Iemand wie se boedel gesekwestreer word terwyl hy volgens sub-artikel (1) aan 'n boedel waarvan hy kurator was, 'n som geld skuld wat hy van daardie boedel verduister het, die is vir altyd onbekwaam om die betrekking te beklee van kurator, voorlopige kurator, likwidateur, kurator datief, datiewe voog, *curator bonis* of eksekuteur datief.

73. (1) 'n Kurator kan regsadvies inwin omtrent enige regsvraag betreffende die bereddering of verdeling van die boedel waarvan hy kurator is en kan 'n prokureur of 'n prokureur en 'n advokaat aanstel om namens die boedel as eiser of verweerder in regte op te tree en alle koste kragtens hierdie artikel deur 'n kurator gemaak benewens die koste waarin die boedel in so 'n regsgeding verwys mag word, vir sover as wat hulle die gevolg is van stappe deur die kurator ingevolge hierdie artikel gedaan, word ingesluit in die koste van die sekwestrasie van die boedel: Met dien verstande dat die kurator nie namens die boedel as eiser of verweerder in regte mag optree nie tensy die skuldeisers hom daartoe gemagtig het.

Kurator kan regsadvies inwin.

(2) Alle koste ingevolge hierdie artikel gemaak, wat nie onder die taksasie van die taksasie-amptenaar van die Hof val nie, word getakseer deur die Meester, volgens 'n tarief deur hom vasgestel.

74. As aan die Hof blyk dat 'n prokureur of advokaat met die doel om homself te bevoordeel op onbehoorlike wyse die instelling, verdediging of leiding van 'n geding deur of teen 'n insolvente boedel aangeraai het of onnodige onkoste in verband daarmee gemaak het, dan kan die Hof daardie prokureur of advokaat persoonlik verwys in die koste of 'n deel daarvan, wat daardeur veroorsaak is.

Onbehoorlike aanbeveling of leiding van regsgeding.

75. (1) 'n Siviele regsgeding wat teen 'n skuldenaar ingestel is voor die sekwestrasie van sy boedel, verval na verstryking van 'n termyn van drie weke vanaf die dag van die eerste byeenkoms van die skuldeisers van daardie boedel, tensy die persoon wat daardie regsgeding ingestel het, binne daardie termyn aan die kurator van daardie boedel, of as geen kurator aangestel is nie, aan die Meester kennis gee het dat hy voornemens is om daardie regsgeding voort te sit, en na verstryking van 'n termyn van drie weke vanaf die dag waarop hy kennis gee het, daardie regsgeding met redelike spoed voortset: Met dien verstande dat die Hof bedoelde persoon kan veroorloof (en wel op die voorwaardes wat die Hof mog wenslik ag om te stel) om daardie regsgeding voort te sit, alhoewel hy nie binne bedoelde termyn aldus kennis gee het nie, as die Hof bevind dat daar 'n redelike verontskuldiging vir die versuim was.

Regsgeding teen boedel.

(2) Na bekragtiging, deur die Meester, van 'n kuratorsrekening in 'n insolvente boedel volgens artikel honderd-entien, mag niemand 'n regsgeding teen daardie boedel instel nie weens 'n aanspreeklikheid wat voor sy sekwestrasie ontstaan het: Met dien verstande dat die Hof op voorwaardes wat hy wenslik ag om te stel, die instelling van so 'n regsgeding, na bedoelde bekragtiging, kan veroorloof, as hy bevind dat daar 'n redelike verontskuldiging was vir die vertraging van die instelling van daardie geding.

76. (1) Wanneer 'n kurator van 'n insolvente boedel sy betrekking ontruim of bedank het of afgesit of oorlede is, dan verval geen voorheen ingestelde regsgeding waarby bedoelde boedel betrokke is, slegs as gevolg van die ontruiming, bedanking, afsetting of dood.

Voortsetting van aanhangige regsgeding deur oorblywende of nuwe kurator.

(2) Die Hof waarin so 'n geding aanhangig is, kan, nadat hy in kennis gestel is van die ontruiming, bedanking, afsetting of dood, toelaat dat die naam van die betrokke kurator vervang word deur die naam van die oorblywende of nuwe kurator, en die geding word daarop voortgeset asof die oorblywende of nuwe kurator oorspronklik die boedel in daardie geding verteenwoordig het.

77. 'n Kurator moet in die kennisgewing van sy aanstelling in die Staatskoerant volgens voorskrif van sub-artikel (2) van artikel ses-en-vyftig, alle persone wat iets skuld aan die boedel waarvan hy kurator is, oproep om hulle skulde te betaal binne 'n termyn en op 'n plek in daardie kennisgewing vermeld, en as een van hulle in gebreke bly om dit te doen, dan moet die kurator onverwyld van hom betaling invorder, indien nodig in regte.

Invordering van boedel se in-skulde.

amount not exceeding double the amount so retained or double the value of the property so used.

(2) The amount which a trustee is so liable to pay may be deducted from any claim which the said trustee may have against the estate in question or may be recovered from him by action in a court of law at the instance of his co-trustee, the Master or any creditor of the estate who has proved his claim. 5

(3) A person whose estate is sequestrated while he is, in terms of sub-section (1) indebted to an estate of which he was trustee for any sum of money which he misappropriated from that estate, shall be for ever incapable of holding the office of trustee, provisional-trustee, liquidator, curator dative, tutor dative, *curator bonis*, or executor dative. 10

Trustee may obtain legal advice.

73. (1) A trustee may obtain legal advice on any question of law affecting the administration or distribution of the estate of which he is trustee and may employ an attorney or an attorney and counsel for the institution or defence of legal proceedings on behalf of or against the estate, and all costs incurred by the trustee under this section as well as costs awarded against the estate in those legal proceedings, in so far as they result from any action taken by the trustee under this sub-section, shall be included in the cost of the sequestration of the estate; provided that the trustee shall not institute or defend any legal proceedings on behalf of the estate, unless he has been authorized thereto by the creditors. 15 20 25

(2) All costs incurred under this section which are not the subject of taxation by the taxing officer of the Court, shall be taxed by the Master according to a tariff framed by him.

Improper advising or conduct of legal proceedings.

74. If it appears to the Court that any attorney or counsel has, with intent to benefit himself, improperly advised the institution, defence or conducting of legal proceedings by or against an insolvent estate or has incurred any unnecessary expense therein, the Court may order the whole or part of the expense thereby incurred to be borne by that attorney or counsel personally. 30 35

Legal proceedings against estate.

75. (1) Any civil legal proceedings instituted against a debtor before the sequestration of his estate shall lapse upon the expiration of a period of three weeks as from the date of the first meeting of the creditors of that estate, unless the person who instituted those proceedings gave notice, within that period, to the trustee of that estate, or if no trustee has been appointed, to the Master, that he intends to continue those proceedings, and after the expiration of a period of three weeks as from the date of such notice, prosecutes those proceedings with reasonable expedition; provided that the Court may permit the said person (on such conditions as it may think fit to impose) to continue those proceedings even though he failed to give such notice within the said period, if it finds that there was a reasonable excuse for such failure. 40 45

(2) After the confirmation, by the Master, of any trustee's account in an insolvent estate in terms of section *one hundred and ten*, no person shall institute any legal proceedings against that estate in respect of any liability which arose before its sequestration: provided that the Court may, on such conditions as it may think fit to impose, permit the institution of such proceedings after the said confirmation, if it finds that there was a reasonable excuse for the delay in instituting such proceedings. 50 55

Continuance of pending legal proceedings by surviving or new trustee.

76. (1) Whenever a trustee of an insolvent estate has vacated his office or has been removed from office or has resigned or died, no legal proceedings previously instituted, in which the said estate is involved, shall lapse merely by reason of the vacating, removal, resignation or death. 60

(2) The Court in which any such proceedings are pending may, upon receiving notice of the vacating, removal, resignation or death, allow the name of the surviving or new trustee to be substituted for the name of the former; and the proceedings shall thereupon continue as if the surviving or new trustee had originally represented the estate in those proceedings. 65 70

Recovery of debts due to estate.

77. A trustee shall, in the notification of his appointment in the *Gazette*, in terms of sub-section (3) of section *fifty-six*, call upon all persons indebted to the estate of which he is trustee to pay their debts within a period and at a place mentioned in that notice, and if any such person fails to do so, the trustee shall forthwith recover payment from him, if need be by legal proceedings. 75

trasie van 'n boedel 'n eksekuteur, kurator of beheerder van daardie boedel was, na die sekwestrasie van daardie boedel geag 'n insolvent te wees met betrekking tot daardie boedel.

68. (1) 'n Verslag wat voorgee die notule te wees van die verrichtings op 'n byeenkoms van die skuldeisers van 'n insolvente boedel, ingevolge hierdie Wet gehou en wat voorgee onderteken te wees deur iemand wat homself as Meester, magistraat of ander voorsittende amptenaar noem, die strek, by blote oorlegging deur wie ook al, tot bewys, *prima facie*, van

Regsvermoede omtrent notule en geldigheid van handelings op byeenkomste van skuldeisers.

10 die daarin opgetekende verrichtings.

- (2) Elke byeenkoms van die verrichtings waarvan sulke notule as bedoel in sub-artikel (1) gehou en onderteken is, word geag behoorlik belê en gehou te geword het en alle daarop verrigte handelings word geag regsgeldig verrig te geword het, tensy

15 die teendeel bewys word.

69. (1) 'n Kurator moet onmiddellik na sy aanstelling alle roerende goedere, boeke en geskrifte wat behoort tot die boedel waarvan hy kurator is, in sy besit of onder sy beheer neem.

Kurator moet goed van boedel onder sy beheer neem.

- (2) As die kurator rede het om te vermoed dat sodanige goed, of 'n boek of geskrif verberg of andersins onwettig van hom weerhou word, dan kan hy by die bevoegde magistraat aansoek doen om 'n lasbrief tot deursoeking bedoel in sub-artikel (3).

- (3) As aan 'n magistraat by wie so 'n aansoek gedaan word, 25 blyk op grond van 'n beëdigde verklaring dat daar gegronde rede bestaan om te vermoed dat goed, of 'n boek of geskrif wat tot 'n insolvente boedel behoort, op 'n persoon, plek, voertuig of vaartuig of in 'n houer van watter aard ook al verberg is of andersins onwettig aan die betrokke kurator 30 weerhou word binne die magistraat se regsgebied, dan kan hy 'n lasbrief uitvaardig om daardie goed, boek of stuk te soek en in besit te neem.

- (4) So 'n lasbrief moet op dieselfde wyse tenuitvoer gelê word as 'n lasbrief om gesteelde goed te soek, en die persoon 35 wat die lasbrief ten uitvoer lê moet elke voorwerp wat hy uit kragte daarvan in besit neem, aan die kurator oorhandig.

70. (1) Die kurator van 'n insolvente boedel moet in 'n bank in die Unie 'n rekening op naam van die boedel aanlê en moet daarin op krediet van die boedel van tyd tot tyd alle somme 40 geld stort, wat hy ten behoeve van die boedel ontvang. Alle tjeks of orders wat op daardie rekening getrek word, moet die naam van die nemer, en die grond van betaling bevat, moet op order uitgemaak en deur elke kurator van die boedel of deur sy verteenwoordiger onderteken word.

Aanlê van bankrekening.

- (2) 'n Kurator moet binne veertien dae na sy aanstelling aan die Meester skriftelik kennis gee van die bank en banktak waarin bedoelde rekening aangelê is of sal word en hy mag nie sonder skriftelike toestemming van die Meester daardie rekening van daardie tak verplaas nie.

- (3) Die Meester en 'n borg vir die kurator of so 'n borg se gemagtigde het dieselfde reg op inligtings met betrekking tot daardie rekening as die kurator self, en is geregtig op insage van alle daarop betreklike bewysstukke, onverskillig of hulle in hande van die bank of van 'n kurator is.

- (4) Die Meester kan, na kennisgewing aan die kurator, die bestuurder van bedoelde banktak skriftelik gelas om alle gelde waarmee daardie rekening gekrediteer staan op die tydstop wanneer bedoelde bestuurder daardie opdrag ontvang en alle gelde wat daarna op daardie rekening inbetaal mag word, 60 in die voogdyfonds te stort en bedoelde bestuurder moet aan daardie opdrag gevolg gee.

71. (1) Die kurator van 'n insolvente boedel moet onmiddellik na sy aanstelling 'n boek aanlê waarin hy so spoedig moontlik aantekening moet maak van alle gelde, goedere, boeke, rekenings 65 en ander stukke wat hy ten behoeve van die boedel ontvang het.

Aantekening van alle ontvangste.

- (2) Die Meester kan te eniger tyd die kurator skriftelik gelas om bedoelde boek ter insage oor te lê en elke skuldeiser wat sy vordering teen die boedel bewys het en as die Meester 70 dit gelas, elkeen wat beweer 'n skuldeiser te wees, kan bedoelde boek op alle redelike tye insien.

72. (1) 'n Kurator wat sonder wettige rede geld, tot 'n bedrag van meer as twintig pond, wat behoort tot die boedel waarvan hy kurator is, behou of wetens sy medekurator 75 toelaat om so 'n som geld te behou langer as die eerste dag na die ontvangs daarvan waarop hy of sy medekurator hy magte was om daardie geld in die bank te stort, of wat goed van die boedel gebruik of wetens toelaat dat sy mede-kurator dit gebruik vir 'n ander doel as ten bate van die boedel, dit is, 80 buiten en behalwe enige ander straf waaraan hy mag blootstaan, aanspreeklik tot betaling aan die boedel van 'n bedrag wat

Onregmatige terughouding van geld of gebruik van goed deur kurator.

estate, an executor, curator or administrator of that estate, shall after the sequestration of that estate, be deemed to be an insolvent in relation to that estate.

Presumption as to record of proceedings and validity of acts at meetings of creditors.

68. (1) Any record purporting to be a record of any proceedings at a meeting of the creditors of an insolvent estate held under this Act and purporting to have been signed by a person describing himself as Master, magistrate or other presiding officer shall, upon its mere production by any person, be received as *prima facie* evidence of the proceedings recorded therein.

(2) Unless the contrary is proved, it shall be presumed that any meeting, of the proceedings whereat there was kept and signed such a record as is mentioned in sub-section (1), was duly convened and held and that all acts performed thereat were validly performed.

Trustee must take charge of property of estate.

69. (1) Immediately after his appointment a trustee shall take into his possession or under his control all movable property, books and documents belonging to the estate of which he is trustee.

(2) If the trustee has reason to believe that any such property, book or document is concealed or otherwise unlawfully withheld from him, he may apply to the magistrate having jurisdiction for a search warrant mentioned in sub-section (3).

(3) If it appears to a magistrate to whom such application is made, from a statement made upon oath, that there are reasonable grounds for suspecting that any property, book or document belonging to an insolvent estate is concealed upon any person, or at any place or upon or in any vehicle or vessel or receptacle of whatever nature, or is otherwise unlawfully withheld from the trustee concerned, within the area of the magistrate's jurisdiction, he may issue a warrant to search for and take possession of that property, book or document.

(4) Such a warrant shall be executed in a like manner as a warrant to search for stolen property, and the person executing the warrant shall deliver any article seized thereunder to the trustee.

Opening of banking account.

70. (1) The trustee of an insolvent estate shall open an account in the name of the estate with a bank within the Union, and shall deposit therein to the credit of the estate from time to time all sums received by him on behalf of the estate. All cheques or orders drawn upon that account shall contain the name of the payee and the cause of payment and shall be drawn to order and be signed by every trustee of the estate or by his agent.

(2) Within fourteen days after his appointment the trustee shall give to the Master notice in writing of the bank and branch thereof with which the said account has been or will be opened, and he shall not, without the written permission of the Master, transfer that account from that branch.

(3) The Master and any surety for the trustee, or any person authorized by such surety, shall have the same right to information in regard to that account as the trustee himself possesses, and may examine all vouchers in relation thereto, whether in the hands of the bank or of a trustee.

(4) The Master may, after notice to the trustee, direct the manager of the said branch of the bank in writing to pay over into the Guardians' Fund all moneys standing to the credit of that account at the time of the receipt, by the said manager, of that direction, and all moneys which may thereafter be paid into that account, and the said manager shall carry out that direction.

Record of all receipts.

71. (1) Immediately after his appointment the trustee of an insolvent estate shall open a book wherein he shall enter as soon as possible a statement of all moneys, goods, books, accounts and other documents received by him on behalf of the estate.

(2) The Master may at any time direct the trustee in writing to produce the said book for inspection and every creditor who has proved his claim against the estate, and, if the Master so orders, every person claiming to be a creditor may inspect the said book at all reasonable times.

Unlawful retention of moneys or use of property by trustee.

72. (1) A trustee who, without lawful cause, retains any money exceeding twenty pounds belonging to the estate of which he is trustee, or knowingly permits his co-trustee to retain such a sum of money longer than the earliest day after its receipt on which it was possible for him or his co-trustee to pay that money into a bank, or who uses or knowingly permits his co-trustee to use any property of the estate except for the benefit of the estate, shall, in addition to any other penalty to which he may be liable, be liable to pay into the estate an

noot) is geregtig op die getuieleen (wat uit die boedel betaal moet word) waarop hy geregtig sou wees as hy 'n getuie was in 'n siviele geding in 'n geregshof.

(8) As die insolvent of sy eggenote of haar eggenoot opgeroep word om 'n byeenkoms van skuldeisers na die tweede byeenkoms of 'n verdaagde tweede byeenkoms by te woon, dan is hy of sy geregtig op 'n toelae uit die insolvente boedel tot dekking van sy of haar nodige onkoste in verband met daardie bywoning.

10 66. (1) As 'n kragtens artikel vier-en-sestig gedagvaarde persoon in gebreke bly om op 'n byeenkoms van skuldeisers volgens voorskrif van die dagvaarding te verskyn of in gebreke bly om op daardie byeenkoms aanwesig te bly, dan kan die amptenaar wat op daardie byeenkoms voorsit, 'n lasbrief
15 uitvaardig wat elke lid van die polisiemag magtig om die gedagvaarde in hegtenis te neem en hom voor bedoelde amptenaar te bring.

Dwanguitoefening tot gehoorsaming van dagvaardings en aflegging van getuienis.

(2) Tensy die gedagvaarde persoon bedoelde amptenaar oortuig dat hy 'n redelike verontskuldiging had vir sy versuim om aan die dagvaarding gevolg te gee of om die byeenkoms te verlaat, kan bedoelde amptenaar hom verwys na die gevangenis om daar aangehou te word tot op 'n tydstip wat bedoelde amptenaar mag bepaal en die amptenaar aan die
20 hoof van die gevangenis of tronk waarna bedoelde persoon verwys is, moet hom aanhou en uitlewer op die tyd en plek wat eersbedoelde amptenaar vir sy uitlewering bepaal het.

(3) As 'n soas voormeld gedagvaarde persoon volgens voorskrif van die dagvaarding, verskyn dog in gebreke bly om 'n boek of stuk oor te lê tot oorlegging waarvan hy gedagvaar is,
30 of as iemand wat kragtens sub-artikel (1) van artikel vyf-en-sestig ondervra kan word, weier om ingesweer te word deur die amptenaar wat voorsit op 'n byeenkoms van skuldeisers waarop hy opgeroep word om teguienis af te lê of weier om te antwoord op 'n vraag wat aan hom kragtens voormelde
35 artikel wettig gestel is of die vraag nie tot tevredenheid van die voorsittende amptenaar beantwoord nie, dan kan daardie amptenaar 'n lasbrief uitvaardig wat bedoelde persoon verwys na die gevangenis waar hy aangehou word totdat hy belowe het om te doen wat van hom verlang word, dog behoudens die
40 bepalinge van sub-artikel (5).

(4) As iemand wat uit die gevangenis ontslaan is nadat hy volgens sub-artikel (3) belowe het om te doen wat van hom verlang word, in gebreke bly om sy belofte gestand te doen, dan kan bedoelde amptenaar hom na die gevangenis verwys
45 so dikwels as wat nodig mag wees om hom te dwing om te doen wat van hom verlang word.

(5) Iemand wat kragtens hierdie artikel na die gevangenis verwys is kan die Hof om sy ontslag uit die hegtenis versoek en die Hof kan sy ontslag gelas as dit bevind dat hy onregmatig na die gevangenis verwys is of onregmatig aangehou word.
50

(6) In verband met die gevangeneming van iemand of met die verwysing van iemand na die gevangenis, kragtens hierdie artikel, kom aan die amptenaar wat die lasbrief tot gevangeneming of tot verwysing na die gevangenis uitgevaardig het, dieselfde vrydom van aanspreeklikheid toe as wat toekom aan 'n regterlike amptenaar in verband met 'n handeling wat hy ampshalwe verrig het.

67. (1) As uit 'n verklaring, afgelê by 'n ondervraging kragtens artikel vyf-en-sestig, blyk dat daar gegronde redes bestaan om die insolvent te verdink, van 'n oortreding van hierdie Wet, dan moet die Meester bedoelde verklaring of 'n gesertifiseerde afskrif daarvan en alle nodige stukke instuur aan die Prokureur-generaal van die provinsie waarin die ondervraging
65 plaasgevind het of die misdryf vermoed word begaan te wees of as die ondervraging plaasgevind het of die misdryf vermoed word begaan te wees in die regsgebied van die Plaaslike Afdeling van die Hooggeregshof vir die Oostelike Distrikte van die Kaap die Goeie Hoop, aan die Solisiteur-generaal van die Oostelike Distrikte van die Kaap die Goeie Hoop, om daardie Prokureur-generaal of die Solisiteur-generaal in staat te stel om te beslis of 'n strafgeding in die saak ingestel moet word.
70

Wat gedaan moet word as 'n misdryf vermoed word.

(2) Wanneer so 'n verklaring afgelê is op 'n byeenkoms waarop 'n ander amptenaar as die Meester voorgesit het, dan moet die voorsittende amptenaar, wanneer hy die notule van die byeenkoms aan die Meester instuur volgens sub-artikel (3) van artikel negen-en-dertig, die Meester se aandag vestig op wat aan hom voorkom as gegronde redes om die insolvent te verdink van 'n oortreding van hierdie Wet.
75

(3) By die toepassing van hierdie artikel en van artikels vier-en-sestig en vyf-en-sestig word iemand wat voor die sekwe-

witness fees to be paid out of the estate, to which he would be entitled if he were a witness in any civil proceedings in a Court of law.

(8) If the insolvent or his or her spouse is called upon to attend any meeting of creditors held after the second meeting or an adjourned second meeting, he or she shall be entitled to an allowance out of the insolvent estate to defray his or her necessary expenses in connection with such attendance. 5

Enforcing summonses and giving of evidence.

66. (1) If a person summoned under section *sixty-four* fails to appear at a meeting of creditors, in answer to the summons, or fails to remain in attendance at that meeting the officer presiding at such meeting may issue a warrant, authorizing any member of the police force to apprehend the person summoned and to bring him before the said officer. 10

(2) Unless the person summoned satisfies the said officer that he had a reasonable excuse for his failure to answer the summons, or for absenting himself from the meeting, the said officer may commit him to prison to be detained there until such time as the said officer may appoint, and the officer in charge of the prison or gaol to which the said person was committed, shall detain him and produce him at the time and place appointed by the first-mentioned officer for his production. 15 20

(3) If a person summoned as aforesaid, appears in answer to the summons but fails to produce any book or document which he was summoned to produce, or if any person who may be examined at a meeting of creditors in terms of sub-section (1) of section *sixty-five* refuses to be sworn by the officer presiding at a meeting of creditors at which he is called upon to give evidence or refuses to answer any question lawfully put to him under the said section or does not answer the question to the satisfaction of the presiding officer, that officer may issue a warrant committing the said person to prison, where he shall be detained until he has undertaken to do what is required of him, but subject to the provisions of sub-section (5). 25 30 35

(4) If a person who has been released from prison after having undertaken in terms of sub-section (3) to do what is required of him, fails to fulfil his undertaking, the said officer may commit him to prison as often as may be necessary to compel him to do what is required of him. 40

(5) Any person committed to prison under this section may apply to the Court for his discharge from custody and the Court may order his discharge if it finds that he was wrongfully committed to prison or is being wrongfully detained.

(6) In connection with the apprehension of a person or with the committal of a person to prison under this section, the officer who issued the warrant of apprehension or committal to prison shall enjoy the same immunity which is enjoyed by a judicial officer in connection with any act performed by him in the exercise of his functions. 45 50

Steps to be taken on suspicion of an offence.

67. (1) If it appears from any statement made at an examination under section *sixty-five* that there are reasonable grounds for suspecting that the insolvent has been guilty of any contravention of this Act, the Master shall transmit the said statement, or a certified copy thereof, and all necessary documents to the Attorney-General of the Province wherein the examination was held or the offence is suspected to have been committed, or, if the examination was held or offence is suspected to have been committed within the jurisdiction of the Eastern Districts of the Cape of Good Hope Local Division of the Supreme Court, to the Solicitor-General of the Eastern Districts of the Cape of Good Hope, to enable that Attorney-General or the Solicitor-General to determine whether any criminal proceedings shall be instituted in the matter. 55 60

(2) When any such statement has been made at a meeting at which an officer other than the Master presided, the presiding officer, when transmitting the record of the proceedings to the Master, in terms of sub-section (3) of section *thirty-nine*, shall direct the attention of the Master to what appear to him to be reasonable grounds for suspecting that the insolvent has been guilty of a contravention of this Act. 65 70

(3) For the purposes of this section and sections *sixty-four* and *sixty-five*, a person who was, before the sequestration of an

wat inligtings, soos bedoel in sub-artikel (2), bevat, dagvaar om daardie boek of stuk of 'n uittreksel daarvan op so 'n byeenkoms van skuldeisers oor te lê.

65. (1) Op 'n byeenkoms van die skuldeisers van 'n insol-
 5 vente boedel kan die amptenaar wat daarop voorsit die in-
 solvent en enige ander op die byeenkoms aanwesige persoon
 wat kragtens sub-artikel (2) van artikel vier-en-sestig gedagvaar
 is of kon gedagvaar geword het, oproep en aan hom die eed
 oplê en bedoelde amptenaar, die kurator en elke skuldeiser
 10 wat 'n vordering teen die boedel bewys het of die verteen-
 woordiger van een van hulle, kan 'n aldus opgeroepe en be-
 edigde persoon ondervra—

Ondervraging
 van insolvent en
 ander getuie.

- (a) omtrent alle rekeningboeke, aantekenings of geskrifte
 wat betrekking het of waarvan vermoed word dat
 15 hulle betrekking het op die besigheid van die insolvent
 of die bereddering van die boedel, onverskillig of
 hulle al dan nie by daardie ondervraging oorgelê is ;
 (b) omtrent die oorsaak van die insolvensie, die toestand
 van die insolvent se sake, die aard en voorwaardes
 20 van sy diens of beroep, die bedrag van sy inkomste
 of winste sedert die dag van die sekwestrasie van sy
 boedel, sy verkryging van enige goed sedert die dag
 van die sekwestrasie of sy vooruitsigte om in die
 toekoms goed te verkry ; en
 25 (c) oor die algemeen omtrent alle aangeleenthede wat
 betrekking het op die insolvent of sy besigheid of
 sake, hetsy voor of na die sekwestrasie van sy boedel
 en omtrent alle goed wat tot sy boedel behoort en
 omtrent die besigheid, sake of goed van sy eggenote
 30 of haar eggenoot :

Met dien verstande dat die voorsittende amptenaar 'n vraag
 kan belet, wat irrelevant skyn te wees of wat die verhoor on-
 nodig sou verleng en hy moet 'n vraag belet wat handel oor
 iets wat nie in hierdie sub-artikel vermeld word nie.

- 35 (2) In verband met oorlegging van 'n boek of geskrif volgens
 voorskrif van 'n dagvaarding uitgevaardig kragtens sub-artikel
 (3) van artikel vier-en-sestig of by ondervraging van iemand
 kragtens sub-artikel (1) van hierdie artikel, is die regsreëls
 betreffende privilegie, soas toepaslik op 'n getuie wat gedag-
 40 vaar is om 'n boek of geskrif oor te lê of om getuienis af te lê
 in 'n geregshof van toepassing : Met dien verstande dat 'n
 bankier op wie se bank die betrokke insolvent of sy eggenoot
 of haar eggenote 'n rekening aanhou of te eniger tyd aangehou
 het verplig is om, indien hy kragtens sub-artikel (3) van artikel
 45 vier-en-sestig daartoe gedagvaar word, oor te lê enige tjek
 wat in sy besit is en wat die insolvent of sy eggenote of haar
 eggenoot getrek het binne een jaar voor die sekwestrasie van
 die insolvent se boedel, of 'n aantekening of 'n uittreksel van
 'n aantekening van die trek van so 'n tjek, waaruit blyk die
 50 dag waarop die tjek getrek is of betaalbaar was, die bedrag
 van die tjek en ten gunste van wie die tjek opgestel was, en
 om, indien daartoe opgevorder, alle ander inligting waaroor
 hy beskik, in verband met so 'n tjek of die rekening van die
 insolvent of sy eggenote of haar eggenoot, te verstrek ; en
 55 met dien verstande voorts dat 'n kragtens sub-artikel (1)
 ondervraagde persoon nie geregtig is om by die ondervraging
 te weier om 'n vraag te beantwoord nie om rede dat die ant-
 woord hom sou kan inkrimineer.

- (3) Die voorsittende amptenaar moet die verklaring van
 60 iemand wat ingevolge hierdie artikel getuienis aflê, opteken
 of laat opteken : Met dien verstande dat, as iemand wat
 kragtens hierdie artikel sou verplig kan word om getuienis
 af te lê, teenoor die kurator of sy verteenwoordiger 'n ver-
 klaring afgelê het wat op skrif gestel is of 'n skriftelike ver-
 65 klaring aan die kurator of sy verteenwoordiger oorhandig het,
 dit oorgelees kan word deur of voorgelees kan word aan be-
 doelde persoon wanneer hy kragtens hierdie artikel as getuie
 opgeroep word, en dat as hy dit dan bevestig, dit aangemerk
 word as getuienis wat ingevolge hierdie artikel afgelê is.

- 70 (4) By so 'n ondervraging moet van die insolvent verlang
 word dat hy 'n verklaring aflê dat hy al sy sake volledig en na
 waarheid bekend gemaak het.

- (5) Alle getuienis ingevolge hierdie artikel afgelê kan in
 enige geding teen die persoon wat die getuienis afgelê het,
 75 aangevoer word.

(6) Iemand wat kragtens hierdie artikel opgeroep word om
 getuienis af te lê, kan by sy ondervraging bygestaan word
 deur 'n advokaat, prokureur of wetsagent.

- (7) Iemand wat gedagvaar is tot bywoning van 'n byeen-
 80 koms van skuldeisers om kragtens hierdie artikel ondervra
 te word (behalwe die insolvent en sy eggenote of haar egge-

ment containing any such information as is mentioned in sub-section-(2), to produce that book or document, or an extract therefrom at any such meeting of creditors.

Examination of insolvent and other witnesses.

65. (1) At any meeting of the creditors of an insolvent estate the officer presiding thereat may call and administer the oath to the insolvent and any other person present at the meeting who was or might have been summoned in terms of sub-section (2) of section *sixty-four* and the said officer, the trustee and any creditor who has proved a claim against the estate or the agent of any of them may examine a person so called and sworn—

- (a) concerning all books of account, entries or documents relating or suspected of relating to the business of the insolvent or the administration of the estate, whether or not they have been produced at such examination;
- (b) concerning the cause of the insolvency, the state of the insolvent's affairs, the nature and conditions of his employment or occupation, the amount of his income or profits since the date of the sequestration of his estate, the acquisition by him of any property since the date of the sequestration or his prospect of acquiring any property in the future; and
- (c) generally, concerning all matters relating to the insolvent or his business or affairs, whether before or after the sequestration of his estate, and concerning any property belonging to his estate, and concerning the business, affairs or property of his or her spouse:

Provided that the presiding officer may disallow any question which appears to be irrelevant or which would prolong the examination unnecessarily, and shall disallow any question which deals with any matter not mentioned in this sub-section.

(2) In connection with the production of any book or document in compliance with a summons issued under sub-section (3) of section *sixty-four* or at an examination of a person under sub-section (1) of this section, the law relating to privilege as applicable to a witness summoned to produce a book or document or giving evidence in a court of law, shall apply: Provided that a banker at whose bank the insolvent in question or his or her spouse keeps or at any time kept an account, shall be obliged to produce, if summoned to do so under sub-section (3) of section *sixty-four*, any cheque in his possession which was drawn by the insolvent or his or her spouse within one year before the sequestration of the insolvent's estate, or a record of or an extract from a record of the drawing of any such cheque, showing the date upon which the cheque was drawn, or made payable, the amount of the cheque and in whose favour it was made out, and if called upon to do so, to give any other information available to him in connection with such cheque or the account of the insolvent of his or her spouse; and provided further that a person examined under sub-section (1) shall not be entitled at such examination to refuse to answer any question upon the ground that the answer would tend to incriminate him.

(3) The presiding officer shall reduce to writing or cause to be reduced to writing the statement of any person giving evidence under this section: Provided that if a person who may be required to give evidence under this section made to the trustee or his agent a statement which was reduced to writing, or delivered a statement in writing to the trustee or his agent, that statement may be read by or read over to that person when he is called as a witness under this section and if then adhered to by him, shall be deemed to be evidence given under this section.

(4) The insolvent shall at such examination be required to make a declaration that he has made a full and true disclosure of all his affairs.

(5) Any evidence given under this section shall be admissible in any proceedings instituted against the person who gave that evidence.

(6) Any person called upon to give evidence under this section may be assisted at his examination by counsel, an attorney or agent.

(7) Any person summoned to attend a meeting of creditors for the purpose of being examined under this section (other than the insolvent and his or her spouse) shall be entitled to

60. Op versoek van die Meester of van 'n ander belang-hebbende kan die Hof 'n kurator afsit om rede— Afsitting van kurator deur Hof.

(a) dat hy nie bevoeg was om as kurator gekies of aangestel te word nie of dat sy verkiesing of aanstelling om 'n ander rede onwettig was of dat hy onbevoeg geword het om as kurator gekies of aangestel te word; of

(b) dat hy versuim het om op 'n bevredigende wyse te voldoen aan 'n verpligting wat hierdie Wet aan hom oplê, of om aan 'n wettige eis van die Meester te voldoen;

(c) dat hy geestelik of liggaamlik onbekwaam is om sy werksaamhede as kurator op bevredigende wyse te verrig.

61. Op versoek van 'n kurator kan die Meester hom veroorloof om uit die Unie te vertrek of hom uit sy betrekking ontslaan, en wel in beide gevalle op die voorwaardes wat die Meester mag wenslik ag om te stel en mits hy sodanige kennis gee van sy voorneme om uit die Unie te vertrek of om te bedank, as wat die Meester mag voorskrywe. Afwesigheid met verlof of bedanking van kurator.

62. (1) Wanneer die Hof een van twee medekurators uit sy betrekking afgesit het, kan dit die belegging gelas van 'n byeenkoms van die skuldeisers van die betrokke boedel om 'n nuwe kurator te kies in die plek van die kurator wat afgesit is. Verkiesing van nuwe kurator.

(2) Wanneer 'n enigste kurator sy betrekking ontruim of bedank het of afgesit of oorlede is, dan moet die Meester 'n byeenkoms van die skuldeisers van die betrokke boedel belê om 'n nuwe kurator te kies en in die tussentyd kan die Meester 'n *curator bonis* tot behoud van die boedel aanstel.

(3) Wanneer een van twee medekuratore sy betrekking ontruim of bedank het of afgesit of oorlede is, dan kan die Meester 'n byeenkoms van die skuldeisers van die betrokke boedel belê om 'n nuwe kurator te kies in die plek van die kurator wat sy betrekking ontruim of bedank het of afgesit of oorlede is, of as die Hof dit volgens sub-artikel (1) gelas het moet hy so 'n byeenkoms belê.

(4) Die bepalinge van artikel vier-en-veertig is van toepassing in verband met die verkiesing van 'n kurator volgens hierdie artikel.

63. (1) Elke kurator of *curator bonis* is geregtig op 'n redelike vergoeding vir sy dienste, wat die Meester volgens tarief B in die Tweede Bylae tot hierdie Wet moet takseer: Met dien verstande dat die Meester om gegronde redes sy vergoeding kan vergroot of verminder of hom sy vergoeding geheel of gedeeltelik kan ontsê weens versuim of vertraging van die verrigting van sy werksaamhede of weens onbehoorlike verrigting van sy werksaamhede. Vergoeding van kurator of *curator bonis*.

(2) Iemand wat die kurator in sy diens het of wat 'n mede-werknemer van die kurator is of wat in die diens van die kurator is, die is nie geregtig op vergoeding uit die insolvente boedel weens dienste aan die boedel verrig nie en 'n kurator of sy vennoot is nie geregtig op vergoeding uit die boedel weens dienste aan die boedel verrig nie buiten die vergoeding waarop hy kragtens hierdie Wet as kurator geregtig is.

64. (1) 'n Insolvent moet die eerste en tweede byeenkoms van sy skuldeisers en elke verdaagde byeenkoms bywoon, tensy hy van die amptenaar wat op daardie byeenkoms sal voorsit of voorsit vooraf skriftelik verlof ontvang het om weg te gaan of weg te bly. Die insolvent moet ook elke volgende byeenkoms van skuldeisers bywoon as die kurator van sy boedel hom skriftelik kennis gee het om so 'n byeenkoms by te woon. Insolvent en ander persone moet byeenkomste van skuldeisers bywoon.

(2) Die amptenaar wat op so 'n byeenkoms sal voorsit of voorsit, kan iemand van wie bekend is of om gegronde redes vermoed word dat hy in besit is of was van goed wat aan die insolvent behoort het voor die sekwestrasie van sy boedel of wat aan die insolvente boedel of aan die eggenote of eggenoot van die insolvent behoort of behoort het, of dat hy aan die boedel iets skuld, of enigeen (met inbegrip van die insolvent se eggenote of eggenoot) wat volgens bedoelde amptenaar se oordeel in staat mag wees om inligtings van belang te verstrek omtrent die insolvent of sy sake (hetsy voor of na die sekwestrasie van sy boedel) of omtrent goed wat tot die boedel behoort of omtrent die besigheid, sake of goed van die eggenote of eggenoot van die insolvent, dagvaar om op daardie byeenkoms of op 'n verdaagde byeenkoms te verskyn, ten einde kragtens artikel vyf-en-sestig ondervra te word.

(3) Bedoelde amptenaar kan ook iemand, van wie bekend is of om gegronde redes vermoed word dat hy in besit of bewaring is van, of seggenskap het oor 'n boek of geskrif

31. (1) Na die sekwestrasie van 'n skuldenaar se boedel kan die Hof 'n regshandeling tot niet maak, wat die skuldenaar voor die sekwestrasie van sy boedel aangegaan het, waardeur hy met 'n ander saamgespan het om goed, wat aan hom behoort te vervreemd op 'n wyse wat benadeling van sy skuldeisers of verlening van voorkeur aan een skuldeiser bo 'n ander ten gevolge gehad het.

Samespanning tot beskikking oor goed voor sekwestrasie.

(2) Iemand wat aan die samespanning deelgeneem het, is verplig om alle verlies wat die betrokke insolvente boedel daardeur gely het, te vergoed en hy moet as 'n boete ten bate van die boedel so 'n bedrag betaal as wat die Hof mog bepaal, dog nie meer as die bedrag waarmee hy bevoordeel sou geword het as die vervreemding nie tot niet gemaak was nie, en as hy 'n skuldeiser is, verbeur hy ook sy vordering teen die boedel.

15 (3) Bedoelde skadevergoeding en boete kan ingevorder word in 'n aksie tot vernietiging van die betrokke regshandeling en as geen sodanige aksie ingestel is nie, dan kan die kurator daardie skadevergoeding en boete deur 'n aksie invorder.

32. (1) 'n Geding tot vernietiging van 'n vervreemding van goed kragtens artikel *ses-en-twintig, negen-en-twintig, dertig*, of *een-en-dertig*, of tot invordering van skadevergoeding of 'n boete kragtens artikel *een-en-dertig*, moet deur die kurator ingestel word. As die kurator in gebreke bly om so 'n geding in te stel, dan kan 'n skuldeiser dit namens die kurator instel, nadat hy die kurator teen alle koste, in die geding gevrywaar het.

Geding tot vernietiging van ongeoorloofde vervreemding.

(2) In so 'n geding kan die insolvent gedwing word om getuies af te lê deur 'n getuie-dagvaarding, uitgevaardig op versoek van een van die partye in die geding of hy kan deur die Hof opgeroep word om getuies af te lê. As hy sodanige getuies aflê, kan hy nie weier om 'n vraag te beantwoord nie omrede dat die antwoord hom sou kan inkrimineer of omrede dat hy op 'n kriminele aanklag sal moet teregstaan en by die verhoor deur sy antwoord benadeel sou kan word.

35 (3) Wanneer die Hof kragtens een van voormelde artikels 'n vervreemding van goed tot niet maak, dan verklaar die Hof dat die kurator geregtig is om die vervreemde goed, of by gebreke van daardie goed, die waarde daarvan op die dag van die vervreemding, in te vorder.

40 33. (1) Iemand wat as vergoeding vir 'n vervreemding wat kragtens artikel *ses-en-twintig, negen-en-twintig, dertig* of *een-en-dertig* tot niet gemaak kan word, goed of 'n sekuriteit wat hy besit het, afgestaan het of 'n reg teenoor 'n ander persoon verloor het, dit is, as hy te goeder trou gehandel het, nie verplig om enige goed of ander voordeel wat hy deur die vervreemding verkry het, terug te gee nie, tensy die kurator hom weëns die afstand van daardie goed of sekuriteit of verlies van daardie reg skadeloos gestel het.

Ongeoorloofde beskikking verkort nie sekere regte nie.

(2) Artikel *ses-en-twintig, negen-en-twintig, dertig* en *een-en-dertig* maak geen inbreuk op die regte van iemand wat te goeder trou en vir waarde goed verkry het van iemand anders as 'n persoon wie se boedel later gesekwestreer is.

34. (1) As 'n handelaar 'n besigheid wat aan hom behoort het, of die klandisie of enige goed wat tot so 'n besigheid behoort het (behalwe goedere wat in die gewone loop van daardie besigheid verkoop is), vervreemd het, en sy boedel word binne ses maande na daardie vervreemding gesekwestreer, dan is die vervreemding teenoor die kurator van sy boedel nietig, tensy hy minstens tien en hoogstens dertig dae voor daardie vervreemding 'n kennisgewing van daardie voorgenome vervreemding gepubliseer het in twee uitgawes van die *Staatskoerant* en in twee uitgawes van 'n nuusblad in omloop in die distrik waarin daardie besigheid gedryf geword het.

Vernietigbare verkoop van besigheid.

65 (2) Sodra so 'n kennisgewing gepubliseer word, dan word elke gelikwiderde skuld van bedoelde handelaar in verband met bedoelde besigheid, wat op 'n toekomstige dag invorderbaar sou word, dadelik invorderbaar as die betrokke skuldeiser betaling van die skuld eis: Met dien verstande dat as daardie skuld geen rente dra nie, die bedrag van daardie skuld, wat op daardie toekomstige dag verskuldig sou gewees het as voormelde eis van betaling nie ingestel was nie, verminder word met ses persent per jaar van daardie bedrag oor die tydperk tussen die dag waarop die betaling geskied en daardie toekomstige dag.

(3) As iemand wat 'n vordering het teen bedoelde handelaar in verband met bedoelde besigheid, voor daardie vervreemding die handelaar gedagvaar het tot betaling van sy vordering, dan is die vervreemding teenoor hom nietig sover as nodig is om sy vordering te laat gelde.

Uncompleted acquisition of immovable property before sequestration.

35. If an insolvent, before the sequestration of his estate, entered into a contract for the acquisition, by purchase or exchange, of immovable property which was not transferred to him, the trustee of his insolvent estate may enforce or abandon the contract. The other party to the contract may call upon the trustee by notice in writing to elect whether he will enforce or abandon the contract, and if the trustee has after the expiration of six weeks as from the receipt of the notice, failed to make his election as aforesaid and inform the other party thereof, the other party may apply to the Court by motion for cancellation of the contract and for an order directing the trustee to restore to the applicant the possession of any immovable property under the control of the trustee, of which the insolvent or the trustee gained possession or control by virtue of the contract, and the Court may make such order on the application as it thinks fit: Provided that this section shall not affect any right which the other party may have to establish against the insolvent estate, a non-preferent claim for compensation for any loss suffered by him as a result of the non-fulfilment of the contract.

Goods not paid for which debtor purchased not on credit.

36. (1) If a person, before the sequestration of his estate, by virtue of a contract of purchase and sale which provided for the payment of the purchase price upon delivery of the property in question to the purchaser, received any movable property without paying the purchase price in full, the seller may, after the sequestration of the purchaser's estate, reclaim that property if within ten days after delivery thereof he has given notice in writing to the purchaser or to the trustee of the purchaser's insolvent estate or to the Master, that he reclaims the property: Provided that if the trustee disputes the seller's right to reclaim the property, the seller shall not be entitled to reclaim it, unless he institutes, within seven days after having received notice that the trustee so disputes his right, legal proceedings to enforce his right.

(2) For the purposes of sub-section (1) a contract of purchase and sale shall be deemed to provide for the payment of the purchase price upon delivery of the property in question to the purchaser, unless the seller has agreed that the purchase price or any part thereof shall not be claimable before or at the time of such delivery.

(3) The trustee of the purchaser's insolvent estate shall not be obliged to restore any property reclaimed by the seller in terms of sub-section (1) unless the seller refunds to him every part of the purchase price which he has already received.

(4) Except as in this section provided, a seller shall not be entitled to recover any property which he sold and delivered to a purchaser whose estate was sequestrated after the sale, only by reason of the fact that the purchaser failed to pay the purchase price.

(5) The owner of the movable property which was in the possession or custody of a person at the time of the sequestration of that person's estate, shall not be entitled to recover that property if it has, in good faith, been sold as part of the said person's insolvent estate, unless the owner has, by notice in writing, given, before the sale, to the trustee of the insolvent estate, or if there is no such trustee, to the Master, demanded a return of the property.

(6) If any such property has been sold as part of the insolvent estate, the former owner of that property may recover from the trustee, before the confirmation of any trustee's account in the estate in terms of section *one hundred and ten*, the nett proceeds of the sale of that property (unless he has recovered the property itself from the purchaser), and thereupon he shall lose any right which he may have had to recover the property itself in terms of sub-section (5).

Effect of sequestration upon a lease.

37. (1) A lease entered into by any person as lessee shall not be determined by the sequestration of his estate, but the trustee of his insolvent estate may determine the lease by notice in writing to the lessor: Provided that the lessor may claim from the estate, compensation for any loss which he may have sustained by reason of the non-performance of the terms of such lease.

(2) If the trustee does not, within three months of his appointment notify the lessor that he desires to continue the lease on behalf of the estate, he shall be deemed to have determined the lease at the end of such three months.

(3) The rent due under any such lease, from the date of the sequestration of the estate of the lessee to the determination or the cession thereof by the trustee, shall be included in the costs of sequestration.

(4) The determination of the lease by the trustee in terms of this section shall deprive the insolvent estate of any right

35. As 'n insolvent voor die sekwestrasie van sy boedel 'n kontrak aangegaan het tot verkryging, deur koop of ruil, van onroerende goed wat nie aan hom getransporteer is nie, dan kan die kurator van sy insolvente boedel die kontrak handhaaf of verwerp. Die ander party tot die kontrak kan die kurator skriftelik aansê om te kies of hy die kontrak wil handhaaf of verwerp en as die kurator ses weke na ontvangs van die aansegging in gebreke gebly het om soas voormeld sy keuse te doen en die ander party daarvan kennis te gee, dan kan die ander party by wyse van mosie die Hof versoek om vernietiging van die kontrak en om 'n bevel aan die kurator dat hy die versoeker moet herstel in die besit van onroerende goed onder die beheer van die kurator, wat die insolvent of die kurator kragtens die kontrak in sy besit of onder sy beheer gekry het, en die Hof kan na aanleiding van die versoek so 'n order uitvaardig as wat hy wenslik ag: Met dien verstande dat hierdie artikel geen inbreuk maak op een of ander reg wat die ander party mag hê om teenoor die insolvente boedel 'n nie-preferente vordering in te bring tot vergoeding van skade wat hy gely het as gevolg van die nie-nakoming van die kontrak.
36. (1) As iemand, voor die sekwestrasie van sy boedel, kragtens 'n koopkontrak waarin beding is dat die koopprys betaal moet word by lewering van die betrokke goed aan die koper, roerende goed ontvang het sonder om die koopprys ten volle te betaal, dan kan die verkoper na die sekwestrasie van die boedel van die koper daardie goed terugeis as hy binne tien dae na lewering van die goed aan die koper of aan die kurator van die koper se insolvente boedel of aan die Meester skriftelik kennis gegee het dat hy die goed terugeis: Met dien verstande dat as die kurator die verkoper se reg om die goed terug te eis, betwis, die verkoper dit nie kan terugeis nie, tensy hy binne sewe dae nadat hy kennis ontvang het dat die kurator sy reg betwis, 'n regsgeding instel om sy reg te handhaaf.
- (2) By die toepassing van sub-artikel (1) word veronderstel dat 'n koopkontrak beding dat die koopprys betaal moet word by lewering van die betrokke goed aan die koper, tensy die verkoper daarin toegestem het dat die koopprys of 'n deel daarvan nie voor of by die lewering opgevorder kan word nie.
- (3) Die kurator van die koper se insolvente boedel is nie verplig om goed wat die verkoper kragtens sub-artikel (1) teruggeëis het, terug te gee nie, tensy die verkoper elke deel van die koopprys, wat hy reeds ontvang het, terugbetaal.
- (4) Afgesien van die bepalinge van hierdie artikel is 'n verkoper nie geregtig om goed wat hy verkoop en gelewer het aan 'n koper wie se boedel na die verkoop gesekwestreer is, terug te vorder nie, alleen omdat die koper in gebreke gebly het om die koopprys te betaal nie.
- (5) Die eienaar van roerende goed wat in besit of bewaring van iemand was tydens die sekwestrasie van die boedel van laasbedoelde persoon, is nie geregtig om daardie goed op te vorder nie as dit te goeder trou verkoop is as deel van die insolvente boedel van bedoelde persoon, tensy die eienaar voor die verkoping by skriftelike kennisgewing aan die kurator van die insolvente boedel, of as daar geen sodanige kurator is nie, aan die Meester, die teruggawe van die goed geëis het.
- (6) As sodanige goed as deel van die insolvente boedel verkoop is, dan kan die vorige eienaar, voor die bekragtiging van 'n rekening van die kurator in die boedel, volgens artikel honderden-tien, die netto-opbrengs van die verkoop van daardie goed van die kurator opvorder (tensy hy die goed self van die koper teruggekry het) en daarop verloor hy alle reg wat hy mag gehad het om die goed self volgens sub-artikel (5) op te vorder.
37. (1) 'n Huur, deur iemand as huurder aangegaan, word deur die sekwestrasie van sy boedel nie beëindig nie, dog die kurator van sy insolvente boedel kan die huur by skriftelike kennisgewing aan die verhuurder beëindig. Met dien verstande dat die verhuurder van die boedel vergoeding kan eis van enige verlies wat hy mog gely het as gevolg van die nie-nakoming van die bepalinge van die huurkontrak.
- (2) As die kurator nie binne drie maande vanaf sy aanstelling aan die verhuurder kennis gee nie dat hy die huur ten behoeve van die boedel wil voortset, dan word veronderstel dat hy die huur aan die end van daardie drie maande beëindig het.
- (3) Die huurloon wat onder die huur verskuldig is, vanaf die dag van die sekwestrasie van die boedel van die huurder tot die beëindiging of cessie van die huur deur die kurator, word gereken as deel van die koste van sekwestrasie.
- (4) Die beëindiging van die huur deur die kurator kragtens hierdie artikel, ontnem aan die insolvente boedel die reg op

Onvoltooide
verkryging van
onroerende goed
voor
sekwestrasie.

Onbetaalde
goedere wat
skuldenaar nie op
krediet gekoop
het nie.

Uitwerking van
sekwestrasie op 'n
huurkontrak.

to compensation for improvements made on the leased property during the period of the lease.

(5) A stipulation in a lease that the lease shall terminate or be varied upon the sequestration of the estate of either party to the lease, shall be null and void. 5

Contract of service terminated by insolvency of employer.

38. The sequestration of the estate of an employer shall terminate the contract of service between him and his employees, but any employee whose contract of service has been so terminated shall be entitled to claim compensation from the insolvent estate of his former employer for any loss which he may have suffered by reason of the termination of his contract of service prior to its expiration. 10

Time and place of meetings of creditors.

39. (1) Whenever the Master convenes any meeting of creditors as hereinafter provided, he shall appoint it to be held at such time and place as he considers to be most convenient for all parties concerned and may, if necessary, alter the time and place of any such meeting: Provided that he shall publish in the *Gazette* sufficient notice of any such alteration. 15

(2) All meetings of creditors held in the district wherein there is a Master's office shall be presided over by the Master. Meetings of creditors held in any other district shall be held in accordance with the direction of the Master and shall be presided over by the magistrate of the district, or by an officer holding the rank of chief or principal clerk designated by the Magistrate for that purpose or if no officer holding such rank is available, by any other officer in the public service designated by the magistrate for that purpose. 20 25

(3) The officer presiding at such a meeting shall keep a record of the proceedings, which he shall certify at the conclusion of the proceedings, and if he is not the Master, he shall transmit the record to the Master. 30

(4) If at a meeting of creditors held in a district where there is no Master, an officer other than the Magistrate presides, the presiding officer shall state in the record of the proceedings the reason for the magistrate's absence. 35

(5) The officer presiding at a meeting of creditors may, if necessary or desirable, adjourn the meeting from time to time.

First and second meetings of creditors.

40. (1) On the receipt of an order of the Court sequestrating an estate finally, the Master shall immediately convene by notice in the *Gazette*, a first meeting of the creditors of the estate for the proof of their claims against the estate and for the election of a trustee. 40

(2) The Master shall publish such notice on a date not less than ten days before the date upon which the meeting is to be held and shall in such notice state the time and place at which the meeting is to be held. 45

(3) After the first meeting of creditors and the appointment of a trustee, the Master shall appoint a second meeting of creditors for the proof of claims against the estate, and for the purpose of receiving the trustee's report on the affairs and condition of the estate, and of giving the trustee directions in connection with the administration of the estate. The trustee shall convene such meeting in the manner prescribed in sub-sections (1) and (2). 50

General meetings of creditors.

41. The trustee of an insolvent estate may at any time and shall, whenever he is thereto required by the Master or by creditors representing one-fourth of the value of all claims proved against the estate, convene in the manner prescribed in section *forty*, a meeting of creditors, hereinafter called a general meeting, to give him directions concerning any matter relating to the administration of the estate. In the notice convening the meeting the trustee shall state the matters to be dealt with at the meeting. 55 60

Special meetings of creditors.

42. After the second meeting of creditors the trustee shall convene in the manner prescribed in section *forty* a special meeting of creditors for the proof of claims against the estate in question whenever he is thereto required by any interested person who at the same time tenders to the trustee payment of all expenses to be incurred in connection with such a meeting. 65 70

A creditor may register his name and address with trustee.

43. Any person who claims to be a creditor of an insolvent estate may register his name and address in the Union with the trustee of that estate upon payment to the trustee of a fee of ten shillings. Thereupon the trustee shall send to that address a notice of every meeting of creditors of that estate and a copy of every account which he is submitting to the Master. Failure on the part of the trustee to comply with a 75

skadevergoeding weens verbeterings wat gedurende die huur aan die verhuurde goed aangebring is.

(5) 'n Beding in 'n huurkontrak dat die huur sal eindig of 'n verandering ondergaan met die sekwestrasie van die boedel van een van die partye tot die huur, is nietig.

38. Die sekwestrasie van die boedel van 'n werkgewer beëindig die dienskontrak tussen hom en sy werknemers, dog 'n werknemer wie se dienskontrak aldus beëindig geword het, is geregtig om van die insolvente boedel van sy vorige werkgewer vergoeding te eis van enige verlies wat hy mog gely het as gevolg van die beëindiging van sy dienskontrak voordat dit afgelopen het.

Dienskontrak word beëindig deur insolvensie van werkgewer.

39. (1) Wanneer die Meester 'n byeenkoms van skuldeisers belê, soas hieronder bepaal, moet hy dit belê op 'n tyd en plek wat hy as die gerieflikste beskou vir alle betrokke partye, en hy kan, indien nodig, die tyd en plek van so 'n byeenkoms verander, mits hy in die *Staatskoerant* 'n voldoende kennisgewing van so 'n verandering publiseer.

Tyd en plek van byeenkomste van skuldeisers.

(2) Op alle byeenkomste van skuldeisers gehou in 'n distrik waarin daar 'n meesterskantoor is, sit die Meester voor. Byeenkomste van skuldeisers in 'n ander distrik gehou, word volgens die Meester se voorskrifte, onder voorsitterskap van die magistraat van die distrik of van 'n amptenaar met die rang van hoofklerk of eerste klerk, deur die magistraat daarvoor aangewys, of as geen amptenaar met daardie rang beskikbaar is nie, onder voorsitterskap van 'n ander amptenaar in die staatsdiens wat die magistraat daarvoor aangewys het.

(3) Die amptenaar wat by so 'n byeenkoms voorsit, moet van die verrigtings notule hou, wat hy aan die end van die verrigtings moet waarmerk en as hy nie die Meester is nie, moet hy die notule aan die Meester instuur.

(4) As op 'n byeenkoms van skuldeisers, gehou in 'n distrik waarin daar geen Meester is nie, 'n ander amptenaar as die magistraat voorsit, moet die voorsittende amptenaar in die notule van die verrigtings die rede vir die magistraat se afwesigheid aangee.

(5) Die amptenaar wat op 'n byeenkoms van skuldeisers voorsit, kan, indien nodig of wenslik, die byeenkoms van tyd tot tyd verdaag.

40. (1) Na ontvangs van 'n order van die Hof waardeur 'n boedel finaal gesekwestreer word, moet die Meester dadelik by kennisgewing in die *Staatskoerant* 'n eerste byeenkoms van skuldeisers van die boedel belê om hulle vorderings teen die boedel te bewys en om 'n kurator te kies.

Eerste en tweede byeenkomste van skuldeisers.

(2) Die Meester moet daardie kennisgewing publiseer op 'n dag nie minder as tien dae voor die dag waarop die byeenkoms gehou sal word en moet in die kennisgewing die tyd wanneer en die plek waar die byeenkoms gehou sal word, bepaal.

(3) Na die eerste byeenkoms van skuldeisers en die aanstelling van 'n kurator, moet die Meester 'n tweede byeenkoms van skuldeisers vasstel om vorderings teen die boedel te bewys en om die kurator se verslag oor die sake en toestand van die boedel te ontvang en om aan die kurator opdrag te gee in verband met die bereddering van die boedel. Die kurator moet daardie byeenkoms belê volgens die voorskrifte van sub-artikels (1) en (2).

41. Die kurator van 'n insolvente boedel kan te eniger tyd en moet as die Meester of skuldeisers wat een vierde van die waarde van alle teen die boedel bewese vorderings verteenwoordig, dit verlang, volgens voorskrif van artikel veertig 'n byeenkoms van skuldeisers (hieronder 'n algemene byeenkoms van skuldeisers genoem) belê om hom opdrag te gee omtrent een of ander saak in verband met die bereddering van die boedel. In die kennisgewing waarin hy die byeenkoms belê moet die kurator melding maak van die sake wat op die byeenkoms sal moet behandel word.

Algemene byeenkomste van skuldeisers.

42. Na die tweede byeenkoms van skuldeisers moet die kurator volgens voorskrif van artikel veertig 'n spesiale byeenkoms van skuldeisers belê om vorderings teen die betrokke boedel te bewys, wanneer 'n belanghebbende dit verlang en gelyktydig aan die kurator betaling aanbied van alle koste wat in verband met die byeenkoms gemaak sal moet word.

Spesiale byeenkomste van skuldeisers.

43. Elkeen wat beweer dat hy 'n skuldeiser van 'n insolvente boedel is, kan sy naam en adres in die Unie by die kurator van daardie boedel aangee, teen betaling van 'n fooi van tien sjielings. Daarop moet die kurator aan daardie adres stuur 'n kennisgewing van elke byeenkoms van skuldeisers van daardie boedel en 'n afskrif van elke rekening wat die kurator aan die Meester voorlê. As 'n kurator versuim om aan 'n bepaling

Skuldeiser kan sy naam en adres by kurator aangee.

provision of this section shall constitute a failure to perform his duties but shall not invalidate anything done under this Act.

Proof of liquidated claims against estate.

44. (1) Any person or the representative of any person who has a liquidated claim against an insolvent estate, the cause of which arose before the sequestration of that estate, may, at any time before the final distribution of that estate in terms of section *one hundred and eleven*, but subject to the provisions of section *one hundred and three*, prove that claim in the manner hereinafter provided: Provided that no claim shall be proved against an estate after the expiration of a period of three months as from the conclusion of the second meeting of creditors of the estate, except with leave of the Court or the Master, and on payment of such sum to cover the cost or any part thereof, occasioned by the late proof of the claim, as the Court or Master may direct.

(2) If a person who appears from the books of an insolvent estate to be a creditor of that estate, or who to the knowledge of the trustee in that estate is a creditor of that estate, has failed at the first or second meeting of creditors of that estate, to prove his claim against the estate, the trustee shall, immediately after the second meeting of creditors, notify him in writing of the sequestration of the estate, unless he has been previously informed thereof.

(3) A claim made against an insolvent estate shall be proved at a meeting of the creditors of that estate, to the satisfaction of the officer presiding at that meeting, who shall admit or reject the claim: Provided that the rejection of a claim shall not debar the claimant from proving that claim at a subsequent meeting of creditors or from establishing his claim by an action at law, but subject to the provisions of section *seventy-five*; and provided further that if a creditor has twenty-four or more hours before the commencement of a meeting of creditors submitted to the officer who is to preside at that meeting the affidavit and other documents mentioned in sub-section (4), he shall be deemed to have tendered proof of his claim at that meeting.

(4) Every such claim shall be proved by affidavit in a form corresponding substantially with Form C or D in the First Schedule to this Act. That affidavit may be made by the creditor or by any person fully cognizant of the claim, who shall set forth in the affidavit the facts upon which his knowledge of the claim is based and the nature and particulars of the claim, whether it was acquired by cession after the institution of the proceedings by which the estate was sequestrated, and if the creditor holds security therefor, the nature and particulars of that security and if he has not realised the security in terms of section *eighty-three*, the amount at which he values the security. The said affidavit or a copy thereof and any documents submitted in support of the claim shall be delivered at the office of the officer who is to preside at the meeting of creditors not later than twenty-four hours before the advertised time of the meeting at which the creditor concerned intends to prove the claim, failing which the claim shall not be admitted to proof at that meeting, unless the presiding officer is of opinion that through no fault of the creditor he has been unable to deliver such evidences of his claim within the prescribed period: Provided that if a creditor has submitted an incorrect claim, he may, with the consent in writing of the Master and on such conditions as the Master may think fit to impose, correct his claim or submit a fresh correct claim.

(5) Any document by this section required to be delivered before a meeting of creditors at the office of the officer who is to preside at that meeting, shall be open for inspection at such office during office hours free of charge by any creditor, the trustee or the insolvent.

(6) A claim against an insolvent's estate for payment of the purchase price of goods sold and delivered to the insolvent on an open account shall not be admitted to proof unless there have been submitted to the insolvent, not later than three months after the opening of the account, a detailed statement

van hierdie artikel te voldoen, maak hy homself aan 'n pligsversuim skuldig maar dit maak nie ongeldig wat ingevolge hierdie Wet gedaan is nie.

44. (1) Iemand of die verteenwoordiger van iemand wat 'n gelikwideerde vordering teen 'n insolvente boedel het, waarvan die oorsaak voor die sekwestrasie van daardie boedel ontstaan het, kan te eniger tyd voor die finale verdeling van daardie boedel volgens artikel *honderd-en-elf* daardie vordering volgens onderstaande voorskrifte bewys, dog behoudens die bepalings van artikel *honderd-en-drie*: Met dien verstande dat na verloop van 'n tydperk van drie maande vanaf die einde van die tweede byeenkoms van skuldeisers van 'n boedel, geen vordering teen die boedel bewys mag word nie sonder verlot van die Hof of van die Meester en teen betaling van so 'n som tot dekking van die koste of 'n deel van die koste veroorsaak deur die vertraagde bewys van die vordering, as wat die Hof of die Meester mag voorskryf.

Bewys van gelikwideerde vorderings teen boedel.

- (2) As iemand wat uit die boeke van 'n insolvente boedel blyk 'n skuldeiser van daardie boedel te wees of van wie die kurator van daardie boedel weet dat hy 'n skuldeiser van daardie boedel is, in gebreke gebly het om op die eerste of tweede byeenkoms van skuldeisers van daardie boedel, sy vordering teen die boedel te bewys, dan moet die kurator onmiddellik na die tweede byeenkoms van skuldeisers aan hom skriftelik kennis gee van die sekwestrasie van die boedel, tensy hy eerder daarvan in kennis gestel is.

- (3) 'n Vordering wat teen 'n insolvente boedel ingebring word, moet op 'n byeenkoms van die skuldeisers van daardie boedel gestaaf word deur bewyse wat die amptenaar wat op daardie byeenkoms voorsit, voldoende ag, en hy moet die vordering of toelaat of afwys: Met dien verstande dat die afwysing van 'n vordering die eiser nie belet om sy vordering op 'n latere byeenkoms van skuldeisers of in 'n regsgeding te bewys nie, dog behoudens die bepalings van artikel *vyf-en-sewentig*; en met dien verstande voorts, dat as 'n skuldeiser vier-en-twintig uur of meer voor die begin van 'n byeenkoms van skuldeisers aan die amptenaar wat op daardie byeenkoms sal voorsit, die beëdigde verklaring en ander dokumente vermeld in sub-artikel (4) voorgelê het, veronderstel word dat hy die bewys van sy vordering op daardie byeenkoms aangebied het.

- (4) Elke sodanige vordering moet bewys word deur 'n beëdigde verklaring in 'n vorm wat in hoofsaak ooreenkom met Formulier C. of D. in die Eerste Bylae tot hierdie Wet. Daardie beëdigde verklaring kan afgelê word deur die skuldeiser of deur iemand ten volle bekend met die vordering, wat in die beëdigde verklaring moet vermeld die feite waarop sy kennis van die vordering berus en die aard en besonderhede van die vordering, of dit verkry is deur cessie na die begin van die geding waardeur die boedel gesekwestreer is en as die skuldeiser in besit van sekuriteit daarvoor is, die aard en besonderhede van daardie sekuriteit en as hy die sekuriteit nie te gelde gemaak het nie volgens artikel *drie-en-tagtig*, die bedrag waarop hy die sekuriteit waardeer. As voormelde beëdigde verklaring of 'n afskrif daarvan en die stukke wat tot stawing van die vordering voorgelê mog word, nie op die kantoor van die amptenaar wat op die byeenkoms van skuldeisers sal voorsit afgegee word nie later as vier-en-twintig uur voor die aangekondigde tyd van die byeenkoms waarop die betrokke skuldeiser voornemens is om sy vordering te bewys, dan word die bewys van die vordering nie op daardie byeenkoms toegelaat nie, tensy die voorsittende amptenaar van oordeel is dat die skuldeiser buiten sy skuld nie in staat was om bedoelde bewyse van sy vordering binne die voorgeskrewe tydperk af te gee nie: Met dien verstande dat as 'n skuldeiser 'n onjuiste vordering voorgelê het, hy dit met skriftelike toestemming van die Meester en op die voorwaardes wat die Meester mag wenslik ag om te stel, kan verbeter of 'n nuwe juiste vordering kan voorlê.

- (5) Elke stuk wat volgens voorskrif van hierdie artikel voor 'n byeenkoms van skuldeisers afgegee moet word op die kantoor van die amptenaar wat op daardie byeenkoms sal voorsit, kan op bedoelde kantoor gedurende kantoorure kosteloos ingesien word deur elke skuldeiser, die kurator of die insolvent.

- (6) Die bewys van 'n vordering teen die boedel van 'n insolvent vir betaling van die koopprys van goedere wat aan die insolvent op 'n ope rekening verkoop en gelewer is, word nie toegelaat nie tensy aan die insolvent nie later as drie maande na die opening van die rekening, 'n gespesifiseerde rekening en

thereof, and thereafter at intervals not exceeding three months detailed statements of account, each from the date up to which the previous statement was made up.

(7) The officer presiding at any meeting of creditors may of his own motion or at the request of the trustee or his agent call upon any person present at the meeting who wishes to prove or who has at any time proved a claim against the estate to take an oath, to be administered by the said officer, and to submit to examination by the said officer or by the trustee or his agent or by a creditor or the agent of a creditor whose claim has been proved, in regard to the said claim.

(8) If any such person is absent from a meeting of creditors the officer who presided or who presided thereat, may summon him in writing to appear before him at a place and time stated in the summons, for the purpose of being examined by the said officer or by the trustee or his agent or by a creditor or the agent of a creditor whose claim has been proved, and if he appears in answer to the summons the provisions of sub-section (7) shall apply.

(9) If any such person fails without reasonable excuse to appear in answer to such summons or having appeared or when present at any meeting of creditors refuses to take the oath or to submit to the said examination or to answer fully and satisfactorily any lawful question put to him, his claim, if already proved, shall be expunged by the Master, and if not yet proved, shall be rejected, and he shall in that case not be entitled to establish his claim by an action at law.

Trustee to examine claims.

45. (1) After a meeting of creditors the officer who presided thereat shall deliver to the trustee every claim proved against the insolvent estate at that meeting and every document submitted in support of the claim.

(2) The trustee shall examine all available books and documents relating to the insolvent estate for the purpose of ascertaining whether the estate in fact owes the claimant the amount claimed.

(3) If the trustee disputes a claim after it has been proved against the estate at a meeting of creditors, he shall report the fact in writing to the Master and shall state in his report his reasons for disputing the claim. The Master may thereupon, after notice to the creditor, reduce or disallow the claim, and if he has done so, he shall forthwith notify the claimant in writing: Provided that such reduction or disallowance shall not debar the claimant from establishing his claim by an action at law, but subject to the provisions of section *seventy-five*.

Set-off.

46. If two persons have entered into a transaction the result whereof is a set-off, wholly or in part, of debts which they owe one another and the estate of one of them is sequestrated within a period of six months after the taking place of the set-off, or if a person who had a claim against another person (hereinafter in this section referred to as the debtor) has ceded that claim to a third person against whom the debtor had a claim at the time of the cession, with the result that the one claim has been set-off, wholly or in part, against the other, and within a period of one year after the cession the estate of the debtor is sequestrated; then the trustee of the sequestrated estate may in either case abide by the set-off or he may with the approval of the Master, disregard it and call upon the person concerned to pay to the estate the debt which he would owe it, but for the set-off, and thereupon that person shall be obliged to pay that debt and may prove his claim against the estate as if no set-off had taken place: Provided that the preceding provisions of this sub-section shall not apply if any debt or claim so set-off is a debt or an unceded claim for the remuneration of services rendered or work performed; and provided, further, that the trustee shall abide by the set-off if the estate of the other party to the set-off was also sequestrated and the trustee did not before the sequestration of his estate, call upon him as aforesaid, to pay his debt.

Right of retention and landlord's legal hypothec.

47. If a creditor of an insolvent estate who is in possession of any property belonging to that estate, to which he has a right of retention or over which he has a landlord's legal

daarna met tussenpose van nie meer as drie maande, gespesifiseerde rekenings, elk sedert die datum tot wanneer die vorige rekening opgemaak was, voorgelê is nie.

(7) Die amptenaar wat op 'n byeenkoms van skuldeisers voorsit, kan uit eie beweging of op versoek van die kurator of sy verteenwoordiger iemand wat op die byeenkoms aanwesig is en wat 'n vordering teen die boedel wil bewys of te eniger tyd bewys het, oproep om 'n eed af te lê, wat bedoelde amptenaar aan hom moet oplê, en homself deur bedoelde amptenaar of deur die kurator of sy verteenwoordiger of deur 'n skuldeiser of die verteenwoordiger van 'n skuldeiser wie se vordering bewys is, omtrent bedoelde vordering te laat ondervra.

(8) As so iemand van 'n byeenkoms van skuldeisers afwesig is, dan kan die amptenaar wat daarop voorsit of voorgesit het, hom skriftelik dagvaar om op 'n plek en tyd in die dagvaarding vermeld, voor hom te verskyn om ondervra te word deur bedoelde amptenaar of deur die kurator of sy verteenwoordiger of deur 'n skuldeiser of die verteenwoordiger van 'n skuldeiser wie se vordering bewys is, en as hy aan die dagvaarding gevolg gee en verskyn is die bepalings van sub-artikel (7) van toepassing.

(9) As so iemand sonder redelike verontskuldiging in gebreke bly om aan die dagvaarding gevolg te gee en te verskyn of as hy verskyn het of op 'n byeenkoms van skuldeisers aanwesig is, weier om die eed af te lê of homself te laat ondervra of om volledig en op bevredigende wyse te antwoord op 'n wettige vraag wat aan hom gestel word, dan skrap die Meester sy vordering as dit reeds bewys is en as dit nog nie bewys is nie, word dit afgewys, en in daardie geval is hy nie geregtig om dit in 'n regsgeding te bewys nie.

45. (1) Na 'n byeenkoms van skuldeisers moet die amptenaar wat daarop voorgesit het, elke vordering wat op daardie byeenkoms teen die insolvente boedel bewys is en elke stuk tot staving van die vordering wat voorgelê is, aan die kurator oorhandig. Kurator moet vorderings ondersoek.

(2) Die kurator moet alle beskikbare boeke en stukke wat op die insolvente boedel betrekking het, ondersoek om na te gaan of die boedel inderdaad aan die eiser die gevorderde bedrag skuld.

(3) As die kurator 'n vordering betwis nadat dit op 'n byeenkoms van skuldeisers teen die boedel bewys is, moet hy daardie feit skriftelik aan die Meester berig en in sy berig die redes aanvoer waarom hy die vordering betwis. Die Meester kan daarop, na kennisgewing aan die skuldeiser die vordering verminder of skrap, en as hy dit gedoen het moet hy die eiser onmiddellik daarvan skriftelik in kennis stel: Met dien verstande dat daardie vermindering of skraping die eiser nie belet om sy vordering in 'n regsgeding te bewys nie, dog behoudens die bepalings van artikel vyf-en-sewentig.

46. As twee persone 'n regshandeling aangegaan het, waarvan die gevolg 'n algehele of gedeeltelike vergelyking is van skulde van die een aan die ander en die boedel van die ene word gesekwestreer binne 'n tydperk van ses maande nadat die skuldvergelyking plaasgevind het, of as iemand wat 'n vordering had teen 'n ander (hieronder in hierdie artikel die skuldenaar genoem) daardie vordering gecedeer, het aan 'n derde persoon teen wie die skuldenaar tydens die cessie 'n vordering had, met die gevolg dat die een vordering geheel of gedeeltelik deur die ander vergelyk is, en die boedel van die skuldenaar word binne 'n tydperk van een jaar na die cessie gesekwestreer, dan kan die kurator van die gesekwestreerde boedel in die een sowel as in die ander geval hom aan die skuldvergelyking hou of dit met goedkeuring van die Meester verontagsaam en van die betrokke persoon verlang dat hy aan die boedel die skuld moet betaal wat hy hom, afgesien van die skuldvergelyking, sou skuld, en daarop is daardie persoon verplig om daardie skuld te betaal en kan sy vordering teen die boedel bewys asof geen skuldvergelyking plaasgevind het nie: Met dien verstande dat die voorgaande bepalings van hierdie artikel nie van toepassing is nie as 'n aldus vergelykte skuld of vordering 'n skuld of 'n ongecedeerde vordering is vir besoldiging of vergoeding weens verrigte dienste of werk; en met dien verstande voorts dat die kurator hom aan die skuldvergelyking moet hou as die boedel van die ander party tot die skuldvergelyking ook gesekwestreer is en die kurator nie voor die sekwestrasie van sy boedel van hom, soas voormeld, verlang het dat hy sy skuld moet betaal nie. Skuldvergelyking.

47. As 'n skuldeiser van 'n insolvente boedel wat in besit is van goed wat tot daardie boedel behoort, waarop hy 'n retensiereg of 'n stilswygende hipoteek van 'n verhuurder Reg van retensie of stilswygende hipoteek van verhuurder.

hypothec, delivers that property to the trustee of that estate, at the latter's request, he shall not thereby lose the security afforded him by his right of retention or lose his tacit hypothec, if, when delivering the property, he notifies the trustee in writing of his rights and in due course proves his claim against the estate: Provided, that a right to retain any book or document of account which belongs to the insolvent estate or relates to the insolvent's affairs shall not afford any security or preference in connection with any claim against the estate. 5

Proof of conditional claim.

48. A creditor whose claim against an insolvent estate is 10 dependent upon a condition, may prove that claim in the manner set forth in section *forty-four* but subject to the following provisions:—

- (1) If the condition is of such a nature that it will be fulfilled, if at all, within a year of the sequestration, 15 the creditor may prove his claim, but he shall have no vote in respect of that claim at a meeting of creditors. If a dividend is awarded on such a claim it shall be paid by the trustee to the Master, who shall pay it to the creditor, if the condition has been fulfilled, 20 and otherwise shall return it to the trustee for distribution among the other creditors.
- (2) If the condition is not such as is described in subsection (1), the creditor may call upon the trustee at a meeting of creditors to place a value upon the 25 claim and the trustee shall thereupon lay before the officer presiding at that meeting a written valuation of the claim with the reasons therefor, and the presiding officer shall admit that claim at such value as he may determine, or reject it: Provided that 30 when the condition has been fulfilled, before the confirmation, by the Master, in terms of section *one hundred and ten*, of a trustee's account in the liquidation of the estate, the creditor may prove his claim as if it had been unconditional. 35

Claims against partnership distinct from claims against partners.

49. When the estate of a partnership and the estates of the partners in that partnership are under sequestration simultaneously, the creditors of the partnership shall not be entitled to prove claims against the estate of a partner and the creditors of a partner shall not be entitled to prove claims against 40 the estate of the partnership; but the trustee of the estate of the partnership shall be entitled to any balance of a partner's estate that may remain over after satisfying the claims of the creditors of the partner's estate in so far as that balance is required to pay the partnership's debts and the trustee of the 45 estate of a partner shall be entitled to any balance of the partnership's estate that may remain over after satisfying the claims of the creditors of the partnership estate, so far as that partner would have been entitled thereto, if his estate had not been sequestrated. 50

Arrear interest. Debt due after sequestration.

50. (1) When a debt bearing interest, became due before the sequestration of the debtor's estate, the creditor to whom that debt is owing may include in his claim against the debtor's estate in respect of that debt any interest thereon which is in arrear, to the date of the sequestration. 55

(2) If a person, before the sequestration of his estate, incurred a debt which is payable upon a date (hereinafter referred to as the due date) after the date of the sequestration, the creditor towards whom the debt was incurred, may claim from the insolvent estate the full amount of that debt as if it were 60 payable on the date of sequestration: Provided that if the debt bears no interest and a distribution account in the estate in question is confirmed by the Master in terms of section *one hundred and ten* before the due date, an amount shall be paid on that claim equal to the amount which would have been paid thereon under the distribution account if the debt had 65 been payable on the date of sequestration, less six per cent. of that amount per annum, reckoned from the date of sequestration to the due date.

Withdrawal of claim already proved against estate.

51. (1) A creditor who has proved a claim against an 70 insolvent estate may withdraw his claim by letters addressed to the Master and to the trustee and the latter shall in writing notify the other creditors of the withdrawal: Provided that the creditor so withdrawing his claim shall remain liable in

van onroerende goed het, daardie goed aan die kurator van die boedel op sy versoek oorhandig, dan verloor hy daardeur nie die sekuriteit wat sy retensiereg aan hom verleen of sy stilswygende hipoteek nie, as hy, wanneer hy die goed oorhandig, aan die kurator van sy regte skriftelik kennis gee en in die gewone loop sy vordering teen die boedel bewys: Met dien verstande dat 'n reg van retensie van 'n rekeningboek of rekening wat tot die insolvente boedel behoort, of wat betrekking het op die insolvent se sake, geen sekuriteit of preferensie verleen nie in verband met 'n vordering teen die boedel.

48. 'n Skuldeiser wie se vordering teen 'n insolvente boedel van 'n voorwaarde afhanklik is, kan daardie vordering volgens die voorskrifte van artikel vier-en-veertig bewys, dog behoudens die volgende bepalings:—

(1) As die voorwaarde van die aard is dat hy, as hy vervul word, binne een jaar na die sekwestrasie vervul sal word, dan kan die skuldeiser sy vordering bewys, dog hy het geen stem op 'n byeenkoms van skuldeisers op grond van daardie vordering nie. As 'n dividend op so 'n vordering toegeken word, moet die kurator dit aan die Meester uit betaal en die Meester moet dit aan die skuldeiser uitbetaal as die voorwaarde vervul is en so nie, moet hy dit aan die kurator teruggee om onder die ander skuldeisers verdeel te word.

(2) As die voorwaarde nie van 'n aard is soas bedoel in subartikel (1) nie, dan kan die skuldeiser op 'n byeenkoms van skuldeisers van die kurator verlang dat hy die vordering moet waardeur en die kurator moet daarop aan die amptenaar wat op daardie byeenkoms voorsit, 'n skriftelike met redes omklede waardering van die vordering voorlê en die voorsittende amptenaar moet daardie vordering toelaat teen so 'n waarde as wat hy mog bepaal of dit afwys: Met dien verstande dat wanneer die voorwaarde vervul is voordat die Meester volgens artikel honderd-en-tien 'n rekening van die kurator by die likwidasie van die boedel bekrachtig het, die skuldeiser sy vordering kan bewys asof dit onvoorwaardelik was.

49. Wanneer die boedel van 'n vennootskap en die boedels van die vennote van daardie vennootskap gelyktydig onder sekwestrasie is, dan is die skuldeisers van die vennootskap nie geregtig om vorderings teen die boedel van 'n vennoot te bewys nie, en die skuldeisers van 'n vennoot is nie geregtig om vorderings teen die boedel van die vennootskap te bewys nie; dog die kurator van die boedel van die vennootskap is geregtig op al wat uit 'n vennoot se boedel mog oorskiet na vereffening van die vorderings van die skuldeisers van die vennoot se boedel, vir sover as wat daardie oorskot nodig is om die vennootskap se skulde te betaal en die kurator van die boedel van 'n vennoot is geregtig op al wat uit die vennootskap se boedel mag oorskiet na vereffening van die vorderings van die skuldeisers van die vennootskap se boedel, vir sover as wat daardie vennoot daarop geregtig sou gewees het, as sy boedel nie gesekwestreer was nie.

50. (1) Wanneer 'n skuld wat rente dra, voor die sekwestrasie van die skuldenaar se boedel opvorderbaar geword het, dan kan die skuldeiser aan wie daardie skuld verskuldig is, by sy vordering teen die skuldenaar se boedel weens daardie skuld insluit alle agterstallige rente wat daarop verskuldig mag wees, tot op die dag van die sekwestrasie.

(2) As iemand voor die sekwestrasie van sy boedel 'n skuld aangegaan het wat opvorderbaar word op 'n dag (hieronder die vervalddag genoem) na die dag van die sekwestrasie, dan kan die skuldeiser teenoor wie die skuld aangegaan is die volle bedrag van die skuld van die insolvente boedel vorder, asof dit op die dag van die sekwestrasie opvorderbaar was: Met dien verstande dat as die skuld geen rente dra nie en 'n distribusie-rekening in die betrokke boedel voor die vervalddag deur die Meester volgens artikel honderd-en-tien bekrachtig word, 'n bedrag op bedoelde vordering uitbetaal word, gelyk aan die bedrag wat volgens die distribusie-rekening daarop sou uitbetaal geword het, as die skuld op die sekwestrasiedag opvorderbaar gewees het, met aftrek van ses persent van daardie bedrag per jaar, gereken vanaf die sekwestrasiedag tot die vervalddag.

51. (1) 'n Skuldeiser wat 'n vordering teen 'n insolvente boedel bewys het, kan sy vordering terugtrek deur briewe gerig aan die Meester en aan die kurator, en laasbedoelde moet die ander skuldeisers van die terugtrekking skriftelik in kennis stel: Met dien verstande dat die skuldeiser, wat aldus sy

Bewys van voorwaardelike vordering.

Vorderings teen vennootskap is afgesonder van vorderings teen vennote.

Agterstallige rente. Skuld wat na sekwestrasie opvorderbaar word.

Terugtrekking van reeds teen boedel bewese vordering.

terms of section *one hundred and four* for his pro rata share of all costs lawfully incurred by the trustee in connection with the sequestration up to the time when he received the creditor's letter of withdrawal.

(2) A creditor who has so withdrawn his claim may, by letters addressed to the Master and to the trustee, cancel his withdrawal, but if he does so, he shall not become liable for any costs in connection with the sequestration for which he was not liable at the time of cancellation and he shall not be entitled to any payment out of the estate in respect of his claim until all the other creditors who have proved their claims have been paid in full.

Voting at meeting
of creditors.

52. (1) Save as in this section and in section *forty-eight* is otherwise provided, every creditor of an insolvent estate shall be entitled to vote at any meeting of the creditors of that estate as soon as his claim against the estate has been proved.

(2) The vote of any creditor shall be reckoned according to the value of his claim, except when it is provided in this Act that votes shall be reckoned in number.

(3) The vote of a creditor shall in no case be reckoned in number, unless his claim is of the value of at least thirty pounds.

(4) A creditor may not vote in respect of any claim which was ceded to him after the commencement of the proceedings by which the estate was sequestrated.

(5) A creditor holding any security for his claim shall, except in the election of a trustee and upon any matter affecting that security, be entitled to vote only in respect of the amount by which his claim exceeds the amount at which he valued his security when proving his claim, or if he did not value his security, in respect of the amount by which his claim exceeds the amount of the proceeds of the realization of his security in terms of section *eighty-three*.

Questions upon
which creditors
may vote.

53. (1) A creditor may vote at a meeting of creditors upon all matters relating to the administration of the estate, but may not vote in regard to matters relating to the distribution of the assets of the estate, except for the purpose of directing the trustee to contest, compromise or admit any claim against the estate.

(2) Subject to the provisions of section *fifty-four* and sub-section (7) of section *one hundred and seventeen* every matter upon which a creditor may vote shall be determined by the majority of votes reckoned in accordance with sub-section (2) of section *fifty-two*, and every creditor may vote either personally or by an agent specially authorized thereto or acting under his general power of attorney.

(3) Every resolution of creditors at a meeting of creditors and the result of the voting on any matter as declared by the officer presiding at that meeting, shall be recorded upon the minutes of the meeting and shall be binding upon the trustee in so far as it is a direction to him; and no other direction of creditors shall be binding upon him.

(4) Any direction by creditors which infringes the rights of any creditor may be set aside by the Court on the application of the creditor whose rights are affected.

(5) The creditors shall not be entitled to direct the trustee to employ or not to employ a particular attorney or auctioneer in connection with the administration of the estate but the creditors may recommend the employment of a particular attorney or auctioneer and if the trustee does not act upon the recommendation, any creditor may submit the matter to the Master whose decision, after hearing the trustee, shall be final.

Election of trustee.

54. (1) At the first meeting of the creditors of an insolvent estate the creditors who have proved their claims against the estate may elect one or two trustees.

(2) Any person who has obtained a majority in number and in value of the votes of the creditors entitled to vote, who voted at such meeting, shall be elected trustee.

(3) If no person has obtained such a majority of votes then—

(a) the person who has obtained a majority of votes in number, when no other person has obtained a majority of votes in value, or has obtained a majority of votes in value, when no other person has obtained a majority of votes in number, shall be deemed to be elected sole trustee;

vordering terugtrek, volgens artikel *honderd-en-vier* aanspreeklik bly vir sy eweredige aandeel van alle koste wettig deur die kurator in verband met die sekwestrasie aangegaan tot op die tyd-

5 (2) 'n Skuldeiser wat aldus sy vordering teruggetrek het, kan sy terugtrekking deur briewe gerig aan die Meester en die kurator, weer intrek; dog as hy dit doen, word hy nie aanspreeklik nie vir koste in verband met die sekwestrasie waarvoor hy op die tyd-
10 stip van die intrekking nie aanspreeklik was nie en hy is nie geregtig op betaling uit die boedel weens sy vordering totdat alle ander skuldeisers, wat hulle vorderings bewys het, ten volle uitbetaal is.

52. (1) Behalwe vir sover hierdie artikel en artikel *agten-veertig* anders bepaal, is elke skuldeiser van 'n insolvente
15 boedel geregtig om te stem op 'n byeenkoms van die skuldeisers van daardie boedel, sodra sy vordering teen die boedel bewys is.

Stemming op byeenkoms van skuldeisers.

(2) Die stem van 'n skuldeiser word bereken volgens die waarde van sy vordering, behalwe waar in hierdie Wet bepaal
20 word dat stemme volgens getal bereken sal word.

(3) Die stem van 'n skuldeiser word in geen geval volgens getal bereken nie, tensy die waarde van sy vordering minstens dertig pond bedra.

(4) 'n Skuldeiser mag nie stem nie op grond van 'n vordering
25 wat aan hom gecedeer is na die begin van die geding waardeur die boedel gesekwestreer geword het.

(5) 'n Skuldeiser wat in besit is van sekuriteit vir sy vordering is, behalwe by die verkiesing van 'n kurator en aangaande 'n saak wat sy sekuriteit raak, slegs geregtig om te stem op
30 grond van die oorskot van sy vordering bo die bedrag waarop hy sy sekuriteit gewaardeer het toe hy sy vordering bewys het of as hy nie sy sekuriteit gewaardeer het nie, op grond van die oorskot van sy vordering bo die bedrag van die opbrings van die tegeldemaking van sy sekuriteit volgens artikel
35 *drie-en-tagtig*.

53. (1) 'n Skuldeiser kan op 'n byeenkoms van skuldeisers stem oor alle sake wat op die bereddering van die boedel
40 betrekking het, dog kan nie stem oor sake wat betrekking het op die verdeling van die bate van die boedel nie, behalwe om die kurator te gelas om 'n vordering teen die boedel te betwis of toe te laat of 'n skikking daaromtrent aan te gaan.

Sake waaroor skuldeisers kan stem.

(2) Behoudens die bepalinge van artikel *vier-en-vyftig* en sub-artikel (7) van artikel *honderd-en-sewentien*, word elke saak
45 waaroor 'n skuldeiser kan stem, beslis deur die meerderheid van stemme, bereken volgens sub-artikel (2) van artikel *twee-en-vyftig* en elke skuldeiser kan stem of persoonlik, of deur 'n spesiaal daartoe gevolmagtigde, of deur iemand wat kragtens sy algemene prokurasie optree.

(3) Elke besluit van skuldeisers op 'n byeenkoms van skuldeisers en die uitslag van 'n stemming oor een of ander saak,
50 soos verklaar deur die amptenaar wat op daardie byeenkoms voorsit, moet aangeteken word in die notule van die byeenkoms en verbind die kurator vir sover as wat dit 'n opdrag aan hom bevat; en geen ander opdrag van die skuldeisers verbind hom nie.

(4) 'n Opdrag van skuldeisers wat inbreuk maak op die regte
55 van 'n skuldeiser kan op versoek van die skuldeiser wie se regte aangetas word, deur die Hof tot niet gemaak word.

(5) Die skuldeisers is nie geregtig om die kurator te gelas om 'n bepaalde prokureur of venduafslaer aan te stel of nie
60 aan te stel nie in verband met die bereddering van die boedel, dog die skuldeisers kan die aanstelling van 'n bepaalde prokureur of venduafslaer aanbeveel en as die kurator nie aan die aanbeveling gevolg gee nie, kan enige skuldeiser die saak voorlê aan die Meester, wie se beslissing, na aanhoring van die kurator,
65 finaal is.

54. (1) Op die eerste byeenkoms van die skuldeisers van 'n insolvente boedel, kan die skuldeisers wat hulle vorderings
70 teen die boedel bewys het, een of twee kurators kies.

Verkiesing van kurator.

(2) Iemand op wie die meerderheid, volgens getal en volgens
70 waarde, van die stemme van die stemgeregtigde skuldeisers wat op daardie byeenkoms gestem het, uitgebring is, word as kurator gekies.

(3) As op niemand so 'n meerderheid van stemme uitgebring
75 is nie, dan—

(a) word die persoon op wie die meerderheid van stemme volgens getal uitgebring is, as op niemand anders
80 'n meerderheid van stemme volgens waarde uitgebring is nie, of op wie die meerderheid van stemme volgens waarde uitgebring is, as op niemand anders 'n meerderheid van stemme volgens getal uitgebring is nie, geag as enige kurator gekies te wees;

- (b) if one person has obtained a majority of votes in value and another a majority of votes in number, both such persons shall be deemed to be elected trustees, and if either person declines a joint trusteeship, the other shall be deemed to be elected sole trustee. 5

(4) For the purposes of this section "majority of votes in number" means a greater number of votes (apart from the value of the claims which they represent, but subject to the provisions of sub-section (2) of section *fifty-two*) than has been obtained by any competitor and "majority of votes in value" means votes representing claims of a greater aggregate value than the votes obtained by any competitor. 10

(5) If at any meeting of creditors convened for the purpose of electing a trustee, no trustee is elected and the estate is not vested at the time of that meeting in a provisional trustee, the Master may appoint a trustee and if he does not so appoint a trustee, the Master or the insolvent with the Master's consent, may apply, at the cost of the estate, to the Court by petition to set aside the sequestration and the Court may make such order thereon as it thinks fit. 15 20

Persons disqualified from being trustees.

55. Any of the following persons shall be disqualified from being elected or appointed a trustee:—

- (a) Any insolvent;
- (b) any person related to the insolvent concerned by consanguinity or affinity within the third degree; 25
- (c) a minor or any other person under legal disability;
- (d) any person who does not reside in the Union or in the Mandated territory of South-West Africa;
- (e) any person who has an interest opposed to the general interest of the creditors of the insolvent estate; 30
- (f) a former trustee disqualified under section *seventy-two*;
- (g) any person declared under section *fifty-nine* to be incapacitated for election as trustee, while any such incapacity lasts, or any person removed by the Court, on account of misconduct, from an office of trust; 35
- (h) a corporate body;
- (i) any person who has at any time been convicted (whether in the Union or elsewhere) of any offence other than a political offence, in respect whereof he received a sentence of imprisonment imposed without the option of a fine; 40
- (j) any person who was, at any time, a party to an agreement or arrangement with any debtor or creditor whereby he undertook that he would, when performing the functions of a trustee or assignee, grant or endeavour to grant to, or obtain or endeavour to obtain for any debtor or creditor any benefit not provided for by law; 45
- (k) any person who has directly or indirectly, endeavoured to induce any person to vote for him as trustee or to effect or assist in effecting his election as trustee of any insolvent estate. 50

Appointment of trustee. Security for his administration.

56. (1) If a trustee was elected at a meeting of creditors at which a person other than the Master presided, the election shall not be valid unless it has been confirmed by the Master. 55

(2) When the Master is satisfied that any person elected as trustee was duly elected and when a person so elected has given security to the satisfaction of the Master for the proper performance of his duties as trustee, the Master shall appoint him as trustee by delivering to him a certificate of appointment, which shall be valid throughout the Union and the mandated territory of South-West Africa. 60

(3) On receipt of his certificate of appointment the trustee shall notify his appointment and address in the *Gazette*. 65

(4) When two trustees have been appointed or when the Master has appointed a co-trustee in terms of sub-section (2) of section *fifty-seven*, both or all three trustees shall act jointly in performing their functions as trustees and each of them shall be jointly and severally liable for every act performed by them jointly or by each of the others. 70

(b) as op een persoon 'n meerderheid van stemme volgens waarde en op 'n ander persoon 'n meerderheid van stemme volgens getal uitgebring is, word albei daardie persone geag as kurators gekies te wees en as een van hulle weier om die kuratorskap met 'n ander te deel, dan word die ander geag as enige kurator gekies te wees.

(4) By die toepassing van hierdie artikel beteken „meerderheid van stemme volgens getal” 'n groter aantal stemme (afgesien van die waarde van die vorderings wat hulle verteenwoordig, dog behoudens die bepalings van sub-artikel (2) van artikel twee-en-vyftig) as wat op 'n mededinger uitgebring is en beteken „meerderheid van stemme volgens waarde” stemme wat vorderings van 'n groter gesamentlike waarde 15 verteenwoordig as die stemme wat op 'n mededinger uitgebring is.

(5) As op 'n byeenkoms van skuldeisers, belê om 'n kurator te kies, geen kurator gekies word nie en die beheer van die boedel tydens daardie byeenkoms nie by 'n voorlopige kurator 20 berus nie, dan kan die Meester 'n kurator aanstel en as hy nie aldus 'n kurator aanstel nie dan kan die Meester of die insolvent met toestemming van die Meester, op koste van die boedel, die Hof by wyse van petisie versoek om die sekwestrasie tot niet te maak en die Hof kan daarop so 'n order uitvaardig 25 as wat hy wenslik ag.

55. Elkeen van die volgende persone is onbevoeg om as kurator gekies of aangestel te word:

Persone wat onbevoeg is om kurator te wees.

- (a) 'n Insolvent;
- (b) 'n bloed- of aanverwant van die betrokke insolvent 30 binne die derde graad;
- (c) 'n minderjarige of 'n ander persoon wat regtens onbevoeg is;
- (d) iemand wat nie in die Unie of die mandaatgebied Suidwes-Afrika woonagtig is nie;
- (e) iemand met belange wat indruis teen die algemene 35 belange van die skuldeisers van die insolvente boedel;
- (f) 'n gewese kurator wat kragtens artikel twee-en-sewentig onbevoeg is;
- (g) iemand wat kragtens artikel negen-en-vyftig onbevoeg 40 verklaar is om as kurator gekies te word, so lang daardie onbevoegdheid duur, of iemand wat deur die Hof weens wangedrag uit 'n vertrouensamp afgesit is;
- (h) 'n regspersoon;
- (i) iemand wat te eniger tyd veroordeel is (hetsy in die 45 Unie of elders) tot gevangenisstraf sonder die keuse van 'n boete, weens 'n ander misdryf as 'n politieke misdryf;
- (j) iemand wat te eniger tyd deelgeneem het aan 'n ooreenkoms of reëling met 'n skuldenaar of skuldeiser waarin hy belowe het om by die verrigting van sy werksaamhede as kurator of boedelredder 50 'n voordeel waarvoor regtens geen voorsiening gemaak is nie, aan 'n skuldenaar of skuldeiser te verleen of te poog om dit aan hom te verleen, of om dit vir hom te verkry of te poog om dit vir hom te verkry;
- (k) iemand wat direk of indirek gepoog het om iemand 55 te beweeg om vir hom te stem as kurator of om sy verkiesing te bewerkstellig of mee te help tot bewerkstelliging van sy verkiesing as kurator van enige insolvente boedel.

56. (1) As 'n kurator gekies is op 'n byeenkoms van skuldeisers waarop iemand anders as die Meester voorgesit het, dan is die 65 verkiesing nie geldig nie, tensy die Meester dit bekragtig het.

Aanstelling van kurator. Sekuriteit vir sy boedelbereddering.

(2) Wanneer die Meester van oordeel is dat iemand wat as kurator gekies is, regmatig gekies is en wanneer 'n aldus gekosene sekuriteit gestel het wat die Meester voldoende ag, dat hy sy werksaamhede as kurator behoorlik sal verrig, dan 70 stel die Meester hom as kurator aan deur oorhandiging aan hom van 'n sertifikaat van aanstelling, wat orals in die Unie en die mandaatgebied Suidwes-Afrika regsgeldig is.

(3) Na ontvangs van sy sertifikaat van aanstelling moet die kurator sy aanstelling en adres in die *Staatskoerant* bekend- 75 maak.

(4) Wanneer twee kurators aangestel is of as die Meester kragtens sub-artikel (2) van artikel sewen-en-vyftig 'n mede-kurator aangestel het, moet albei of aldrie kurators gesamentlik handel by die verrigting van hulle werksaamhede as kurators, 80 en elkeen van hulle is solidair aanspreeklik vir elke handeling errig deur hulle gesamentlik of deur elkeen van die ander.

(5) Whenever two or three trustees disagree on any matter relating to the estate of which they are trustees one or more of them may refer the matter to the Master who may thereupon determine the question in issue.

(6) The cost of giving the security mentioned in sub-section (2), to an amount which the Master considers reasonable, shall be paid out of the estate in question as part of the costs of sequestration. 5

(7) When a trustee has, in the course of liquidating an insolvent estate accounted to the Master, to his satisfaction, for any property in the estate, the Master may consent to a reduction of the security mentioned in sub-section (2) if he is satisfied that the reduced security will suffice to indemnify the estate or the creditors thereof against any maladministration by the trustee of the remaining property in the estate. 10 15

Appointment of trustee or co-trustee by Master.

57. (1) If a person who has been elected as a sole trustee was not properly elected or is disqualified from being a trustee of the estate in question or has failed to give within a period of seven days after the confirmation of his election or within such further period as the Master may allow, the security mentioned in sub-section (2) of section *fifty-six*, the Master shall give notice in writing to the person so elected that he declines to appoint him as trustee and shall, in that notice, state his reasons for declining to appoint him. The Master shall thereupon appoint as trustee of the estate in question any other person who is not disqualified from being a trustee of that estate. 20 25

(2) Whenever the Master considers it desirable, he may appoint a person not disqualified from holding the office of trustee who has given the security mentioned in sub-section (2) of section *fifty-six* as a co-trustee with the trustee or trustees of an insolvent estate. 30

(3) All the provisions of this Act, relating to a trustee shall apply to a trustee or a co-trustee appointed by the Master under this section. 35

Vacation of office of trustee.

58. A trustee shall vacate his office—

- (a) if his estate is sequestrated under this Act; or
- (b) if an order is issued under the law relating to mental disorders for his reception and detention in an institution, or if he is declared by a competent court to be incapable of managing his own affairs; or 40
- (c) if he is convicted of any offence and sentenced to serve any term of imprisonment without the option of a fine.

Court may declare a person disqualified from being a trustee, or remove a trustee.

59. On the application of any person interested the Court may either before or after the appointment of a trustee, declare that the person appointed or proposed is disqualified from holding the office of trustee, and, if he has been appointed, may remove him from office and may declare him incapable of being elected or appointed trustee under this Act during the period of his life or such other period as it may determine, if— 45 50

(a) he has accepted or expressed his willingness to accept from any person engaged to perform any work on behalf of the estate in question, any benefit whatever in connection with any matter relating to that estate; or 55

(b) in order to induce a creditor to vote for him at the election of a trustee or in return for his vote at such election, or in order to exercise any influence upon his election as trustee, he has— 60

- (i) wrongfully omitted or been privy to the wrongful omission of the name of a creditor from any record by this Act required; or
- (ii) directly or indirectly given or offered or agreed to give to any person any consideration; or 65
- (iii) offered to or agreed with any person to abstain from investigating any previous transactions of the insolvent concerned; or
- (iv) been guilty of or privy to the splitting of claims for the purpose of increasing the number of votes. 70

(5) Wanneer twee of drie kurators van mening verskil omtrent een of ander saak wat betrekking het op die boedel waarvan hulle kurators is, dan kan een of meer van hulle die saak verwys na die Meester wat daarop die geskilspunt kan besleg.

(6) Die koste van die sekuriteitstelling bedoel in sub-artikel (2), tot 'n bedrag wat die Meester redelik ag, word uit die betrokke boedel betaal as deel van die sekwestrasiekoste.

(7) Wanneer 'n kurator in die loop van die likwidasie van 'n insolvente boedel teenoor die Meester op 'n hom bevredigende wyse verantwoording gedoen het van een of ander goed in die boedel, dan kan die Meester 'n vermindering bewillig van die sekuriteit bedoel in sub-artikel (2), as hy van oordeel is dat die verminderde sekuriteit voldoende sal wees om die boedel of sy skuldeisers te vrywaar teen wanbeheer deur die kurator van die oorblywende goed in die boedel.

57. (1) As iemand wat as enige kurator gekies is, nie regmatig gekies is nie of onbevoeg is om kurator van die betrokke boedel te wees of in gebreke gebly het om binne sewe dae na die bekragtiging van sy verkiesing of binne so 'n verdere termyn as wat die Meester mag toestaan, die sekuriteit bedoel in sub-artikel (2) van artikel *ses-en-vyftig*, te stel, dan moet die Meester aan die aldus verkosene skriftelik kennis gee dat hy weier om hom as kurator aan te stel en moet in die kennisgewing die redes aangee waarom hy weier om hom aan te stel. Die Meester moet daarop iemand anders wat nie onbevoeg is om as kurator van die betrokke boedel aangestel te word nie, as kurator van daardie boedel aanstel.

Aanstelling van kurator of mede-kurator deur Meester.

(2) Wanneer die Meester dit wenslik ag, kan hy iemand wat nie onbevoeg is om die betrekking van kurator te beklee nie en wat die sekuriteit, bedoel in sub-artikel (2) van artikel *ses-en-vyftig*, gestel het, aanstel as mede-kurator van die kurator of kurators van 'n insolvente boedel.

(3) Alle bepalinge van hierdie Wet omtrent 'n kurator is van toepassing op 'n kurator of mede-kurator wat die Meester kragtens hierdie artikel aangestel het.

58. 'n Kurator ontruim sy betrekking—

- (a) as sy boedel ingevolge hierdie Wet geseekwestreer word; of
- (b) as ingevolge die wet op geestesgebreke 'n order uitgevaardig word om hom in 'n inrigting op te neem en aan te hou of as 'n bevoegde hof verklaar dat hy onbekwaam is om sy eie sake te beheer; of
- (c) as hy weens enige misdryf veroordeel word om gevangenisstraf te ondergaan sonder die keuse van 'n boete.

Wanneer kurator sy betrekking ontruim.

59. Op versoek van 'n belanghebbende kan die Hof, hetsy voor die aanstelling van 'n kurator, hetsy daarna, verklaar dat die aangestelde of beoogde persoon onbevoeg is om die betrekking van kurator te beklee en as hy aangestel is, kan die Hof hom uit sy betrekking afsit en verklaar dat hy onbekwaam is om kragtens hierdie Wet as kurator gekies of aangestel te word, en wel gedurende sy lewe of gedurende sodanige ander tydperk as wat die Hof mag bepaal, indien hy—

Hof kan iemand onbevoeg verklaar om kurator te wees of kurator afsit.

(a) van iemand, wat aangestel is om enige werk ten behoeve van die betrokke boedel te verrig, enige voordeel hoegenaamd in verband met 'n aangeleentheid wat op daardie boedel betrekking het, aangeneem het of hom bereid verklaar het om dit aan te neem; of

(b) ten einde 'n skuldeiser te beweeg om vir hom te stem by die verkiesing van 'n kurator of as vergoeding vir sy stem by so 'n verkiesing, of om enige invloed uit te oefen op sy verkiesing as kurator—

(i) die naam van 'n skuldeiser wederregtelik uitgelaat het van een of ander geskrif wat hierdie Wet voorskryf of by so 'n wederregtelike uitlating betrokke was; of

(ii) direk of indirek enige vergoeding aan iemand gegee of aangebied of belowe het; of

(iii) aan iemand aangebied of met iemand ooreengekom het om vorige handelings van die betrokke insolvent nie te ondersoek nie; of

(iv) hom skuldig gemaak het aan of betrokke was by die splitsing van vorderings ten einde die aantal stemme te vermeerder.

Removal of
trustee by Court.

60. Upon the application of the Master or of any other person interested the Court may remove a trustee from his office on the ground—

- (a) that he was not qualified for election or appointment as trustee or that his election or appointment was for any other reason illegal, or that he has become disqualified from election or appointment as a trustee ; or
- (b) that he has failed to perform satisfactorily any duty imposed upon him by this Act or to comply with a lawful demand of the Master ; or
- (c) that he is mentally or physically incapable of performing satisfactorily his duties as trustee.

Leave of absence
or resignation of
trustee.

61. At the request of a trustee the Master may permit him to absent himself from the Union or may relieve him of his office, in either case upon such conditions as the Master may think fit to impose and subject to his giving such notice of his intention to absent himself from the Union or to resign as the Master may direct.

Election of new
trustee.

62. (1) When a Court has removed one of two joint trustees from office, it may order the convening of a meeting of the creditors of the estate in question for the purpose of electing a new trustee in the place of the trustee who was removed.

(2) When a sole trustee has vacated his office or has been removed from office, has resigned or died, the Master shall convene a meeting of the creditors of the estate in question for the purpose of electing a new trustee, and in the meantime the Master may appoint a *curator bonis* for the preservation of the estate.

(3) When one of two joint trustees has vacated his office or has been removed from office, has resigned or died the Master may convene a meeting of the creditors of the estate in question for the purpose of electing a new trustee in the place of the trustee who has vacated his office or has been removed from office, has resigned or died, or if the Court has so ordered, in terms of sub-section (1), he shall convene such a meeting.

(4) The provisions of section *fifty-four* shall apply in connection with the election of a new trustee in terms of this section.

Remuneration of
trustee or *curator*
bonis.

63. (1) Every trustee or *curator bonis* shall be entitled to a reasonable remuneration for his services, to be taxed by the Master according to tariff B in the Second Schedule to this Act: Provided that the Master may, for good cause, reduce or increase his remuneration, or may disallow his remuneration either wholly or in part on account of any failure of or delay in the discharge of his duties or on account of any improper performance of his duties.

(2) A person who employs or is a fellow employee or is in the employment of the trustee shall not be entitled to any remuneration out of the insolvent estate for services rendered to the estate, and a trustee or his partner shall not be entitled to any remuneration out of the estate for services rendered to the estate, except the remuneration to which under this Act he is entitled as trustee.

Insolvent and
others to attend
meetings of
creditors.

64. (1) An insolvent shall attend the first and second meetings of the creditors of his estate and every adjourned meeting, unless he has previously obtained the written permission of the officer who is to preside or who presides at such meeting to absent himself. The insolvent shall also attend any subsequent meeting of creditors if required so to do by written notice of the trustee of his estate.

(2) The officer who is to preside or who presides at any such meeting may summon any person who is known or upon reasonable grounds believed to be or to have been in possession of any property which belonged to the insolvent before the sequestration of his estate or which belongs or belonged to the insolvent estate or to the spouse of the insolvent or to be indebted to the estate, or any person (including the insolvent's spouse) who in the opinion of said officer may be able to give any material information concerning the insolvent or his affairs (whether before or after the sequestration of his estate) or concerning any property belonging to the estate or concerning the business, affairs or property of the insolvent's spouse, to appear at such meeting or adjourned meeting for the purpose of being examined under section *sixty-five*.

(3) The said officer may also summon any person who is known or upon reasonable grounds believed to have in his possession or custody or under his control any book or docu-

en as die goed onroerend is, enige bedrag wat daarop betaal is aan die Staat of ten bate van 'n provinsiale administrasie of aan 'n liggaam deur of kragtens een of ander Wet ingestel, tot voldoening aan 'n uit die eiendom van daardie goed voort-spruitende verpligting tot periodieke betaling van so 'n bedrag, as daardie bedrag verskuldig was en die betaling daarvan nodig was om die kurator in staat te stel om die goed te transporteer, maak deel uit van die koste van die tegeldemaking.

(2) As 'n ander versekerde skuldeiser dan die skuldeiser op wie se versoek die betrokke boedel gesekwestreer is, in sy beëdigde verklaring, ingedien tot staving van sy vordering teen die boedel, te kenne gee dat hy hom tot voldoening van sy vordering uitsluitend verlaat op die opbrings van die goed waaruit sy sekuriteit bestaan, dan is hy nie aanspreeklik vir 15 ander sekwestrasiekoste nie as die koste vermeld in sub-artikel (1) en die koste waarvoor hy volgens paragraaf (a) of (b) van die voorbehoudsbepaling tot artikel *honderd-en-vier* aanspreeklik mag wees.

(3) Alle op 'n versekerde vordering verskuldigde rente vir 'n 20 tydperk van nie meer as twee jaar nie wat aan die sekwestrasiedag onmiddellik voorafgaan, is eweneens verseker, asof dit 'n deel van die hoofsom was.

(4) Nieteenstaande die bepalinge van een of ander wet wat die transport van onroerende goed belet tensy een of ander 25 bedrag betaal is wat periodiek op daardie goed verskuldig is aan die Staat of ten bate van 'n provinsiale administrasie of aan 'n liggaam, deur of kragtens een of ander wet ingestel, tot voldoening aan 'n uit die eiendom van daardie goed voort-spruitende verpligting tot sodanige periodieke betalings, belet 30 die wanbetaling van so 'n bedrag wat verskuldig is op onroerende goed in 'n insolvente boedel en wat vir 'n tydperk van meer as twee jaar opvorderbaar was, nie die kurator van daardie boedel om daardie goed te transporteer ten einde die boedel te likwideer.

35 90. Die bepalinge van hierdie Wet maak geen inbreuk op die bepalinge van 'n ander wet wat aan die Land- en Landbou- bank van Suid-Afrika bevoegdhede verleen en verpligtings 40 op lê met betrekking tot goed wat tot 'n insolvente boedel behoort.

40 91. Behoudens die bepalinge van artikel *honderd-en-drie* en *honderd-en-agt*, moet 'n kurator—

(a) binne 'n termyn van ses maande vanaf die dag van sy aanstelling, as die waarde van die bate in die 45 betrokke boedel tweehonderd-en-vyftig pond of meer bedra; of

(b) binne 'n termyn van drie maande vanaf die dag van sy aanstelling, as die waarde van die bate in die boedel 50 minder as tweehonderd-en-vyftig pond bedra,

aan die Meester voorlê 'n likwidasierekening en 'n distribusie-rekening van die opbrings van die goed in die boedel, wat 55 beskikbaar is vir betaling aan skuldeisers, of as alle vervreembare goed in die boedel te gelde gemaak en verantwoord is en die opbrings is onvoldoende tot dekking van die koste vermeld in artikels *ses-en-negentig* en *sewe-en-negentig*, 'n kontribusierekening, waarin die aanspreeklikheid vir die 60 tekort oor die kontribusiepligtige skuldeisers omgeslaan word.

92. (1) 'n Likwidasierekening moet 'n juiste opgawe bevat 65 van alle gelde wat die kurator ontvang het en van alle gelde wat hy uitgegee het, buiten gelde ontvang of uitgegee in die loop van 'n besigheid wat hy ten behoeve van die betrokke insolvente boedel gedryf het.

(2) Die opgawe van alle sodanige ontvangste en uitgawe moet vermeld die bedrag en datum daarvan en voldoende beson- 70 derhede om die aard daarvan te verduidelik.

(3) Die likwidasierekening moet vergesel gaan van die kurator se bankboekie en van bewysstukke tot staving van die opgawe van ontvangste en uitgawe.

(4) As 'n likwidasierekening nie die finale likwidasierekening 75 is nie, moet die kurator voorts daarin vermeld—

(a) alle nog nie tegeldegemaakte goed;

(b) alle uitstaande inskulde van die boedel;

(c) die redes waarom daar die goed nog nie te gelde gemaak 80 of daardie inskulde nog nie ingevorder is nie.

In daardie geval moet die kurator van tyd tot tyd en soas die Meester mog gelas, maar minstens eenkeer elke ses maande, tensy hy volgens die bepalinge van artikel *honderd-en-sewe* uitstel gekry het, periodieke rekenings opstel en aan die Meester voorlê wat na hulle vorm en in alle ander opsigte ooreen- 85 kom met die rekening vermeld in sub-artikels (1) en (2).

Hierdie Wet
raak Landbank
nie.

Likwidasie-
rekening,
distribusie-
rekening en
kontribusie-
rekening.

Wyse van
opstelling van
likwidasie-
rekening.

(5) If the estate of a partnership is under sequestration, separate trustees' accounts shall be framed in the estate of the partnership and in the estate of each member of that partnership whose estate is under sequestration.

Trading account.

93. If the trustee has carried on any business on behalf of the estate, he shall submit to the Master, in addition to the liquidation account, a trading account containing the following data and no others, namely—

- (a) a record of the value of the stock on hand at the date of sequestration ; 10
- (b) a record of the value of the stock on hand on the date up to which the account is made up ;
- (c) the daily totals of receipts and payments in connection with the business ;
- (d) the result of his conduct of the business. 15

Form of plan of distribution.

94. Any plan of distribution shall show in parallel columns under separate headings—

- (a) every claim or the part of every claim against the estate in question which is secured or otherwise preferent ; 20
- (b) every claim or the part of every claim against the estate which is unsecured and otherwise non-preferent ;
- (c) the amount awarded under that account and under any previous distribution account to every creditor of the estate ; 25
- (d) the deficiency in respect of each claim ;

and shall make provision for the division of the proceeds of the property in the insolvent estate in the order of preference and in the manner set forth in sections *ninety-five to one hundred and two* inclusive. 30

Application of proceeds of securities.

95. (1) The proceeds of any property which was subject to a special mortgage, landlord's legal hypothec, pledge or right of retention, after deduction therefrom of the costs mentioned in sub-section (1) of section *eighty-nine*, shall be applied in satisfying the claims secured by the said property, in their order of preference, with interest thereon calculated in manner provided in sub-section (2) of section *one hundred and one* from the date of sequestration to the date of payment, but subject to the provisions of sub-section (4) of section *ninety-six*. 35

(2) If a creditor whose claim is secured by a special mortgage over immovable property belonging to the insolvent estate has not proved his claim and the trustee is not satisfied that the debt in question has been discharged or abandoned, he shall deposit with the Master for payment into the Guardian's Fund the proceeds of the sale of any such property to an amount not exceeding such capital amount of the said special mortgage and such arrears of interest as the mortgagee would have had a preferent right to claim, after deduction of an amount equal to the costs which he would have had to pay if he had proved his claim and had stated in the affidavit submitted in support of his claim that he relied for the satisfaction of his claim solely on the proceeds of the sale of the said property. The amount so deposited or the part thereof to which the former mortgagee may be entitled shall be paid to him if, within a period of one year after confirmation in terms of section *one hundred and ten* of the distribution account under which the money is distributed, he applies therefor to the Master and the Master is satisfied after proof of his claim, that he is entitled to the amount or part thereof. 40 45 50 55

(3) Any amount deposited with the Master in terms of sub-section (2) which has not been paid out to the former mortgagee, as in that sub-section provided, shall after the expiry of the year mentioned in that sub-section be distributed among the creditors who have proved claims against the insolvent estate prior to the confirmation of the said distribution account, as if the amount had, at the time of such confirmation, been available for distribution among them. 60 70

(4) Any creditor claiming to be entitled to share in the said distribution shall make written application to the Master for payment of his share, and the Master may pay out to such creditor or may hand the money to the trustee, if any, for distribution among the creditors entitled thereto, or, if there is no trustee, may appoint a trustee on such conditions as he may think fit to impose for the purpose of making such distribution. 75

- (5) As die boedel van 'n vennootskap onder sekwestrasie is, moet in die boedel van die vennootskap en in die boedel van elke lid van die vennootskap wie se boedel onder sekwestrasie is, afsonderlike kuratorsrekenings opgestel word.
- 5 93. As die kurator namens die boedel 'n besigheid gedryf Handelsrekening.
het, moet hy aan die Meester benewens die likwidasierekening ook 'n handelsrekening voorlê waarin uitsluitend die volgende gegewens voorkom, naamlik:
- 10 (a) 'n Opgawe van die waarde van die voorhande goedere-
voorraad op die dag van die sekwestrasie;
- (b) 'n opgawe van die waarde van die voorhande goedere-
voorraad op die dag tot wanneer die rekening opge-
maak is;
- 15 (c) die daaglikse totale van ontvangste en betalings in
verband met die besigheid;
- (d) die gevolge van sy drywe van die besigheid.
94. 'n Distribusierekening moet aangêe in ewewydige kolomme Vorm van
onder afsonderlike opskrifte— distribusie-
rekening.
- 20 (a) elke vordering of die deel van elke vordering teen
die betrokke boedel wat verseker of andersins preferent
is;
- (b) elke vordering of die deel van elke vordering teen die
boedel wat onverseker en nie andersins preferent
is nie;
- 25 (c) die bedrag wat in daardie rekening en in elke vorige
distribusierekening aan elke skuldeiser van die boedel
toegeken is;
- (d) die tekort op elke vordering;
- en moet voorsiening maak vir die verdeling van die opbrings
30 van die goed in die insolvente boedel volgens die rangorde
van preferensie en op die wyse bepaal in artikels *vyf-en-negentig*
tot en met *honderd-en-twee*.
95. (1) Die opbrings van goed wat aan 'n spesiale verband, Aanwending van
stilswygende hipoteek van 'n verhuurder, pandreg of retensiereg opbrings van
35 onderhewig is, word, na aftrek daarvan van die koste bedoel
in sub-artikel (1) van artikel *nege-en-tagtig*, aangewend tot
voldoening van die vorderings wat deur daardie goed verseker
is, en wel volgens die rangorde van hulle preferensie, met rente
daarop bereken volgens die voorskrif van sub-artikel (2)
40 van artikel *honderd-en-een*, vanaf die dag van die sekwestrasie
tot die dag van betaling, dog behoudens die bepalings van
sub-artikel (4) van artikel *ses-en-negentig*.
- (2) As 'n skuldeiser wie se vordering verseker is deur 'n
spesiale verband op onroerende goed wat tot die insolvente
45 boedel behoort, nie sy vordering bewys het en die kurator nie
oortuig is dat die betrokke skuld voldoen of prysgegee is nie,
dan moet hy die opbrings van die verkoping van daardie
goed, tot 'n bedrag van nie meer as die kapitaalsom van
bedoelde verband en die agterstallige rente waarop die verband-
50 houer 'n preferente vorderingsreg sou gehad het, na aftrek
van 'n bedrag gelyk aan die koste wat hy sou moet betaal
het as hy sy vordering bewys het en in sy beëdigde verklaring
tot stawing van sy vordering te kenne gegee het dat hy hom
tot voldoening van sy vordering uitsluitend verlaat op die
55 opbrings van die verkoping van bedoelde goed, in hande
van die Meester deponeer, om in die voogdyfonds inbetaal
te word. Die aldus gedeponeerde bedrag of die deel daarvan
waarop die gewese verbandhouer geregtig mag wees, word aan
hom uitbetaal as hy, binne 'n tydperk van een jaar na die
60 bekragtiging volgens artikel *honderd-en-tien* van die distribusie-
rekening volgens welke die geld verdeel word, daarom aansoek
doen by die Meester en die Meester oortuig is na bewys van sy
vordering, dat hy op daardie bedrag of deel daarvan geregtig is.
- (3) 'n Bedrag wat volgens sub-artikel (2) by die Meester
65 gedeponeer is en wat nie volgens voorskrif van daardie sub-
artikel aan die gewese verbandhouer uitbetaal is nie, word,
na verloop van die jaar in daardie sub-artikel vermeld, verdeel
onder die skuldeisers wat voor die bekragtiging van bedoelde
distribusierekening vorderings teen die insolvente boedel bewys
70 het, asof die bedrag op die tydstip van daardie bekragtiging
ter verdeling onder hulle beskikbaar gewees het.
- (4) 'n Skuldeiser wat beweer dat hy geregtig is om by
bedoelde verdeling in aanmerking te kom, moet by die Meester
skriftelik aansoek doen om betaling van sy aandeel en die
75 Meester kan daardie skuldeiser uitbetaal of kan die geld
aan die kurator oorhandig (as daar een is), ter verdeling onder
die skuldeisers wat daarop geregtig is, of as daar geen kurator
is nie, dan kan hy 'n kurator aanstel op die voorwaardes
wat die Meester mag wenslik ag om te stel, om daardie verdeling
80 te maak.

(5) Any trustee charged with the duty of making such a distribution shall submit to the Master a supplementary plan of distribution in respect thereof, and the provisions of this Act relating to a plan of distribution shall apply in respect of such supplementary plan.

Funeral and death-bed expenses.

96. (1) Any free residue of an insolvent estate shall be applied in the first place in defraying the expenses of the funeral of the insolvent, if he died before the trustee's first plan of distribution was submitted to the Master in terms of section *ninety-one* and the expenses of the funeral of the insolvent's wife or minor child, if those expenses were incurred within the period of three months immediately preceding the sequestration of the insolvent's estate, but the amount payable under this sub-section shall not exceed twenty-five pounds in all.

(2) Thereafter any balance of the free residue shall be applied in defraying the death-bed expenses of the insolvent if they were incurred before the trustee's first plan of distribution was submitted to the Master in terms of section *ninety-one* and the death-bed expenses of the debtor's wife or minor child, if those expenses were incurred within the period of three months immediately preceding the sequestration of the insolvent's estate, but the amount payable under this sub-section shall not exceed twenty-five pounds in all.

(3) In sub-section (2) "death-bed" expenses means expenses incurred for medical attendance, nursing, medicines and medical necessities, and claims for those expenses shall rank *pari passu* and abate in equal proportion, if necessary.

(4) If the free residue of the estate is insufficient to defray the expenses mentioned in sub-sections (1) and (2), the deficiency shall be defrayed out of the proceeds of any other assets of the estate in proportion to their value.

Cost of sequestration.

97. (1) Thereafter any balance of the free residue shall be applied in defraying the costs of the sequestration of the estate in question with the exception of the costs mentioned in sub-section (1) of section *eighty-nine*.

(2) The costs of the sequestration shall rank according to the following order of priority—

- (a) The sheriff's charges incurred since the sequestration;
- (b) fees payable to the Master in connection with the sequestration;
- (c) the following costs which shall rank *pari passu* and abate in equal proportions if necessary, that is to say: the taxed costs of sequestration (as defined in sub-section (3)), the remuneration of the *curator bonis* and of the trustee and all other costs of administration and liquidation including such costs incurred by the trustee in giving security for his proper administration of the estate as the Master considers reasonable, in so far as they are not payable by a particular creditor in terms of sub-section (1) of section *eighty-nine* and the salary or wages of any person who was engaged by the *curator bonis* or the trustee in connection with the administration of the insolvent estate.

(3) In paragraph (c) of sub-section (2) the expression "taxed costs of sequestration" means the costs (as taxed by the registrar of the Court) incurred in connection with the petition of the debtor for acceptance of the surrender of his estate or of a creditor for the sequestration of the debtor's estate, but it does not include the costs of opposition to such a petition, unless the Court directs that they shall be included.

Costs of execution.

98. (1) Thereafter any balance of the free residue shall be applied in defraying the taxed costs of any execution upon any property of the insolvent to an amount not exceeding the proceeds of that property if that property was still under attachment or if the proceeds of the sale in execution of that property were still in the hands of the sheriff or messenger at the time of the sequestration of the insolvent's estate.

(2) The attachment of any property in execution of any judgment shall, after the sequestration of the estate of the judgment debtor, not have the effect of conferring upon the judgment creditor any other preference than the preference provided for in sub-section (1).

Compensation under the Workman's Compensation Act, 1934.

99. Thereafter any balance of the free residue shall be applied in defraying any compensation which the estate owes to a workman or to any dependent of a workman under the Workmen's Compensation Act, 1934 (Act No. 59 of 1934).

(5) 'n Kurator aan wie so 'n verdeling opgedra word, moet in verband daarmee 'n aanvullende distribusierekening aan die Meester voorlê en die bepalings van hierdie Wet omtrent 'n distribusierekening is van toepassing in verband met so 'n aanvullende rekening.

96. (1) 'n Vrye oorskot van 'n insolvente boedel word aangewend in die eerste plek tot dekking van die koste van die begrafenis van die insolvent, as hy oorlede is voordat die kurator se eerste distribusierekening volgens artikel een-en-negentig aan die Meester voorgelê is, en van die koste van die begrafenis van die insolvent se vrou of minderjarige kind, as daardie koste gemaak is binne die tydperk van drie maande onmiddellik voor die sekwestrasie van die insolvent se boedel; dog nie meer as 'n totaalbedrag van vyf-en-twintig pond mag ingevolge hierdie sub-artikel uitbetaal word nie.

(2) Daarna word die orige van die vrye oorskot aangewend tot dekking van die sterfbed-onkoste van die insolvent, as hulle gemaak is voordat die kurator se eerste distribusierekening volgens artikel een-en-negentig aan die Meester voorgelê is, en van die sterfbed-onkoste van die insolvent se vrou of minderjarige kind, as daardie onkoste gemaak is binne die tydperk van drie maande onmiddellik voor die sekwestrasie van die insolvent se boedel; dog nie meer as 'n totaalbedrag van vyf-en-twintig pond mag ingevolge hierdie sub-artikel uitbetaal word nie.

(3) In sub-artikel (2) beteken „sterfbed-onkoste” die onkoste gemaak vir geneeskundige behandeling, verpleging, geneesmiddels en geneeskundige benodigdhede. Vorderings vir daardie onkoste word gelykop gerangskik en word, indien nodig, eweredig gekort.

(4) As die vrye oorskot van die boedel onvoldoende is tot dekking van die koste vermeld in sub-artikel (1) en (2), dan word die tekort gedek uit die opbrings van die ander bate van die boedel na eweredigheid van hulle waarde.

97. (1) Daarna word die orige van die vrye oorskot aangewend tot dekking van die koste van die sekwestrasie van die betrokke boedel, met uitsondering van die koste bedoel in sub-artikel (1) van artikel nege-en-tagtig.

(2) Die sekwestrasiekoste word gerangskik volgens onderstaande rangorde:

- (a) Die balju se koste wat sedert die sekwestrasie gemaak is;
- (b) die leges wat in verband met die sekwestrasie aan die Meester verskuldig is;
- (c) die volgende onkoste wat gelykop gerangskik en, indien nodig, eweredig gekort word, naamlik: die getakseerde sekwestrasiekoste (soas omskrewen in sub-artikel (3)), die vergoeding van die *curator bonis* en van die kurator en alle ander koste van beheer en likwidasie, met inbegrip van die koste van die sekuriteit deur die kurator gestel vir sy behoorlike bereddering van die boedel, vir sover as wat die Meester daardie koste redelik ag en hulle nie deur 'n bepaalde skuldeiser volgens sub-artikel (1) van artikel nege-en-tagtig gedra moet word nie, en die salaris of loon van iemand wat die *curator bonis* of die kurator in diens geneem het in verband met die bereddering van die insolvente boedel.

(3) In paragraaf (c) van sub-artikel (2) beteken die uitdrukking „getakseerde sekwestrasiekoste” die koste (soas getakseer deur die griffier van die Hof) gemaak in verband met die petisie van die skuldenaar om aanname van die oorgawe van sy boedel of van 'n skuldeiser om sekwestrasie van die skuldenaar se boedel, dog sluit nie in die koste van verset teen so 'n petisie, tensy die Hof gelas dat hulle ingesluit moet word.

98. (1) Daarna word die orige van die vrye oorskot aangewend tot dekking van die getakseerde koste van 'n eksekutoriale beslaglegging op goed van die insolvent, tot 'n bedrag van nie meer as die opbrings van daardie goed nie, as daardie goed nog onder beslaglegging was of as die opbrings van die eksekutoriale verkoping van daardie goed nog in hande van die balju of geregsbode was toe die insolvent se boedel gesekwestreer is.

(2) Die beslaglegging op goed tot tenuitvoerlegging van 'n vonnis, verleen, sal na die sekwestrasie van die boedel van die vonnis-skuldenaar, geen ander preferensie aan die vonnis-skuldeiser gee nie as die preferensie bedoel in sub-artikel (1).

99. Daarna word die orige van die vrye oorskot aangewend tot dekking van die skadeloosstelling wat die boedel ingevolge die Werksmense-Skadeloosstelling-Wet, 1934 (Wet No. 59 van 1934), skuld aan 'n werksman of aan 'n nabestaande van 'n werksman.

Begravenis- en sterfbedkoste.

Sekwestrasiekoste.

Koste van eksekusie.

Skadeloosstelling ingevolge werksmense Skadeloosstelling-wet, 1934.

Salary or wages of
former employees
of insolvent.

100. (1) Thereafter any balance of the free residue shall be applied in paying the salary or wages, for a period not exceeding two months prior to the date of sequestration of the estate, due to an employee who was engaged by the month by the insolvent and the salary or wages, for a period not exceeding two weeks prior to the date of sequestration of the estate, due to an employee who was engaged by the week by the insolvent: Provided that in either case no salary or wages shall be paid under this sub-section to any employee for service rendered by him more than three months before the sequestration of his employer's estate; and provided further that not more than fifty pounds shall be paid out under this section to any one employee. 5 10

(2) If on the date of sequestration any leave is due to any such employee who was engaged by the week, he shall also be entitled to salary or wages in respect of any period, not exceeding seven days, of leave due to him. 15

(3) An employee shall be entitled to salary or wages in terms of sub-section (1) or (2) even though he has not proved his claim therefor in terms of section *forty-four*; but the trustee may 20 require such employee to submit an affidavit in support of his claim for such salary or wages.

Non-preferent
claims.

101. (1) Any balance of the free residue after making provision for the expenditure mentioned in sections *ninety-six* to *one hundred and one* inclusive, shall be applied— 25

(a) in the payment of the unsecured or otherwise non-preferent claims proved against the estate in question in proportion to the amount of each such claim;

(b) if the unsecured or otherwise non-preferent claims have been paid in full, in the payment, thereafter, of 30 interest on such claims from the date of sequestration to the date of payment, in proportion to the amount of each such claim.

(2) The interest mentioned in sub-section (1) shall be calculated at the rate of six per cent. per annum, unless the amount 35 of any claim bears a higher rate of interest by virtue of a lawful stipulation in writing, when the interest on that amount shall be calculated at the stipulated rate of interest.

Late proof of
claims.

102. (1) Subject to the provisions of sub-section (2) of section *ninety-five* and sub-section (3) of section *one hundred*, 40 a creditor of an insolvent estate who has not proved a claim against that estate before the date upon which the trustee of that estate submitted to the Master a plan of distribution in that estate, shall not be entitled to share in the distribution of assets brought up for distribution in that plan: Provided 45 that the Master may, at any time before the confirmation of the said plan permit any such creditor who has proved his claim after the said date to share in the distribution of the said assets, if the Master is satisfied that the creditor has a reasonable excuse for the delay in proving his claim. 50

(2) A creditor of an insolvent estate who proved a claim against that estate after the date upon which the trustee submitted to the Master a plan of distribution in that estate and who was not permitted to share in the distribution of assets under that plan, in terms of sub-section (1), shall be entitled to be 55 awarded under any further plan of distribution submitted to the Master after the proof of his claim, the amount which would have been awarded to him under the previous plan of distribution, if he had proved his claim prior to the submission of that plan to the Master: Provided that the Master is 60 satisfied that the creditor had a reasonable excuse for the delay in proving his claim; and provided further that any creditor who was aware that proceedings had been instituted under section *twenty-six*, *twenty-nine*, *thirty* or *thirty-one* and who delayed proving his claim until the Court had given judgment 65 in those proceedings, shall not be entitled to share in the distribution of any money or the proceeds of any property recovered as a result of such proceedings.

(3) If any creditor has, under sub-section (1) of section *thirty-two* taken proceedings to set aside any disposition of 70 or dealing with property under section *twenty-six*, *twenty-nine*, *thirty* or *thirty-one* or for the recovery of damages or a penalty under section *thirty-one*, no creditor who was not a party to the proceedings shall derive any benefit from any moneys or from the proceeds of any property recovered as a result of 75 such proceedings.

100. (1) Daarna word die orige van die vrye oorskot aangewend tot betaling van die salaris of loon, vir 'n tydperk van nie meer as twee maande nie voor die sekwestrasie van die boedel, verskuldig aan 'n werknemer wat die insolvent by die maand gehuur het en die salaris of loon, vir 'n tydperk van nie meer as twee weke voor die sekwestrasie van die boedel, verskuldig aan 'n werknemer wat die insolvent by die week gehuur het: Met dien verstande dat in die een sowel as in die ander geval geen salaris of loon ingevolge hierdie sub-artikel aan 'n werknemer betaal word nie vir dienste wat hy meer as drie maande voor die sekwestrasie van die werknemer se boedel bewys het; en met dien verstande, voorts, dat nie meer as vyftig pond ingevolge hierdie artikel aan een werknemer uitbetaal word nie.
- 15 (2) As daar op die dag van die sekwestrasie aan so 'n werknemer wat by die week gehuur is, verlof toekom, dan is hy ook geregtig op salaris of loon vir 'n tydperk van nie meer as sewe dae van die verlof wat aan hom toekom.
- (3) 'n Werknemer is geregtig op salaris of loon volgens sub-artikel (1) of (2), alhoewel hy nie sy vordering daarvan volgens artikel vier-en-veertig bewys het nie; dog die kurator kan van so 'n werknemer verlang dat hy 'n beëdigde verklaring tot staving van sy vordering vir daardie salaris of loon moet oorlê.
- 20 101. (1) Wat van die vrye oorskot oorbly nadat voorsiening gemaak is vir die uitgawe vermeld in artikels ses-en-negentig tot en met honderd word aangewend—
- (a) tot betaling van die onversekerde of andersins nie-preferente vorderings wat teen die betrokke boedel bewys is na eweredigheid van die bedrag van elke sodanige vordering;
- 30 (b) as die onversekerde of andersins nie-preferente vorderings ten volle uitbetaal is, tot betaling daarna van rente op daardie vorderings vanaf die dag van die sekwestrasie tot die dag van betaling, na eweredigheid van die bedrag van elke sodanige vordering.
- 35 (2) Die rente bedoel in sub-artikel (1) word bereken teen ses persent per jaar, tensy die bedrag van 'n vordering uit kragte van 'n wettige skriftelike beding 'n hoër rente dra, wanneer die rente op daardie bedrag volgens die bedonge rentekoers bereken word.
- 40 102. (1) Behoudens die bepalinge van sub-artikel (2) van artikel vyf-en-negentig en sub-artikel (3) van artikel honderd, is 'n skuldeiser van 'n insolvente boedel wat nie voor die dag waarop die kurator van daardie boedel aan die Meester 'n distribusierekening in daardie boedel voorgelê het, 'n vordering teen daardie boedel bewys het nie, nie geregtig om te deel in die bate wat in daardie rekening ter verdeling aangegee word nie: Met dien verstande dat die Meester te eniger tyd voor die bekragtiging van bedoelde rekening aan so 'n skuldeiser wat sy vordering na bedoelde dag bewys het, kan toestaan om in daardie bate te deel, as die Meester oortuig is dat die skuldeiser 'n redelike verontskuldiging het vir die vertraging van die bewys van sy vordering.
- 50 (2) 'n Skuldeiser van 'n insolvente boedel wat 'n vordering teen daardie boedel bewys het na die dag waarop die kurator 'n distribusierekening in daardie boedel aan die Meester voorgelê het en aan wie nie kragtens sub-artikel (1) toegestaan is om op grond van daardie rekening in die bate te deel nie, is geregtig op toekenning, op grond van 'n verdere distribusierekening wat na die bewys van sy vordering aan die Meester voorgelê word, van die bedrag wat op grond van die vorige distribusierekening aan hom toegeken sou geword het, as hy sy vordering bewys het voordat daardie rekening aan die Meester voorgelê was, mits die Meester van oordeel is dat die skuldeiser 'n redelike verontskuldiging had vir die vertraging van die bewys van sy vordering: Met dien verstande dat 'n skuldeiser wat geweet het dat kragtens artikel ses-en-twintig, negen-en-twintig, dertig, of een-en-dertig 'n geding ingestel was en wat die bewys van sy vordering agterweë gehou het totdat die Hof in daardie geding vonnis gevel het, nie geregtig is om te deel in geld of die opbrings van goed wat as gevolg van daardie geding verkry is nie.
- 70 (3) As 'n skuldeiser kragtens sub-artikel (1) van artikel twee-en-dertig 'n geding ingestel het om kragtens artikel ses-en-twintig, nege-en-twintig, dertig of een-en-dertig die vreemding van goed tot niet te maak of om kragtens artikel een-en-dertig skadevergoeding of 'n boete in te vorder, dan kan 'n skuldeiser wat nie aan daardie geding deelgeneem het nie, geen voordeel trek uit geld of die opbrings van goed wat as gevolg van daardie geding verkry is nie.

Salaris of loon van gewese werknemers van insolvent.

Nie-preferente vorderings.

Vertraagde bewys van vorderings.

Form of plan of contribution.

103. A plan of contribution shall show in parallel columns—

- (a) each claim in respect of which the claiming creditor is liable to contribute; and
- (b) the amount which he is liable to contribute,

and shall make provision for all such contributions in accordance with the provisions of section *one hundred and four*.

Contributions by creditors towards cost of sequestration when free residue insufficient.

104. Where there is no free residue in an insolvent estate or when the free residue is insufficient to meet all the expenses, costs and charges mentioned in sections *ninety-six* and *ninety-seven*, all creditors who have proved claims against the estate shall be liable to make good any deficiency, the non-preferent creditors each in proportion to the amount of his claim and the secured creditors each in proportion to the amount for which he would have ranked upon the surplus of the free residue, if there had been any: Provided that—

- (a) if all the creditors who have proved claims against the estate are secured creditors who would not have ranked upon the surplus of the free residue, if there had been any, such creditors shall be liable to make good the whole of the deficiency, each in proportion to the amount of his claim;
- (b) if a creditor has withdrawn his claim, he shall be liable to contribute in respect of any deficiency only so far as is provided in section *fifty*, and if a creditor has withdrawn his claim within five days after the date of any resolution of creditors he shall be deemed to have withdrawn the claim before anything was done in pursuance of that resolution;
- (c) if all the creditors who would have ranked upon the surplus of the free residue, if there had been any, have withdrawn their claims and, after payment of their contribution in terms of paragraph (b) there is still a deficiency, the remaining creditors whose claims have been proved against the estate shall, notwithstanding the fact that they would not have ranked upon the surplus of the free residue, if there had been any, be liable to make good such deficiency, each in proportion to the amount of his claim.

Trustee's account to be signed and verified.

105. A trustee shall sign every account which he submits to the Master and he shall verify by his affidavit (which shall be free from stamp duty) that the account is a full and true account of the administration of the estate in question up to the date of the account and that, so far as he is aware, all the assets of the estate have been disclosed in the account.

Inspection of trustee's accounts by creditors.

106. (1) If an insolvent resided or carried on business, before the sequestration of his estate, in a district (other than the district of Wynberg, Simonstown or Bellville in the Province of the Cape of Good Hope) in which there is no Master's office, the trustee of that estate shall transmit to the magistrate of that district a duplicate of every account which he submitted to the Master as hereinbefore provided.

(2) When a trustee has submitted an account to the Master, he shall give notice of that fact in the *Gazette* and shall state in that notice the place or places where and the period during which the account will lie open for inspection by the creditors of the estate in question. He shall also post or deliver a similar notice to every creditor who has proved a claim against the estate.

(3) Every such account and every duplicate thereof transmitted to a magistrate shall be open for the inspection by creditors of the estate in question at the office of the Master and of such magistrate during a period of fourteen days as from the date of publication of the said notice in the *Gazette*.

(4) A magistrate who has received a trustee's account shall cause to be affixed in a public place in or about his office a notice that he has received the account and that it will lie open for inspection in his office during a period stated in that notice.

(5) After the expiration of the said period the magistrate shall endorse upon the account a certificate (which shall be free from stamp duty) that the account was open in his office for inspection as hereinbefore provided, and shall transmit the account to the Master.

103. 'n Kontribusierekening moet aangee in ewewydige kolomme—

Vorm van kontribusierekening.

- (a) elke vordering ten opsigte waarvan die vorderende skuldeiser kontribusiepligtig is; en
 5 (b) die bedrag wat hy moet inbetaal, en moet vir alle sodanige inbetalings voorsiening maak volgens die bepalinge van artikel honderd-en-vier.

104. Wanneer daar geen vrye oorskot in 'n insolvente boedel is nie of wanneer die vrye oorskot onvoldoende is om al die koste en onkoste bedoel in artikels ses-en-negentig en sewe-en-negentig te dek, is alle skuldeisers wat vorderings teen die boedel bewys het verplig om die tekort te dek, en wel die nie-preferente skuldeisers elkeen na eweredigheid van die bedrag van sy vordering en die versekerde skuldeisers elkeen na eweredigheid van die bedrag waarvoor hy by die verdeling van die surplus van die vrye oorskot in aanmerking sou gekom het, as daar so 'n surplus gewees het: Met dien verstande dat—

Bydrae deur skuldeisers tot sekwestrasiekoste wanneer vrye oorskot onvoldoende is.

- 20 (a) as al die skuldeisers wat vorderings teen die boedel bewys het, versekerde skuldeisers is wat nie by die verdeling van die vrye oorskot in aanmerking sou gekom het nie, as daar 'n vrye oorskot gewees het, daardie skuldeisers verplig is om die hele tekort te dek, en wel elkeen na eweredigheid van sy vordering;
 25 (b) as 'n skuldeiser sy vordering teruggetrek het, hy kontribusie-pligtig is ten opsigte van 'n tekort slegs vir sover as wat artikel vyftig bepaal, en as 'n skuldeiser sy vordering teruggetrek het binne vyf dae na die dag van 'n besluit van skuldeisers, gehandel word asof hy sy vordering teruggetrek het voordat iets ingevolge daardie besluit gedaan is;
 30 (c) as al die skuldeisers wat in aanmerking sou gekom het by die verdeling van die surplus van die vrye oorskot, as daar so 'n surplus gewees het, hulle vorderings teruggetrek het en daar na betaling van hulle kontribusie volgens paragraaf (b) nog 'n tekort is, die orige skuldeisers, wie se vorderings teen die boedel bewys is, verplig is om die tekort te dek, en wel elkeen na eweredigheid van die bedrag van sy vordering,
 35 alhoewel hulle nie by die verdeling van die surplus van die vrye oorskot in aanmerking sou gekom het nie, as daar so 'n surplus gewees het.

105. 'n Kurator moet elke rekening wat hy aan die Meester voorlê onderteken en hy moet deur dy beëdigde verklaring (wat vry van seëlreg is) bevestig dat die rekening 'n volledige en juiste rekening is van die bereddering van die betrokke boedel tot op die dagtekening van die rekening en dat vir sover as wat hy weet, al die bate van die boedel in die rekening aangegee is.

Kurator se rekenings moet onderteken en beëdig wees.

106. (1) As 'n insolvent voor die sekwestrasie van sy boedel gewoon of besigheid gedryf het in 'n ander distrik as die distrik Wynberg, Simonstad of Bellville in die Provinsie Kaap die Goeie Hoop, waarin daar geen Meesterskantoor is nie, dan moet die kurator van daardie boedel aan die magistraat van daardie distrik 'n duplikaat stuur van elke rekening wat hy volgens voorgaande bepalinge aan die Meester voorgelê het.

Insage van kurator se rekenings deur skuldeisers.

(2) Wanneer 'n kurator 'n rekening aan die Meester voorgelê het, moet hy van daardie feit in die *Staatskoerant* kennis gee en moet in daardie kennisgewing bekendmaak op watter plek of plekke en hoe lang die rekening ter insage van die skuldeisers van die betrokke boedel sal lê. Hy moet ook 'n dergelike kennisgewing aan elke skuldeiser wat 'n vordering teen die boedel bewys het, oor die pos stuur of oorhandig.

(3) Elke sodanige rekening en elke aan 'n magistraat gestuurde duplikaat daarvan moet gedurende 'n tydperk van veertien dae vanaf die publikasie van voormelde kennisgewing in die *Staatskoerant*, ter insage van die skuldeisers van die betrokke boedel lê op die kantoor van die Meester en van bedoelde magistraat.

(4) 'n Magistraat wat 'n kuratorsrekening ontvang het, moet op 'n openbare plek in of by sy kantoor 'n kennisgewing laat aanheg, waarin hy vermeld dat hy die rekening ontvang het en dat dit op sy kantoor ter insage sal lê gedurende 'n tydperk in daardie kennisgewing aangegee.

(5) Na verloop van bedoelde tydperk moet die magistraat op die rekening 'n sertifikaat (wat vry van seëlreg is) aanteken dat die rekening volgens voorgaande bepalinge op sy kantoor ter insage gelê het en die rekening aan die Meester stuur.

Extension of time
for submitting
trustee's account.

107. (1) If a trustee is unable to submit an account to the Master within the period prescribed therefor by section *ninety-one*, he may give notice in the *Gazette* of his intention to apply to the Master for an extension of that period.

(2) After the expiration of a period of fourteen days as from the publication of the said notice he may apply to the Master in writing for an extension of the first-mentioned period, and if he adduces reasons which are in the Master's opinion sufficient to justify such an extension, the Master may grant him such an extension as the Master thinks reasonable in the circumstances of the case.

(3) If the Master refuses the application, the trustee may apply by motion to the Court (after having given the Master notice of his intention to make the application) for an order extending the said period and the Court may thereupon make such order as it thinks fit.

Compelling trustee
to submit accounts.

108. (1) If a trustee has funds in hand which, in the opinion of the Master, ought to be distributed among the creditors of the estate in question and the trustee has not submitted to the Master a plan for the distribution of those funds, the Master may direct him in writing to submit to him a plan for the distribution of those funds, although the period prescribed in section *ninety-one* may not have elapsed.

(2) If a trustee has failed to submit an account to the Master within the period and in the manner hereinbefore prescribed, the Master may direct the trustee in writing to submit his account.

(3) If, after the expiration of a period of fourteen days as from the receipt of a direction issued under sub-section (1) or (2) the trustee has failed to comply satisfactorily with that direction, the Master may apply by motion to the Court (after having given the trustee notice of his intention to make the application) for an order compelling the trustee to submit the account in question to the Master, and the Court may thereupon make such order as it thinks fit.

Objections to
trustee's account.

109. (1) The insolvent or any person interested in the estate may, at any time before the confirmation of the trustee's account; in terms of section *one hundred and ten*, lay before the Master in writing any objection, with the reasons therefor, to that account.

(2) If the Master is of the opinion that any such objection is well founded or if, apart from any objection, he is of the opinion that the account is in any respect incorrect or contains any improper charge and should be amended, he may direct the trustee to amend the account or may give such other directions in connection therewith as he may think fit: Provided that—

(a) any person aggrieved by any such direction of the Master or by the refusal of the Master to sustain an objection so lodged, may apply by motion to the Court within fourteen days as from the date of the Master's direction, or as from the date of intimation to the objector of the Master's refusal to sustain his objection, after notice to the trustee, for an order to set aside the Master's decision and the Court may thereupon confirm the account or make such order as it thinks fit; and

(b) when any such direction affects the interests of a person who has not lodged an objection with the Master, the account so amended shall again lie open for inspection by the creditors in the manner and with the notice hereinbefore prescribed, unless the person affected as aforesaid consents in writing to the immediate confirmation of the account.

Confirmation of
trustee's accounts.

110. When a trustee's account has been open to inspection by creditors as hereinbefore prescribed and—

- (a) no objection has been lodged; or
- (b) an objection has been lodged and the account has been amended in accordance with the direction of the Master and has again been open for inspection if necessary as in paragraph (b) of sub-section (2) of section *one hundred and nine* prescribed and no application has been made to the Court in terms of paragraph (a) of the said sub-section (2) to set aside the Master's decision; or
- (c) an objection has been lodged but withdrawn or has not been sustained and the objector has not applied to the Court in terms of the said paragraph (a),

107. (1) As 'n kurator nie in staat is om 'n rekening aan die Meester voor te lê nie binne die termyn wat artikel *een-en-negentig* daarvoor voorskryf, dan kan hy in die *Staatskoerant* kennis gee van sy voorneme om by die Meester aansoek te doen om verlenging van daardie termyn.
- (2) Na afloop van 'n termyn van veertien dae vanaf die publikasie van bedoelde kennisgewing, kan hy by die Meester skriftelik aansoek doen om verlenging van eersbedoelde termyn en as hy redes aanvoer wat volgens die Meester se oordeel voldoende is om so 'n verlenging te regverdig, kan die Meester hom so 'n verlenging toestaan as wat die Meester onder die omstandighede van die geval redelik ag.
- (3) As die Meester die aansoek weier, kan die kurator die Hof by wyse van mosie versoek (nadat hy aan die Meester kennis gegee het van sy voorneme om die versoek te maak) om 'n order tot verlenging van bedoelde termyn en die Hof kan daarop so 'n order uitvaardig as wat hy wenslik ag.
108. (1) As 'n kurator gelde in hande het wat volgens die Meester se oordeel onder die skuldeisers van die betrokke boedel behoort verdeel te word en die kurator het nie 'n distribusierekening tot verdeling van daardie gelde aan die Meester voorgelê nie, dan kan die Meester hom skriftelik beveel om 'n distribusierekening tot verdeling van daardie gelde voor te lê, alhoewel die termyn wat artikel *een-en-negentig* voorskryf, nog nie verstryk het nie.
- (2) As 'n kurator in gebreke gebly het om binne die termyn en op die wyse in die voorgaande bepaal, 'n rekening aan die Meester voor te lê, dan kan die Meester die kurator skriftelik beveel om sy rekening voor te lê.
- (3) As 'n kurator na verloop van 'n termyn van veertien dae vanaf die ontvangs van 'n kragtens sub-artikel (1) of (2) uitgevaardigde bevel in gebreke gebly het om op bevredigende wyse aan daardie bevel te voldoen, dan kan die Meester die Hof by wyse van mosie versoek (nadat hy aan die kurator kennis gegee het van sy voorneme om die versoek te maak) om 'n order wat die kurator verplig om die betrokke rekening aan die Meester voor te lê en die Hof kan daarop so 'n order uitvaardig as wat hy wenslik ag.
109. (1) Die insolvent of iemand wat by die boedel belang het, kan te eniger tyd voor die bekragtiging van die kuratorsrekening volgens artikel *honderd-en-tien*, aan die Meester 'n met redes omklede skriftelike beswaar teen daardie rekening voorlê.
- (2) As die Meester van oordeel is dat so 'n beswaar gegrond is of as hy, afgesien van enige beswaar, van oordeel is dat die rekening in een of ander opsig onjuis is of 'n onbehoorlike bedrag in rekening bring en gewysig behoort te word, dan kan hy die kurator beveel om die rekening te wysig of kan sulke ander bevel in verband daarmee gee as wat hy wenslik ag: Met dien verstande dat—
- (a) iemand wat hom verongelyk ag deur so 'n bevel van die Meester of deur die Meester se weiering om aan 'n aldus ingediende beswaar gevolg te gee, binne veertien dae vanaf die dag van die Meester se bevel of vanaf die dag waarop aan die beswaarmaker meege-deel is dat die Meester weier om aan sy beswaar gevolg te gee, die Hof by wyse van mosie kan versoek (na kennisgewing aan die kurator) om 'n order waar-deur die Meester se beslissing tot niet gemaak word en die Hof daarop die rekening kan bekragtig of so 'n order kan uitvaardig as wat hy wenslik ag; en
- (b) wanneer so 'n bevel die belange aantast van iemand wat nie 'n beswaar by die Meester ingedien het nie, die aldus gewysigde rekening weer ter insage van die skuldeisers moet lê op die wyse en na die kennis-gewing in die voorgaande vermeld, tensy voormelde betrokke persoon skriftelik toestem tot die onmiddel-like bekragtiging van die rekening.
110. Wanneer 'n kuratorsrekening ter insage van skuld-eisers gelê het, soas in die voorgaande bepaal, en—
- (a) geen beswaar ingedien is nie; of
- (b) 'n beswaar ingedien is en die rekening volgens die Meester se bevel gewysig is en indien nodig volgens voorskrif van paragraaf (b) van sub-artikel (2) van artikel *honderd-en-nege* weer ter insage gelê het en die Hof nie volgens paragraaf (a) van bedoelde sub-artikel (2) versoek is nie om die Meester se beslissing tot niet te maak; of
- (c) 'n beswaar wel ingedien maar teruggetrek is of daaraan geen gevolg gegee is nie en die beswaarmaker nie volgens bedoelde paragraaf (a) by die Hof 'n versoek ingedien het nie,

Verlenging van termyn vir indiening van kuratorsrekening.

Verpligting van kurator om rekenings voor te lê.

Besware teen kuratorsrekening.

Bekragtiging van kuratorsrekenings.

the Master shall confirm the account and his confirmation shall be final save as against a person who may have been permitted by the Court before any dividend has been paid under the account, to reopen it.

Distribution of estate and collection of contributions from creditors.

111. (1) Immediately after the confirmation of a trustee's account, the trustee shall give notice of the confirmation in the *Gazette* and shall state in that notice, according to the circumstances, that a dividend to creditors is in course of payment or that a contribution is in course of collection from the creditors and that every creditor liable to contribute is required to pay to the trustee the amount for which he is so liable. 5

(2) If any contribution is payable, the trustee shall specify fully in that notice the address at which the payment of the contribution is to be made, and shall deliver or post a copy of the notice to every creditor liable to contribute. 10

(3) Immediately after the confirmation of a trustee's account the trustee shall in accordance therewith distribute the estate or collect from each creditor liable to contribute the amount for which he is liable. 20

Trustee to produce acquittances for dividends or to pay over unpaid dividends to Master.

112. (1) The trustee shall without delay lodge with the Master the receipts for dividends paid to creditors and if there is a contribution account the vouchers necessary to complete the account.

(2) If any such dividend has at the expiration of a period of three months as from the confirmation of the account under which it is payable, not been paid out to the creditor entitled thereto, the trustee shall immediately pay in the dividend to the Master who shall deposit it in the Guardians' Fund for account of the creditor. 25 30

(3) If, at the expiration of the said period of three months, the trustee has failed to furnish the Master with a proper receipt for any dividend which has not been paid in to the Master as aforesaid, the trustee shall *prima facie* be presumed to have retained such dividend and the Master may in that case apply to the Court by motion for an order compelling the trustee to produce proof that he paid the dividend in question to the creditor entitled thereto or to pay that dividend to the Master as aforesaid. 35

Application to Court for an order to pay dividend.

113. If a trustee has delayed payment of any dividend, the creditor entitled thereto may apply to the Court by motion for an order compelling the trustee to pay him that dividend. 40

Surplus to be paid into guardians' funds until rehabilitation of insolvent.

114. (1) If after the confirmation of a final plan of distribution there is any surplus in an insolvent estate which is not required for the payment of claims, costs, charges or interest, the trustee shall, immediately after the confirmation of that account, pay that surplus over to the Master, who shall deposit it in the Guardians' Fund and after the rehabilitation of the insolvent shall pay it out to him at his request. 45

(2) If the trustee has failed so to pay over the said surplus the Master or the insolvent may apply to the Court by motion for an order to compel the trustee to comply with sub-section (1). 50

Enforcement of order of Court.

115. (1) If a trustee has failed to comply with any order of the Court made under section *one hundred and twelve, one hundred and thirteen or one hundred and fourteen* the Court may order that any sum of money which that trustee was condemned to pay be recovered by attachment and sale of the goods of the trustee and may further commit him to prison for contempt of the Court. 55 60

(2) If the Court has ordered a trustee to pay out of his own means the costs of any proceedings instituted under any provision of this Act, and the person in whose favour the order was made is unable to recover those costs from the trustee, those costs shall be paid as part of the costs of the sequestration out of any assets of the estate in question, which have not yet been distributed among the creditors. 65

Enforcing payment of contributions.

116. (1) After the expiration of a period of fourteen days as from the delivery or posting to any creditor of the notice mentioned in sub-section (2) of section *one hundred and eleven*, the trustee may take out a writ of execution against any such creditor who, being liable to contribute under the plan of contribution, has failed to pay the amount of his liability. 70

dan moet die Meester die rekening bekragtig en is sy bekragtiging afdoende, behalwe teenoor iemand aan wie die Hof voordat ingevolge die rekening 'n diwidend uitbetaal is, mag toegestaan het om die rekening te heropen.

- 5 111. (1) Onmiddellik na die bekragtiging van 'n kuratorsrekening moet die kurator van die bekragtiging in die *Staatskoerant* kennis gee en na gelang van die omstandighede in die kennisgewing vermeld dat die uitbetaling van 'n diwidend aan skuldeisers of die insameling van 'n kontribusie van die skuldeisers aan die gang is en dat elke kontribusiepligtige skuldeiser aan die kurator die bedrag waarvoor hy aanspreeklik is moet inbetaal.

Verdeling van boedel en insameling van kontribusies van skuldeisers.

- (2) As 'n kontribusie verskuldig is, moet die kurator in daardie kennisgewing die adres waar die inbetaling van die kontribusie moet geskied, volledig aangee en 'n afskrif van die kennisgewing aan elke kontribusiepligtige skuldeiser oorhandig of oor die pos stuur.

- (3) Onmiddellik na die bekragtiging van 'n kuratorsrekening moet die kurator in ooreenstemming daarmee die boedel verdeel of van elke kontribusiepligtige skuldeiser die bedrag waarvoor hy aanspreeklik is, insamel.

112. (1) Die kurator moet onverwyld die kwitansies vir diwidende wat aan skuldeisers uitbetaal is, en as daar 'n kontribusierekening is, die bewysstukke wat nodig is om die rekening te voltooi, by die Meester indien.

Kurator moet kwitansies vir diwidende oorle of onbetaalde diwidende aan Meester uitbetaal.

- (2) As so 'n diwidend by die verstryking van 'n tydperk van drie maande vanaf die bekragtiging van die rekening ingevolge waarvan dit verskuldig is, nie uitbetaal is nie aan die skuldeiser wat daarop geregtig is, dan moet die kurator die diwidend onmiddellik inbetaal aan die Meester, wat dit op rekening van die skuldeiser in die voogdyfonds moet stort.

- (3) As die kurator by die verstryking van bedoelde tydperk van drie maande in gebreke gebly het om aan die Meester 'n behoorlike kwitansie te verstrek vir 'n diwidend wat nie soas voormeld aan die Meester inbetaal is nie, dan word *prima facie* vermoed dat die kurator die diwidend agtergehou het en die Meester kan in daardie geval die Hof by wyse van 'n mosie versoek om 'n order wat die kurator verplig om die bewys te lewer dat hy die betrokke diwidend aan die skuldeiser wat daarop geregtig is, uitbetaal het of om daardie diwidend soas voormeld aan die Meester in te betaal.

113. As 'n kurator die uitbetaling van 'n diwidend vertraag het, kan die skuldeiser wat daarop geregtig is die Hof by wyse van 'n mosie versoek om 'n order tot verpligting van die kurator om hom daardie diwidend uit te betaal.

Versoek aan Hof om order tot betaling van diwidend.

114. (1) As daar na die bekragtiging van 'n finale distribusierekening 'n oorskot in 'n insolvente boedel is wat nie benodig is tot betaling van vorderings, koste, onkoste of rente nie, dan moet die kurator onmiddellik na die bekragtiging van daardie rekening daardie oorskot inbetaal aan die Meester, wat dit in die voogdyfonds moet stort en dit na die rehabilitasie van die insolvent aan hom op sy versoek moet uitbetaal.

Oorskot moet in voogdyfonds gestort word tot rehabilitasie van insolvent.

- (2) As die kurator in gebreke gebly het om bedoelde oorskot aldus in te betaal, dan kan die Meester of die insolvent die Hof by wyse van 'n mosie versoek om 'n order tot verpligting van die kurator om aan sub-artikel (1) te voldoen.

115. (1) As 'n kurator in gebreke gebly het om te voldoen aan 'n order van die Hof wat kragtens artikel *honderd-en-twaalf*, *honderd-en-dertien* of *honderd-en-veertien* uitgevaardig is, dan kan die Hof gelas dat een of ander geldsom tot betaling waarvan daardie kurator veroordeel geword het, verhaal moet word deur inbeslagneming en verkoop van die goedere van die kurator en kan hom buitendien weens minagting van die Hof na die gevangenis verwys.

Handhawing van order van Hof.

- (2) As die Hof 'n kurator veroordeel het tot betaling, uit sy eie middele, van die koste van 'n kragtens een of ander bepaling van hierdie Wet ingestelde geding en die persoon ten gunste van wie die oordeel gevel is, nie in staat is om daardie koste op die kurator te verhaal nie, dan word daardie koste as 'n deel van die koste van die sekwestrasie betaal uit bate van die betrokke boedel wat nog nie onder die skuldeisers verdeel is nie.

116. (1) Na verloop van 'n tydperk van veertien dae vanaf die oorhandiging of versending per pos aan 'n skuldeiser van die kennisgewing bedoel in sub-artikel (2) van artikel *honderden-elf*, kan die kurator 'n eksekusiëlasbrief verkry teen so 'n skuldeiser wat ingevolge 'n kontribusierekening kontribusiepligtig is en in gebreke gebly het om die bedrag wat hy skuld te betaal.

Dwang tot betaling van kontribusies.

(2) Whenever a creditor liable to contribute under a plan of contribution is in the opinion of the Master and of the trustee unable to pay the contribution for which he is liable or whenever the trustee has incurred in connection with the recovery of any contribution any expenses which are in the opinion of the Master and of the trustee irrecoverable, the trustee shall as soon as practicable and in any event within such period as the Master may prescribe therefor, frame and submit to the Master a supplementary plan of contribution wherein he shall apportion the share of the creditor who is unable to pay or the expenses in question among the other creditors who are in the opinion of the Master and of the trustee able to pay.

(3) The provisions of sub-section (2) shall *mutatis mutandis* apply whenever a creditor liable to contribute under a first or further supplementary plan of distribution is, in the opinion of the Master and of the trustee, unable to pay the contribution for which he is liable, or whenever the trustee has incurred expenses in connection with the recovery of a contribution under a first or further supplementary plan of distribution which are, in the opinion of the Master and the trustee, irrecoverable by the trustee.

(4) A trustee may, in lieu of complying with the requirements of section *one hundred and six* in connection with any supplementary plan of contribution, furnish a copy of that plan to every creditor liable to contribute thereunder.

Composition.

117. (1) At any time after the first meeting of the creditors of an insolvent estate, the insolvent may submit to the trustee of his estate a written offer of composition.

(2) If the trustee is of the opinion that the creditors will probably accept the offer of composition, he shall as soon as possible after receipt of the offer post or deliver to every creditor who has proved his claim, a copy of the offer with his report thereon.

(3) If the trustee is of the opinion that there is no likelihood that the creditors will accept the offer of composition, he shall inform the insolvent that the offer is unacceptable and that he does not propose to send a copy thereof to the creditors.

(4) The insolvent may thereupon appeal to the Master who, after having considered a report from the trustee, may, if he considers the offer of composition sufficient for submission to the creditors, direct the trustee to post or deliver a copy of the offer to every creditor who has proved his claim.

(5) Whenever the trustee posts or delivers to the creditors a copy of an offer of composition in terms of the preceding provisions of this section, he shall simultaneously convene and give notice to the creditors of a meeting for the purpose of considering the said offer and any other matter mentioned in the notice.

(6) The said meeting shall be convened for a date not earlier than fourteen days and not later than twenty-one days after the date upon which the said notice is posted or delivered to any creditor.

(7) If the offer of composition has been accepted by creditors whose votes amount to not less than three-fourths in value and three-fourths in number (calculated in accordance with the provisions of section *fifty-two*) of the votes of all the creditors who proved claims against the estate, and payment under the composition has been made or security for such payment has been given as specified in the composition or in terms of sub-section (8), the insolvent shall be entitled to a certificate under the hand of the Master of the acceptance of the offer: Provided that no offer may be so accepted if it contains any condition whereby any creditor would obtain as against another creditor any benefit to which he would not have been entitled upon the distribution of the estate in the ordinary way; and provided further that any condition which makes the offer of composition or the fulfilment thereof or of any part thereof subject to the rehabilitation or to the consent of the creditors to the rehabilitation of the insolvent shall be of no effect.

(8) If a composition provides for the giving of security, the nature whereof is not fully specified in the composition, the security to be given shall be such as the trustee considers sufficient to ensure payment of the amount secured.

(2) Wanneer 'n skuldeiser wat ingevolge 'n kontribusierekening kontribusiepligtig is, volgens die oordeel van die Meester en van die kurator nie in staat is nie om die kontribusie waarvoor hy aanspreeklik is, te betaal nie, of wanneer die kurator in verband met die invordering van 'n kontribusie gemaak het wat volgens die oordeel van die Meester en van die kurator nie verhaal kan word nie, dan moet die kurator so gou doenlik en in elke geval binne die termyn wat die Meester daarvoor mag voorskrywe, 'n aanvullende kontribusierekening opstel en aan die Meester voorlê. Daarin moet hy die aandeel van die skuldeiser wat nie kan betaal nie of die betrokke onkoste omslaan oor die skuldeisers wat volgens die oordeel van die Meester en van die kurator wel in staat is om te betaal.

(3) Die bepalinge van sub-artikel (2) is *mutatis mutandis* van toepassing wanneer 'n skuldeiser, wat ingevolge 'n eerste of verdere aanvullende kontribusierekening kontribusiepligtig is, volgens die oordeel van die Meester en van die kurator nie die kontribusie, waarvoor hy aanspreeklik is, kan betaal nie of wanneer die kurator in verband met die invordering van 'n kontribusie ingevolge 'n eerste of verdere kontribusierekening koste gemaak het wat volgens die oordeel van die Meester en van die kurator nie deur die kurator verhaal kan word nie.

(4) 'n Kurator kan, in plaas van te voldoen aan die vereistes van artikel *honderd-en-ses* in verband met 'n aanvullende kontribusierekening 'n afskrif van daardie rekening besorg aan elke skuldeiser wat ingevolge daarvan kontribusiepligtig is.

117. (1) Te enige tyd na die eerste byeenkoms van die skuldeisers van 'n insolvente boedel, kan die insolvent aan die kurator van sy boedel skriftelik 'n akkoord aanbied. Akkood.

(2) As die kurator van oordeel is dat die skuldeisers waarskynlik die aanbod van 'n akkoord sal aanneem, moet hy so spoedig moontlik na ontvangs van die aanbod, 'n afskrif daarvan, met sy verslag daaromtrent, oorhandig of deur die pos stuur aan elke skuldeiser wat sy vordering bewys het.

(3) As die kurator van oordeel is dat dit onwaarskynlik is dat die skuldeisers die aanbod van 'n akkoord sal aanneem, moet hy aan die insolvent meedeel dat die aanbod onaanneemlik is en dat hy nie voornemens is om 'n afskrif daarvan aan die skuldeisers te stuur nie.

(4) Die insolvent kan hom daarop beroep op die Meester wat, na oorweging van 'n verslag van die kurator, as hy die aanbod van 'n akkoord voldoende ag om aan die skuldeisers voorgelê te word, die kurator kan gelas om 'n afskrif van die aanbod te oorhandig of deur die pos te stuur aan elke skuldeiser wat sy vordering bewys het.

(5) Wanneer die kurator volgens die voorgaande bepalinge van hierdie artikel 'n aanbod van 'n akkoord aan die skuldeisers oorhandig of deur die pos stuur, moet hy gelyktydig 'n byeenkoms belê en aan die skuldeisers daarvan kennis gee, ten einde bedoelde aanbod en enige ander saak wat in die kennisgewing vermeld word, te oorweeg.

(6) Bedoelde byeenkoms moet belê word op 'n dag nie eerder as veertien dae en nie later as een-en-twintig dae na die dag waarop bedoelde kennisgewing aan een of ander skuldeiser oorhandig of deur die pos gestuur word.

(7) As die aanbod van 'n akkoord aangeneem is deur skuldeisers wie se stemme nie minder bedra as drie-vierde volgens waarde en drie-vierde volgens getal (bereken volgens die bepalinge van artikel *twee-en-veertig*) van die stemme van al die skuldeisers wat vorderings teen die boedel bewys het, en die betaling ingevolge die akkoord gedaan is of sekuriteit vir daardie betaling gestel is soos in die akkoord bepaal of volgens sub-artikel (8), dan is die insolvent geregtig op 'n sertifikaat, deur die Meester onderteken, van die aanname van die aanbod: Met dien verstande dat geen aanbod aldus aangeneem mag word nie as dit 'n voorwaarde bevat waardeur een of ander skuldeiser teenoor 'n ander skuldeiser 'n voordeel sou ontvang waarop hy nie geregtig sou gewees het nie by verdeling van die boedel op die gewone wyse; en met dien verstande voorts dat 'n voorwaarde wat die aanbod van 'n akkoord of die vervulling daarvan of van 'n deel daarvan afhanklik maak van die rehabilitasie of van die toestemming van die skuldeisers tot die rehabilitasie van die insolvent, nietig is.

(8) As 'n akkoord bepaal dat sekuriteit gestel moet word maar die aard van die sekuriteit nie ten volle in die akkoord omskrywe word nie, dan moet sodanige sekuriteit gestel word as wat die kurator voldoende ag om die betaling van die bedrag waarvoor sekuriteit gestel is, te waarborg.

Effect of composition.

118. (1) An offer of composition which has been accepted as aforesaid shall be binding upon the insolvent and upon all the non-preferent creditors of the insolvent estate; but the right of any preferent creditor shall not be prejudiced thereby, except in so far as he has expressly and in writing waived his preference. 5

(2) If it be a condition of the composition that any property in the insolvent estate shall be restored to the insolvent, the acceptance of the composition shall divest the trustee of such property and re-invest the insolvent therewith as from the date upon which such property is in pursuance of the composition to be restored to the insolvent, but subject to any condition provided for in the composition. 10

(3) A composition shall not affect the liability of a surety for the insolvent. 15

If insolvent partner enters into composition, trustee of partnership estate may take over his estate.

119. (1) When the estate of a partnership and the estate of a partner in that partnership are simultaneously under sequestration, the acceptance of an offer of composition by the separate creditors of the partner shall not take effect until the expiration of a period of six weeks as from the date of a notice in writing of that acceptance given by the trustee of the partner's separate estate to the trustee of the partnership estate, or if the trustee of the partner's estate is also the trustee of the partnership estate, as from the date of the acceptance. The said notice shall be accompanied by a copy of the deed embodying the composition. 20

(2) At any time during the said period of six weeks the trustee of the partnership estate may take over the assets of the estate of the insolvent partner if he undertakes to fulfil the obligations of the insolvent partner in terms of the composition: Provided that if the composition provides for the giving of any specific security, the Master shall determine what other security the trustee of the partnership estate may give in lieu thereof. 25 30 35

Effect of composition on spouse of the insolvent.

120. A composition shall not be binding on the separate creditors of the spouse of the insolvent concerned who have proved claims in terms of sub-section (5) of section *twenty-one*; but upon the acceptance of the offer of composition the property or, if it has been realized, the proceeds of the property of that spouse shall be restored to her or him, without prejudice to the claims of the creditors of that spouse or to any right of preference of any of them at the time when the property was vested in the trustee: Provided that any movable property held as security by any such creditor when the property was vested in the trustee shall be restored to that creditor; and provided further that the proceeds of any security whatsoever which has been realized shall be paid to the person or persons entitled thereto, according to their rights. 40 45 50

Functions of trustee under composition.

121. (1) Any moneys to be paid and anything to be done for the benefit of creditors in pursuance of a composition shall be paid and shall be done, as far as practicable, through the trustee: Provided that any creditor who has failed to prove his claim before the trustee has made a final distribution among those creditors who have proved their claims, shall be entitled to recover direct from the insolvent within six months as from the confirmation by the Master, of the account under which the distribution was made, any payments to which he may be entitled under the composition and the trustee shall have no duty in regard thereto and after the said distribution the creditor shall have no claim against the insolvent estate. 50 55 60

(2) When a composition has been entered into between an insolvent and the creditors of his estate, the trustee of that estate shall frame a liquidation account and plan of distribution of the assets which are or will become available for distribution among the creditors under the composition, and all the provisions of this Act which relate to a liquidation account and plan of distribution and to the distribution of assets among creditors shall apply in connection with the first-mentioned liquidation account and plan of distribution, and with the first-mentioned assets. 65 70

Application for rehabilitation.

122. (1) An insolvent who has obtained from the Master the certificate mentioned in sub-section (7) of section *one hundred and seventeen* may apply to the Court for an order for his rehabilitation: Provided that he has not less than three 75

118. (1) 'n Aanbod van 'n akkoord wat soas voormeld aangeneem is, verbind die insolvent en al die nie-preferente skuldeisers van die insolvente boedel; dog die reg van 'n preferente skuldeiser word daardeur nie verkort nie, behalwe vir sover as wat hy uitdruklik en skriftelik van sy preferensie afgesien het.

Gevolge van akkoord.

(2) As dit 'n voorwaarde van die akkoord is dat een of ander goed in die insolvente boedel aan die insolvent teruggegee moet word dan het die aanname van die akkoord tot gevolg dat daardie goed aan die kurator onttrek word en weer op die insolvent oorgaan vanaf die dag waarop die goed ooreenkomstig die akkoord aan die insolvent teruggegee moet word dog behoudens een of ander voorwaarde wat in die akkoord opgeneem is.

(3) 'n Akkoord maak geen inbreuk op die aanspreeklikheid van 'n borg van 'n insolvent nie.

119. (1) Wanneer die boedel van 'n vennootskap en die boedel van 'n vennoot in daardie vennootskap, gelyktydig onder sekwestrasie is, dan het die aanname van die aanbod van 'n akkoord deur die afsonderlike skuldeisers van die vennoot geen uitwerking nie totdat 'n termyn van ses weke verloop het vanaf die dag waarop die kurator van die vennoot se afsonderlike boedel aan die kurator van die vennootskapsboedel van die aanname skriftelik kennis gegee het, of as die kurator van die vennoot se boedel ook die kurator van die vennootskapsboedel is, vanaf die dag van die aanname. Beoelde kennisgewing moet vergesel gaan van 'n afskrif van die akte wat die akkoord bevat.

As insolvente vennoot akkoord aangaan, kan kurator van vennootskapsboedel sy boedel oorneem.

(2) Te eniger tyd gedurende voormelde termyn van ses weke kan die kurator van die vennootskapsboedel die bate in die boedel van die insolvente vennoot oorneem, as hy hom verbind om die verpligtings van die insolvente vennoot volgens die akkoord uit te voer: Met dien verstande dat as die akkoord beding dat 'n bepaalde sekuriteit gestel moet word, die Meester moet bepaal watter ander sekuriteit die kurator van die vennootskapsboedel in plaas daarvan kan stel.

120. 'n Akkoord verbind nie die afsonderlike skuldeisers van die eggenote of eggenoot van die betrokke insolvent wat ingevolge sub-artikel (5) van artikel een-en-twintig vorderings bewys het nie, dog by aanname van die aanbod van 'n akkoord word goed van daardie eggenote of eggenoot, of as dit te gelde gemaak is, die opbrings daarvan, aan haar of hom teruggegee, sonder afbreuk aan die vorderings van die skuldeisers van daardie eggenote of eggenoot of aan 'n preferente reg van een of meer van hulle op die tydstip toe die goed onder beheer van die kurator was: Met dien verstande dat roerende goed wat so 'n skuldeiser as sekuriteit gehou het toe die goed op die kurator oorgegaan het, aan daardie skuldeiser teruggegee moet word; en met dien verstande voorts dat die opbrings van watter sekuriteit ook al wat te gelde gemaak is, aan die persoon of persone wat daarop geregtig is, uitbetaal moet word, ooreenkomstig hulle regte.

Uitwerking van akkoord op eggenote of eggenoot van insolvent.

121. (1) Alle gelde wat betaal en alle handelings wat verrig moet word ten bate van skuldeisers ingevolge 'n akkoord moet sover doenlik deur middel van die kurator betaal en verrig word: Met dien verstande dat 'n skuldeiser wat in gebreke gebly het om sy vordering te bewys voordat die kurator 'n finale verdeling gedaan het onder die skuldeisers wat wel hulle vorderings bewys het, geregtig is om binne ses maande vanaf die bekragtiging, deur die Meester, van die rekening uit kragte waarvan die verdeling gedaan is, alle betalings waarop hy kragtens die akkoord geregtig mag wees, direk op die insolvent te verhaal en dat die kurator geen verpligtings in verband daarmee het nie en die skuldeiser na die voormelde verdeling geen vordering teen die insolvente boedel het nie.

Werkkring van kurator ingevolge akkoord.

(2) Wanneer 'n akkoord aangegaan is tussen 'n insolvent en die skuldeisers van sy boedel, moet die kurator van daardie boedel 'n likwidasierekening en 'n distribusierekening van die bate wat ter verdeling onder die skuldeisers ingevolge die akkoord beskikbaar is of sal word, opstel en is al die bepalinge van hierdie Wet aangaande 'n likwidasierekening en 'n distribusierekening en die verdeling van bate onder skuldeisers van toepassing in verband met eersbedoelde likwidasierekening en distribusierekening en met eersbedoelde bate.

122. (1) 'n Insolvent wat van die Meester die sertifikaat bedoel in sub-artikel (7) van artikel honderd-en-sewentien verkry het, kan die Hof om sy rehabilitasie versoek, mits hy nie minder as drie weke voordat hy die aansoek doen, deur 'n advertensie in die Staatskoerant kennis gegee het van sy

Versoek om rehabilitasie.

weeks before making the application, given, by advertisement in the *Gazette*, notice of his intention to make the application; and provided further that the said certificate shows that payment has been made or the security prescribed by sub-section (7) or (8) of section *one hundred and seventeen* has been given 5 for the payment of not less than seven shillings and sixpence for every pound of every claim proved or to be proved against the estate of the insolvent.

(2) An insolvent who is not entitled under sub-section (1) to apply to the Court for his rehabilitation and who has 10 previously given to the Master and to the trustee of his estate in writing and by advertisement in the *Gazette* not less than six weeks' notice of his intention to apply to the Court for his rehabilitation may so apply—

- (a) after twelve months have elapsed from the confirmation 15 by the Master, of the last trustee's account in his estate, unless he falls within the provisions of paragraph (b) or (c); or
- (b) after three years have elapsed from such confirmation if his estate has either under this Act or a prior law 20 been sequestrated prior to the sequestration to which he desires to put an end and if he does not fall within the provisions of paragraph (c); or
- (c) after five years have elapsed from the date of his conviction of any fraudulent act in relation to his 25 existing or any previous insolvency or of any offence under section *one hundred and thirty, one hundred and thirty-one or one hundred and thirty-two* of this Act or under any corresponding provision of the Insolvency Act, 1916 (Act No. 32 of 1916): 30

Provided that no application for rehabilitation under this sub-section shall be granted before the expiration of a period of four years from the date of sequestration of the estate of the applicant, except upon the recommendation of the Master. 35

(3) After the expiration of a period of six months as from the sequestration of an estate, the insolvent concerned may apply to the Court for his rehabilitation—

- (a) if he has, not less than six weeks before making the application, given to the Master and to the trustee 40 of his estate notice in writing, and published in the *Gazette* a notice of his intention to make the application; and
- (b) if, at the time of making the application, no claim has been proved against his estate; and 45
- (c) if he has not been convicted of an offence mentioned in paragraph (c) of sub-section (2); and
- (d) if his estate was not sequestrated under any law prior to the sequestration which he desires to end.

(4) A trustee who has received a notice mentioned in sub-section (2) or (3) shall report to the Master any facts which 50 in his opinion would justify the Court in refusing, postponing, or qualifying the insolvent's rehabilitation.

(5) At any time after the confirmation by the Master, of a plan of distribution providing for the payment in full of all 55 claims proved against an insolvent estate, with interest thereon from the date of sequestration, calculated in terms of sub-section (2) of section *one hundred and one* and of all the costs of sequestration, the insolvent concerned may apply to the Court for his rehabilitation: Provided that he has not less 60 than three weeks before making the application given notice in writing to the Master and to the trustee of his estate of his intention to make the application.

Security to be furnished prior to application for rehabilitation.

123. Not less than three weeks before applying to the Court for his rehabilitation an insolvent shall furnish to the registrar 65 of the Court security, to the amount or value of twenty-five pounds, for the payment of the costs of any person who may oppose the rehabilitation and be awarded costs by the Court.

Facts to be averred on application for rehabilitation.

124. In support of an application for his rehabilitation, an insolvent shall submit his affidavit that he has made a complete 70 surrender of his estate and has not granted or promised any benefit whatever to any person or entered into any secret agreement with intent to induce his trustee or any creditor not to oppose the rehabilitation. Such affidavit shall include a statement of his assets and liabilities and of his earnings at 75 the date of the application. Information shall also be laid before the Court as to what dividend was paid to his creditors,

voorneme om die versoek te doen en mits ook uit voormelde sertifikaat blyk dat nie minder as sewe shillings en ses pennies op elke pond van elke vordering wat teen die boedel van die insolvent bewys is of nog bewys sal word, betaal is of dat die 5 sekuriteit wat sub-artikel (7) of (8) van artikel *honderd-en-sewentien* vir die betaling van daardie bedrag voorskryf, gestel is.

(2) 'n Insolvent wat nie kragtens sub-artikel (1) geregtig is om die Hof om sy rehabilitasie te versoek nie en wat nie minder 10 as ses weke voorheen skriftelik aan die Meester en aan die kurator van sy boedel en deur 'n advertensie in die *Staatskoerant* kennis gegee het van sy voorneme om die Hof om sy rehabilitasie te versoek, mag so 'n versoek doen—

(a) nadat twaalf maande verstryk het vanaf die bekragtiging deur die Meester van die laaste kuratorsrekening in sy boedel tensy hy val onder die bepalinge van paragraaf (b) of (c); of

(b) nadat drie jaar verstryk het vanaf bedoelde bekragtiging as sy boedel hetsy kragtens hierdie Wet, hetsy 20 kragtens 'n vorige wet gesekwestreer geword het voor die sekwestrasie waaraan hy 'n end wens te maak, mits hy nie onder die bepalinge van paragraaf (c) val nie; of

(c) nadat vyf jaar verstryk het vanaf die dag van sy veroordeling weens een of ander bedrieglike handeling met 25 betrekking tot sy bestaande of 'n vorige insolvensie of weens 'n misdryf bedoel in artikel *honderd-en-dertig*, *honderd-een-en-dertig* of *honderd-twee-en-dertig* van hierdie Wet of in 'n daarmee ooreenstemmende bepaling van die „Insolventiewet, 1916” (Wet No. 32 van 1916):

Met dien verstande dat geen rehabilitasie ingevolge hierdie sub-artikel toegestaan mag word nie voordat 'n tydperk van vier jaar verstryk het vanaf die dag van die sekwestrasie 35 van die versoeker se boedel, tensy die Meester dit aanbeveel.

(3) Na verstryking van 'n tydperk van ses maande vanaf die sekwestrasie van 'n boedel mag die betrokke insolvent die Hof om sy rehabilitasie versoek—

(a) as hy nie minder as ses weke voordat hy die versoek 40 doen, skriftelik aan die Meester en aan die kurator van sy boedel en deur 'n advertensie in die *Staatskoerant* kennis gegee het van sy voorneme om die versoek te doen; en

(b) as daar, op die tydstip wanneer hy die versoek doen, 45 geen vordering teen sy boedel bewys is nie; en

(c) as hy nie veroordeel is nie weens 'n misdryf bedoel in paragraaf (c) van sub-artikel (2); en

(d) as sy boedel nie kragtens watter wet ook al gesekwestreer was nie voor die sekwestrasie waaraan hy 'n 50 end wens te maak.

(4) 'n Kurator wat 'n kennisgewing, bedoel in sub-artikel (2) of (3) ontvang het, moet aan die Meester alle feite meedeel op grond waarvan die Hof volgens sy mening geregverdig sou wees om die rehabilitasie van die insolvent te weier, uit te stel 55 of te kwalifiseer.

(5) Te eniger tyd na die bekragtiging, deur die Meester, van 'n distribusierekening waarin voorsiening gemaak word vir die volle betaling van alle teen 'n insolvente boedel bewese vorderings met rente daarop vanaf die dag van sekwestrasie, 60 bereken volgens sub-artikel (2) van artikel *honderd-en-een*, en van alle sekwestrasiekoste, kan die betrokke insolvent die Hof om sy rehabilitasie versoek, mits hy nie minder as drie weke voordat hy die versoek doen, aan die Meester en aan die kurator van sy boedel skriftelik kennis gegee het van 65 sy voorneme om die versoek te doen.

123. Nie minder as drie weke voordat 'n insolvent die Hof om sy rehabilitasie versoek, moet hy in hande van die griffier sekuriteit stel tot 'n bedrag of waarde van vyf-en-twintig pond, tot betaling van die koste van iemand wat hom teen die 70 rehabilitasie mag verset en aan wie die Hof sy koste mag toestaan.

124. Tot ondersteuning van 'n versoek om rehabilitasie, moet 'n insolvent sy beëdigde verklaring oorlê, dat hy sy boedel ten vólle oorgegee het en dat hy aan niemand enige voordeel 75 hoegenaamd verleen of belowe het nie en geen geheime ooreenkoms aangegaan het nie met die bedoeling om sy kurator of 'n skuldeiser te beweeg om hom nie teen die rehabilitasie te verset nie. Daardie beëdigde verklaring moet bevat 'n aangifte van sy bate en skulde en van sy verdienste op die 80 dag van die versoek. Voorts moet aan die Hof meegedeel word

Voor aansoek om rehabilitasie moet sekuriteit gestel word.

Feite wat by 'n versoek om rehabilitasie beweer moet word.

what further assets in his estate are available for realization and the estimated value thereof, the total amount of all claims proved against his estate, and the total amount of his liabilities at the date of the sequestration of his estate. If application for rehabilitation is made pursuant to sub-section (1) of section *one hundred and twenty-two* the insolvent shall set out the particulars of the composition and shall state whether there are or are not creditors whose claims against his estate have not been proved, and if there are such creditors, he shall state their names and addresses and particulars of their claims.

Opposition to or refusal by Court of rehabilitation.

125. (1) Upon the day fixed for the hearing of an application for rehabilitation the Master shall report thereon to the Court, and the Master, the trustee or any creditor or other person interested in the estate of the applicant may appear in person or by counsel to oppose the grant of the application.

(2) Whether the application be opposed or not, the Court may refuse an application for rehabilitation or may postpone the hearing of the application or may rehabilitate the insolvent upon such conditions as it may think fit to impose and may order the applicant to pay the costs of any opposition to the application if it is satisfied that the opposition was not vexatious.

(3) Among the conditions referred to in sub-section (2), the Court may require the insolvent to consent to judgment being entered against him for the payment of any unsatisfied balance of any debt which was or could have been proved against his estate, or of such lesser sum as the Court may determine, but in such case execution shall not be issued on the judgment except with leave of the Court and on proof that the insolvent has since the date of sequestration of his estate acquired property or income available for the payment of his debts; or apart from any such judgment the Court may impose any other condition with respect to any property, or income which may accrue to the insolvent in the future.

(4) In granting an application for rehabilitation made under sub-section (1) of section *one hundred and twenty-two* the Court may order that any obligation incurred by the applicant before the sequestration of his estate which, but for that order, would be discharged as a result of the applicant's rehabilitation, shall remain of full force and effect, notwithstanding the rehabilitation.

(5) The registrar of the Court shall forthwith give notice to the Master of every rehabilitation of an insolvent granted by the Court.

Partnership cannot be rehabilitated.

126. A partnership whose estate has been sequestrated shall not be rehabilitated.

Effect of rehabilitation.

127. (1) Subject to the provisions of sub-section (3) and subject to such conditions as the Court may have imposed in granting a rehabilitation, the rehabilitation of an insolvent shall have the effect—

- (a) of putting an end to the sequestration;
- (b) of discharging all debts of the insolvent, which were due, or the cause of which had arisen, before the sequestration, and which did not arise out of any fraud on his part;
- (c) of relieving the insolvent of every disability resulting from the sequestration.

(2) A rehabilitation granted on an application made in circumstances described in sub-section (3) of section *one hundred and twenty-two* shall have the effect of reinvesting the insolvent with his estate.

(3) A rehabilitation shall not affect—

- (a) the rights of the trustee or creditors under a composition;
- (b) the powers, or duties of the Master or the duties of the trustee in connection with a composition;
- (c) the right of the trustee or creditors to any part of the insolvent's estate which is vested in but has not yet been distributed by the trustee, but subject to the provisions of sub-section (2);
- (d) the liability of a surety for the insolvent;
- (e) the liability of any person to pay any penalty or suffer any punishment under any provision of this Act.

watter diwidend aan sy skuldeisers uitbetaal is, watter verdere bate in sy boedel nog beskikbaar is om te gelde gemaak te word en wat die geskatte waarde daarvan is, die totaalbedrag van alle teen sy boedel bewese vorderings en die totaalbedrag van sy skulde op die dag van die sekwestrasie van sy boedel. As die rehabilitasie versoek word ingevolge sub-artikel (1) van artikel *honderd-twee-en-twintig*, moet die insolvent die besonderhede van die akkoord aangee en vermeld of daar al dan nie skuldeisers is wie se vorderings teen sy boedel nie bewys is nie en as daar sulke skuldeisers is, moet hy hulle name en adresse en die besonderhede van hulle vorderings vermeld.

125. (1) Op die dag vasgestel vir die verhoor van 'n versoek om rehabilitasie, moet die Meester daaromtrent aan die Hof verslag doen en die Meester, die kurator of 'n skuldeiser of ander persoon wat belang het by die boedel van die versoeker kan persoonlik of deur middel van 'n advokaat verskyn om hom te verset teen die bewilliging van die versoek.

Verset teen rehabilitasie of weiering van rehabilitasie deur Hof.

(2) Onverskillig of daar al dan nie verset teen die versoek is, kan die Hof 'n versoek om rehabilitasie weier of die verhoor van die versoek uitstel of die insolvent rehabiliteer en wel op sodanige voorwaardes as wat die Hof wenslik ag om te stel en kan die versoeker veroordeel tot betaling van die koste van verset teen die rehabilitasie, as die Hof van oordeel is dat die verset nie vexatoor was nie.

(3) As een van die voorwaardes bedoel in sub-artikel (2) kan die Hof van die insolvent verlang dat hy toestem tot 'n vonnis teen hom tot betaling van 'n nog onvoldane oorskot van 'n skuld wat teen sy boedel bewys is of bewys kon geword het, of van so 'n mindere bedrag as wat die Hof mag bepaal, dog in daardie geval vind geen eksekusie op grond van die vonnis plaas nie dan met verlof van die Hof en na bewys dat die insolvent sedert die dag van die sekwestrasie van sy boedel goedere of inkomste verkry het wat vir die betaling van sy skulde beskikbaar is; of afgesien van so 'n vonnis kan die Hof enige ander voorwaarde stel met betrekking tot enige goed of inkomste wat in die toekoms aan die insolvent mag toekom.

(4) As die Hof 'n versoek om rehabilitasie ingevolge sub-artikel (1) van artikel *honderd-twee-en-twintig* toestaan, kan die Hof beveel dat 'n verbintenis van die versoeker wat voor die sekwestrasie van sy boedel ontstaan het, en wat afgesien van daardie bevel as gevolg van die versoeker se rehabilitasie gedelg sou geword het, sy volle regsgeldigheid behou, niesteenstaande die rehabilitasie.

(5) Die Griffier van die Hof moet onverwyld aan die Meestre kennis gee van elke rehabilitasie van 'n insolvent wat die Hof toegestaan het.

126. 'n Vennootskap wie se boedel gesekwestreer is, kan nie gerehabiliteer word nie.

Vennootskap kan nie gerehabiliteer word nie.

127. (1) Behoudens die bepalings van sub-artikel (3) en behoudens die voorwaardes wat die Hof by die verlening van 'n rehabilitasie mag gestel het, is die gevolg van die rehabilitasie van 'n insolvent dat—

Gevolge van rehabilitasie.

(a) aan die sekwestrasie 'n end gemaak word;

(b) alle skulde van die insolvent wat voor die sekwestrasie invorderbaar was of waarvan die oorsaak voor die sekwestrasie ontstaan het en wat nie uit sy bedrog ontstaan het nie, gedelg word;

(c) die insolvent onthef word van elke onbevoegdheid wat uit die sekwestrasie voortspruit.

(2) 'n Rehabilitasie verleen op 'n versoek gedaan in die omstandighede vermeld in sub-artikel (3) van artikel *honderd-twee-en-twintig* het ten gevolge dat die boedel van die insolvent weer op hom oorgaan.

(3) 'n Rehabilitasie is van geen invloed op—

(a) die regte van die kurator of skuldeisers kragtens 'n akkoord;

(b) die bevoegdhede of verpligtings van die Meester of die verpligtings van die kurator in verband met 'n akkoord;

(c) die reg van die kurator of skuldeisers op enige deel van die insolvent se boedel wat onder beheer van die kurator is maar nog nie deur hom verdeel is nie, dog behoudens die bepalings van sub-artikel (2);

(d) die aanspreeklikheid van 'n borg van die insolvent;

(e) die verpligting van iemand om 'n boete te betaal of sy strafbaarheid ingevolge 'n bepaling van hierdie Wet.

Illegal inducements to vote for composition or not to oppose rehabilitation.

128. Any undertaking to grant any benefit to any person in order to induce him or any other person to accept an offer of composition or to agree to, or refrain from opposing the rehabilitation of an insolvent, or as a consideration for the acceptance of an offer of composition or for the agreement to or non-opposition of the rehabilitation of an insolvent (whether by the person for whom the benefit is intended or by any other person), shall be void and any person who has accepted any such benefit or who has stipulated for any such benefit, whether for himself or any other person shall be liable to pay by way of penalty for the benefit of the creditors of the insolvent estate in question—

- (a) a sum equal to the amount of the claim (if any) which he originally proved against the estate; and
- (b) the amount or value of any benefit given or promised; and
- (c) in case of a composition, the amount paid or to be paid to him under the composition.

Recovery of penalty.

129. The trustee may enforce and recover any penalty mentioned in section *one hundred and twenty-eight* and if he fails to do so any creditor may do so in the name of the trustee, upon his indemnifying the trustee against all costs in connection with such action.

Concealing or destroying books or assets.

130. An insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding three years if at any time before or after the sequestration of his estate he does any of the following acts, unless it is proved that he had no intention to defraud; that is to say, if he—

- (a) conceals, parts with, destroys, mutilates, falsifies or makes any false entry or erasure in any book or document relating to his business, property or affairs or permits any other person to commit any such act in regard to any such book or document; or
- (b) conceals or permits the concealment of any assets which ought to be placed at the disposal of the trustee; or
- (c) otherwise than in the ordinary course of business makes, or permits the making of a disposition of any property which he has obtained on credit and has not paid for; or
- (d) otherwise than in the ordinary course of business destroys, damages, removes or makes a disposition of, or permits the destruction, damage, removal or the making of a disposition of, any assets in his estate if such destruction, damage, removal or disposition has prejudiced or is calculated to prejudice his creditors:

Provided that—

- (i) whenever in any proceedings for a contravention of paragraph (a) any act described in that paragraph is proved to have been committed in regard to any book or other document relating to the business, property or affairs of the insolvent, he shall be deemed to have committed or permitted such act unless it is proved that he neither committed it nor could have prevented the commission;
- (ii) in any proceedings for a contravention of paragraph (c) or paragraph (d) any disposition, destruction, damage or removal of assets proved to have been committed shall, unless the contrary is proved, be deemed to have been otherwise than in the ordinary course of business;
- (iii) if it appears from any book or document relating to the business, property or affairs of the insolvent or if it is proved in any other manner whatsoever that there ought to be available to the trustee at least ten per cent. more assets of the estate than the assets actually available to him, such insolvent shall be deemed to have removed or made a disposition of assets of a value equal to the difference between the value of the assets which ought to be available, and the value of the assets actually so available, in contravention of paragraph (d), unless he fully and accurately accounts for or explains the deficiency and proves that the deficiency was not caused by his action and that he could not have prevented it.

Concealment of liabilities or pretext to existence of assets.

131. An insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding three years if, within two years immediately preceding the sequestration of his estate when making any statement either verbally or in writing in regard to his business, property or affairs to

128. 'n Belofte om aan iemand 'n voordeel te verleen om hom of iemand anders te beweeg om 'n aanbod van 'n akkoord aan te neem of om tot die rehabilitasie van 'n insolvent toe te stem of om hom nie daarteen te verset nie, of as vergoeding vir die aanname van 'n aanbod van 'n akkoord of vir toestemming tot die rehabilitasie van 'n insolvent of omdat geen verset daarteen ingebring is nie (hetsy deur die persoon vir wie die voordeel bestem is of deur iemand anders), is nietig en iemand wat so 'n voordeel aangeneem of beding het, hetsy vir homself, 10 hetsy vir iemand anders, kan verplig word tot betaling, as 'n boete, ten bate van die skuldeisers van die betrokke insolvente boedel—
- (a) van 'n som gelyk aan die vordering wat hy oorspronklik teen die boedel mog bewys het; en
- 15 (b) van die bedrag of waarde van elke verleende of be-loofde voordeel; en
- (c) in geval van 'n akkoord, van die bedrag wat kragtens die akkoord aan hom betaal is of sal word.
129. Die kurator kan 'n boete bedoel in artikel honderd- 20 *agt-en-twintig*, laat geld en invorder en as die kurator in gebreke bly om dit te doen, kan enige skuldeiser dit namens die kurator doen, mits hy die kurator skadeloos stel weens alle koste in verband met daardie handeling.
130. 'n Insolvent is aan 'n misdryf skuldig en strafbaar met 25 gevangenisstraf van hoogstens drie jaar as hy te eniger tyd voor of na die sekwestrasie van sy boedel een van die volgende handelings begaan, tensy bewys word dat hy geen bedoeling had om te bedrieg nie; naamlik as hy—
- (a) in 'n boek of geskrif wat betrekking het op sy besigheid, goedere of sake verberg, van die hand sit, vernietig, vermink, vervals of 'n valse aantekening daarin maak of iets daarin uitwis of toelaat dat iemand anders so 'n handeling met betrekking tot so 'n boek of geskrif begaan; of
- 30 (b) bate, wat ter beskikking van die kurator behoort gestel te word, verberg of hulle verberging toelaat; of
- (c) goed wat hy op krediet verkry en waarvoor hy nie betaal het nie, op 'n ander wyse as 'n gewone besigheidswyse vervreemd of toelaat dat iemand anders dit doen; of
- 40 (d) op 'n ander wyse as 'n gewone besigheidswyse bate in sy boedel vernietig, beskadig, verwyder of vervreemd of toelaat dat iemand anders dit doen as daardie vernietiging, beskadiging, verwydering of vervreemding sy skuldeisers benadeel het of sou kan benadeel;
- 45 Met dien verstande dat—
- (i) wanneer in 'n geding weens 'n oortreding van paragraaf (a), bewys word dat 'n handeling, in daardie 50 paragraaf bedoel, begaan is met betrekking tot 'n boek of geskrif wat betrekking het op die besigheid, goedere of sake van die insolvent, dan vermoed word dat hy daardie handeling begaan of toegelaat het, tensy bewys word dat hy dit nie begaan het en ook nie die begaan daarvan kon verhoed het nie;
- 55 (ii) in 'n geding weens 'n oortreding van paragraaf (c) of (d), elke vervreemding, vernietiging, beskadiging of verwydering van bate wat bewys word begaan te wees, vermoed word op 'n ander wyse as 'n gewone besigheidswyse begaan te wees, tensy die teendeel bewys word;
- 60 (iii) as blyk uit 'n boek of geskrif wat betrekking het op die besigheid, goedere of sake van die insolvent of as op watter ander wyse ook bewys word dat daar minstens tien persent meer bate in die boedel aan die kurator beskikbaar behoort te wees dan die bate wat werklik aan hom beskikbaar is, vermoed word dat die insolvent, in stryd met paragraaf (d), bate van 'n 65 waarde gelyk aan die verskil tussen die waarde van bate wat beskikbaar behoort te wees en die waarde van die bate wat werklik beskikbaar is, verwyder of vervreemd het, tensy hy ten volle en juis rekenskap gee van die tekort of dit verklaar en bewys dat die tekort nie deur sy toedoen veroorsaak is nie en dat hy dit nie had kon verhoed nie.
- 70 75
131. 'n Insolvent is aan 'n misdryf skuldig en strafbaar met gevangenisstraf van hoogstens drie jaar, as hy, binne die twee jaar wat aan die sekwestrasie van sy boedel onmiddellik 80 voorafgaan, by 'n mondelinge of skriftelike mededeling omtrent sy besigheid, goedere of sake, aan iemand wat toe sy skuldeiser was of aan iemand wat sy skuldeiser geword het omdat

Onwettige beweegmiddels om vir akkoord te stem of om verset teen rehabilitasie te voorkom.

Invordering van boete.

Verberging of vernietiging van boeke of bate.

Verberging van skulde of voorwending dat daar bate is.

any person who was then his creditor or to any person who became his creditor on the faith of such a statement, he concealed any liability, present or future, certain or contingent, which he may then have contracted, or failed to disclose the full extent of his liability or mentioned, as if it were an asset, any right or property which at the time was not an asset, or represented that he had more assets than he in fact had or made any false statement in regard to the amount, quality or value of his assets, or in any way concealed or disguised or attempted to conceal or disguise any loss which he had sustained, or gave any incorrect amount thereof, unless it is proved that he had good reason to believe that the said statement was correct in every respect and that he was not concealing or failing to disclose or disguising any relevant fact.

Failure to keep proper records.

132. (1) An insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding one year if his occupation or transactions prior to the sequestration of his estate were such that he might reasonably be expected to keep a record of his transactions, and he failed to keep and to preserve during a period of not less than three years, a proper record of his transactions in the English or the Dutch language.

(2) For the purposes of this section a proper record of transactions includes all such books, wherein is set forth clearly the nature of all such person's transactions, as (being had to his occupation) he can reasonably be expected to have kept. A trader shall be deemed not to have kept a proper record of his transactions unless he kept a record which includes—

(a) detailed stock sheets (which shall disclose the cost price of every article purchased by the trader for the purpose of his business) and balance sheets completed for each of his three financial or business years immediately preceding the sequestration of his estate, or if he commenced business less than three years before the sequestration, completed at the commencement of his business and thereafter for each financial or business year preceding the sequestration ;

(b) books exhibiting for the period since the commencement of his business or since the commencement of his financial or business year next but one before the financial or business year in which his estate was sequestrated (whichever period is the less) the following particulars—

- (i) all property purchased in the course of the business, duly supported by the original invoices ;
- (ii) all cash receipts and disbursements and the dates thereof ;
- (iii) a daily record of all property sold on credit, and such a continuous record of all transactions as a trader may be expected to keep in the ordinary course of his business ;
- (iv) the name of every person indebted to the trader and of every person to whom the trader is indebted and the address of every such person at the time when the indebtedness arose or at any time thereafter ;

(c) a record of all cheques drawn during the period mentioned in paragraph (b) and the counterfoils of such cheques, showing clearly, in the case of each cheque and on each counterfoil, the name of the payee, the amount of the cheque, and the date of the cheque :

Provided that a trader who proves that his turnover for the two years immediately preceding the sequestration of his estate or since the commencement of the business (whichever period is the less), was at the rate of less than one thousand pounds per annum shall be deemed to have kept a proper record, if the court, or jury dealing with the matter in question, having regard to the nature and circumstances of the business, is satisfied that he has kept a sufficient record of his transactions: Provided that the record complies with the requirements of sub-paragraph (iv) of paragraph (b).

hy op daardie medeling vertrou het, 'n teenswoordige of toekomstige, sekere of voorwaardelike skuld wat hy mog aangaan het, verberg het of versuim het om die volle omvang van sy skuld te openbaar of 'n reg of goed wat op die betrokke tydstip geen bate was nie, vermeld het asof dit wel bate was of voorgegee het dat hy meer bate had as wat hy werklik had of 'n valse bewering gemaak het omtrent die bedrag, hoedanigheid of waarde van sy bate of op watter wyse ook 'n verlies wat hy gely het, verberg of verbloem het of gepoog het om dit te verberg of te verbloem, of 'n onjuiste bedrag daarvan opgegee het, tensy bewys word dat hy 'n gegronde rede had om te glo dat bedoelde medeling in elke opsig juis was en hy nie 'n feit van belang verberg of nie openbaar of verbloem het nie.

15 132. (1) 'n Insolvent is skuldig aan 'n misdryf en strafbaar met gevangenisstraf van hoogstens een jaar, as sy beroep of regshandelings voor die sekwestrasie van sy boedel van die aard was, dat redelikerwys van hom verwag kon word dat hy van sy regshandelings aantekening sou hou en hy versuim het om van sy regshandelings behoorlik aantekening te hou in Engelse of die Hollandse taal en die aantekening gedurende 'n tydperk van nie minder as drie jaar te bewaar.

Versuim om behoorlik boek te hou.

(2) Vir die toepassing van hierdie artikel omvat 'n behoorlike aantekening van regshandelings alle boeke, waarin duidelik die aard van elke regshandeling van bedoelde persoon vermeld staan, wat hy met die oog op sy beroep, redelikerwys verwag kon word om te hou. Van 'n handelaar word vermoed dat hy nie behoorlik aantekening van sy regshandelings gehou het nie, tensy hy aantekening gehou het wat omvat—

30 (a) gespesifiseerde voorraadstate (waarin moet aangegee word die kosteprys van elke artikel wat die handelaar vir sy besigheid gekoop het) en balansstate, opgemaak vir elkeen van die drie boek- of besigheidsjare wat aan die sekwestrasie van die handelaar se boedel onmiddellik voorafgaan of as hy minder as drie jaar voor die sekwestrasie sy besigheid begin het, opgemaak aan die begin van sy besigheid en daarna vir elke boek- of besigheidsjaar wat aan die sekwestrasie voorafgaan;

40 (b) boeke, waarin onderstaande besonderhede voorkom oor die tydperk sedert die begin van die besigheid of sedert die begin van die boek- of besigheidsjaar wat voorafgaan aan die boek- of besigheidsjaar voor die boek- of besigheidsjaar waarin die handelaar se boedel gesekwestreer is (na gelang die een of die ander tydperk korter is), naamlik—

(i) alle goedere in die loop van die besigheid gekoop, behoorlik gestaaf deur die oorspronklike fakture;

50 (ii) alle ontvangste en uitgawe in kontant en die datums daarvan;

(iii) daaglikse aantekeninge van alle op krediet verkoopte goedere en sulke deurlopende aantekeninge van alle regshandelings as wat 'n handelaar verwag kan word te maak in die gewone loop van sy besigheid;

55 (iv) die naam van elke persoon wat aan die handelaar iets skuld en van elke persoon aan wie die handelaar iets skuld en die adres van elke sodanige persoon op die tydstip toe die skuld ontstaan het of te eniger tyd daarna;

60 (c) 'n aantekening van alle tjeks, gedurende die tydperk bedoel in paragraaf (b) getrek, en die kontrablaaie van daardie tjeks, met duidelike aangifte by elke tjek en op elke kontrablad, van die naam van die nemer, die bedrag van die tjek en die datum van die tjek;

Met dien verstande dat 'n handelaar wat bewys dat sy omset gedurende die twee jaar wat aan die sekwestrasie van sy boedel onmiddellik voorafgaan of sedert die begin van die 70 besigheid (na gelang die een of die ander tydperk korter is) minder beloop het as duisend pond per jaar, vermoed word behoorlik aantekening te gehou het as die Hof of jurie wat die betrokke saak behandel, van oordeel is dat hy met die oog op die aard en omstandighede van sy besigheid, van sy 75 regshandelings voldoende aantekening gehou het, mits die aantekening voldoen aan die vereistes van sub-paragraaf (iv) van paragraaf (b).

Undue preferences,
contracting debts
without expecta-
tion of ability to
pay, etc.

133. (1) An insolvent shall be guilty of an offence and liable to imprisonment not exceeding one year, if prior to the sequestration of his estate, he made a disposition of any part of his property with the intention of preferring one or more of his creditors above the others or any other: Provided that any such disposition which had the effect of preferring, or was calculated to prefer, one or more creditors above the others or any other shall, unless the contrary is proved, be deemed to have been made with the intention of preferring such creditor or creditors above the others or any other. 5 10

(2) In sub-section (1) the expression "creditor" includes a surety for the insolvent as well as a person who in law is in a position analogous to that of a surety.

(3) An insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding two years if, prior 15 to the sequestration of his estate—

- (a) he contracted any debt of fifteen pounds or more or debts to the aggregate of fifty pounds or more, without any reasonable expectation of being able to discharge such debt or debts; or 20
- (b) at a time when his liabilities exceeded his assets or during the period of six months immediately preceding the sequestration of his estate, he diminished his assets by gambling, betting, hazardous speculations or expenditure, not reasonably necessary in connection 25 with his business or vocation or for the maintenance of himself and his dependents:

Provided that in any proceedings for a contravention of paragraph (a) the insolvent shall, unless the contrary is proved, be deemed to have contracted the debt or debts without 30 having had a reasonable expectation of discharging it or them, if the debt was or the debts were contracted—

- (i) at a time when his liabilities exceeded his assets; or
- (ii) within the period of six months immediately preceding the sequestration of his estate. 35

Failure to give
information or to
deliver assets,
books, etc.

134. An insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding three years—

- (a) if at any time during the sequestration of his estate he, knowing or suspecting that any person has proved or intends to prove a false claim against his estate, fails to inform the Master and the trustee of his estate in writing of that knowledge or suspicion, within seven days as from the date upon which he acquired that knowledge or upon which his suspicion was aroused; 40 45
- (b) if he fails within fourteen days as from the appointment of the trustee of his estate—
 - (i) to deliver to the trustee or as the trustee may direct, any property of whatever nature belonging to the estate which may be in his possession or custody or under his control; or 50
 - (ii) to inform the trustee of the existence and whereabouts of any property belonging to the estate (other than property mentioned in sub-paragraph (i)), which is not fully disclosed in the statement 55 of his affairs mentioned in section four or sixteen or which is not already in the possession of the trustee; or
 - (iii) to deliver to the trustee or deputy sheriff, or as either of them may direct all books and documents in his possession or custody or under his control, relating to his affairs; or 60
 - (iv) to inform the trustee of the existence or whereabouts or any such book or document not in his possession or custody or under his control, 65 if it is not already in the possession of the trustee;

unless, in any such case, he proves that he had a reasonable excuse for such failure;

- (c) if, at any time after the sequestration of his estate, he fails to furnish at the request of the trustee complete 70 and truthful information regarding any property which was at any time in his possession or custody or under his control, or regarding the time when or the manner or circumstances in which he disposed of such property or ceased to be in possession, custody 75

133. (1) 'n Insolvent is aan 'n misdryf skuldig en strafbaar met gevangenisstraf van hoogstens een jaar as hy voor die sekwestrasie van sy boedel 'n deel van sy goedere vervreemd het met die bedoeling om aan een of meer van sy skuldeisers voorkeur te verleen bo die anders of bo 'n ander: Met dien verstande dat so 'n vervreemding wat die verlening van voorkeur aan een of meer skuldeisers bo die anders of bo 'n ander ten gevolge gehad het of kon gehad het, behoudens teëbewys vermoed word te geskied het met die bedoeling om aan daardie skuldeiser of skuldeisers voorkeur te verleen bo die anders of bo 'n ander.
- (2) In sub-artikel (1) omvat die uitdrukking „skuldeiser” 'n borg van die insolvent en ook iemand wat regtens 'n posisie inneem wat van gelyke aard is as die van 'n borg.
- 15 (3) 'n Insolvent is aan 'n misdryf skuldig en strafbaar met gevangenisstraf van hoogstens twee jaar as hy voor die sekwestrasie van sy boedel—
- (a) 'n skuld van vyftien pond of meer of skulde van gesamentlik vyftig pond of meer aangegaan het, sonder dat hy 'n redelike verwagting had dat hy daardie skuld of skulde sal kan vereffen; of
- 20 (b) te eniger tyd wanneer sy skulde meer as sy bate bedra het of gedurende die tydperk van ses maande wat aan die sekwestrasie van sy boedel onmiddellik voorafgaan, sy bate verminder het deur dobbelary, weddenskappe, gewaagde spekulasies of uitgawe wat nie redelikerwys nodig was in verband met sy besigheid of beroep of tot onderhoud van homself en van diegenes wat van hom afhanklik is:
- 30 Met dien verstande dat in 'n geding weens 'n oortreding van paragraaf (a) die insolvent, behoudens teëbewys, vermoed word die skuld of skulde aan te gegaan het sonder dat hy 'n redelike verwagting gehad het dat hy hom of hulle sal kan vereffen, as die skuld of skulde aangegaan is—
- 35 (i) op 'n tydstop toe sy skulde meer as sy bate bedra het; of
- (ii) binne die tydperk van ses maande wat aan die sekwestrasie van sy boedel onmiddellik voorafgegaan het.
- 40 134. 'n Insolvent is aan 'n misdryf skuldig en strafbaar met gevangenisstraf van hoogstens drie jaar—
- (a) as hy te eniger tyd gedurende die sekwestrasie van sy boedel, wanneer hy weet of vermoed dat iemand 'n valse vordering teen sy boedel bewys het of wil bewys, versuim om binne sewe dae vanaf die dag waarop hy daardie kennis verkry of waarop daardie vermoede by hom verwek is, die Meester en die kurator van sy boedel van daardie wete of vermoede skriftelik in kennis te stel;
- 45 (b) as hy versuim om binne veertien dae vanaf die aanstelling van die kurator van sy boedel—
- (i) goed van watter aard ookal wat tot sy boedel behoort en wat in sy besit of bewaring of onder sy beheer mag wees, aan die kurator of volgens voorskrif van die kurator te oorhandig; of
- 55 (ii) die kurator in kennis te stel van die bestaan van enige tot die boedel behorende goed (behalwe goed bedoel in sub-paragraaf (i)) wat nie ten volle aangegee is nie in sy vermoëstaats bedoel in artikel vier of sestiën of wat nie reeds in besit van die kurator is nie, en waar daardie goed is; of
- 60 (iii) alle boeke en geskrifte in sy besit of bewaring of onder sy beheer, wat op sy sake betrekking het, aan die kurator of adjunk-balju of volgens voorskrif van die een of ander van hulle, te oorhandig; of
- 65 (iv) die kurator in kennis te stel van die bestaan van so 'n boek of geskrif wat nie in sy besit of bewaring of onder sy beheer is nie, as dit nie reeds in die kurator se besit is nie, en waar daardie boek of geskrif is;
- 70 tensy hy in elke sodanige geval bewys dat hy 'n redelike verontskuldiging vir die versuim had;
- (c) as hy te eniger tyd na die sekwestrasie van sy boedel versuim om op versoek van die kurator volledige en ware inligtings te verstrek omtrent enige goed wat te eniger tyd in sy besit of bewaring of onder sy beheer was of omtrent die tyd wanneer of die wyse waarop of die omstandighede waarin hy daardie goed van die hand gesit het of opgehou het om dit in sy
- 75
- 80

Onbehoorlike voorkeur, aangaan van skulde sonder vooruitsig van vermoë om te betaal, ens.

Versuim om inligtings te verstrek of om bate, boeke, ens., te oorhandig.

or control thereof, unless he proves that he had a reasonable excuse for such failure.

Obtaining credit during insolvency, offering inducements, etc.

135. Any person shall be guilty of an offence and liable to imprisonment for a period not exceeding one year—

- (a) if, during the sequestration of his estate, he obtains credit to an amount exceeding ten pounds without previously informing the person from whom he obtains credit that he is an insolvent, unless he proves that such person had knowledge of that fact; or
- (b) if he grants, promises, or offers any consideration whatever in order to procure the acceptance by any creditor of an offer of composition or to prevent opposition to a rehabilitation or, during the sequestration of any estate, to induce any person to refrain from investigating any matter relating to that estate or from disclosing any information in regard thereto; or
- (c) if he contravenes or fails to comply with the provisions of section *sixteen*, or of sub-section (3), (4) or (12) of section *twenty-three* unless he proves that he had a reasonable excuse for such contravention or failure; or
- (d) if he makes any false statement in the statement of his affairs mentioned in section *four* or *sixteen*, or in the statement mentioned in sub-section (4) of section *twenty-three*.

Failure to attend meetings of creditors or give certain information.

136. An insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding six months—

- (a) if he fails to comply with the requirements of sub-section (1) of section *sixty-four*; or
- (b) if he fails, when thereto required in writing by the trustee of his estate, to give a true, clear and detailed explanation of his insolvency or fails to account correctly and in detail for the excess of his liabilities over his assets; or
- (c) if, at a meeting of the creditors of his estate, when thereto required by the trustee or the officer presiding or any creditor or by the agent of any of them, he fails to account for or to disclose what has become of any property which was in his possession so recently that in the ordinary course he ought to be able to account therefor; or
- (d) if he fails to comply with the requirements of sub-section (13) of section *twenty-three*.

Failure to appear or to give evidence or giving false evidence.

137. (1) A person shall be guilty of an offence and liable to a fine not exceeding fifty pounds or to imprisonment without the option of a fine for a period not exceeding six months—

- (a) if he is guilty of an act or omission for which he has been or might have been lawfully committed to prison in terms of sub-section (2) or (3) of section *sixty-six*; or
- (b) if he fails, without reasonable excuse, to comply with a notice delivered to him in terms of sub-section (2) or (3) of section *one hundred and fifty* or fails to answer fully any question put to him in terms of sub-section (4) of that section; or
- (c) if, when appearing before the Master, magistrate or other officer in compliance with such a notice, he gives a false answer to such a question or makes a false statement concerning the insolvent or his estate, knowing that answer or statement to be false.

(2) Any person shall be guilty of an offence and liable to the punishment provided by law for the crime of perjury, if, when being examined on oath under this Act, he gives a false answer to any lawful question, knowing that answer to be false or he makes any false statement whatever relative to the subject of the enquiry, knowing that statement to be false.

Failure of insolvent or spouse to appear to give evidence.

138. An insolvent or the spouse of an insolvent shall be guilty of an offence and liable to imprisonment for a period not exceeding six months if, when summoned to give evidence in any proceedings instituted by or against the trustee of the insolvent's estate he or she conceals himself or herself or quits the Union or without reasonable excuse fails to attend those proceedings or refuses to answer any question which may be lawfully put to him or her in the course of those proceedings.

besit of bewaring of onder sy beheer te hê, tensy hy bewys dat hy 'n redelike verontskuldiging vir die versuim had.

135. Enigeen is aan 'n misdryf skuldig en strafbaar met 5 gevangenisstraf van hoogstens een jaar—

- (a) as hy gedurende die sekwestrasie van sy boedel krediet verkry vir 'n bedrag van meer as tien pond sonder om voorheen aan die persoon van wie hy krediet verkry, mee te deel dat hy 'n insolvent is, tensy hy bewys dat daardie persoon dit geweet het; of
- (b) as hy enige vergoeding hoegenaamd verleen, belowe of aanbied om te bewerkstelling dat 'n skuldeiser 'n aanbod van 'n akkoord aanneem of om verset teen 'n rehabilitasie te voorkom of om gedurende die sekwestrasie van 'n boedel iemand te beweeg om die ondersoek van 'n saak aangaande daardie boedel agterweê te laat of gegewens met betrekking daartoe te verswyg; of
- (c) as hy die bepalinge van artikel *sestien* of van sub-artikel (3), (4) of (12) van artikel *drie-en-twintig* oortree of verontagsaam, tensy hy bewys dat hy 'n redelike verontskuldiging vir daardie oortreding of verontagsaming had; of
- (d) as hy 'n valse verklaring maak in die vermoëstaats bedoel in artikel *vier* of *sestien* of in die staats bedoel in sub-artikel (4) van artikel *drie-en-twintig*.

Verkry van krediet gedurende insolvensie, aanbod van sekere vergoeding, ens.

136. 'n Insolvent is aan 'n misdryf skuldig en strafbaar met gevangenisstraf van hoogstens ses maande—

- (a) as hy versuim om te voldoen aan die vereistes van sub-artikel (1) van artikel *vier-en-sestig*; of
- (b) as hy versuim om, op skriftelike aansegging van die kurator van sy boedel, 'n ware, duidelike en gespesifiseerde uitleg van insolvensie te gee of versuim om juiste en gespesifiseerde rekenskap te gee van die feit dat sy skulde sy bate tebowe gaan; of
- (c) as hy op 'n byeenkomis van die skuldeisers van sy boedel, wanneer die kurator of die voorsittende amptenaar of 'n skuldeiser of die verteenwoordiger van een van hulle dit van hom verlang, versuim om rekenskap te gee of mee te deel wat geword het van goed wat so onlangs in sy besit was dat hy in die gewone loop van sake daarvan behoort rekenskap te kan gee; of
- (d) as hy versuim om te voldoen aan die vereistes van sub-artikel (13) van artikel *drie-en-twintig*.

Versuim om byeenkomste van skuldeisers by te woon of sekere inligtings te verstrek.

137. (1) Enigeen is aan 'n misdryf skuldig en strafbaar met 'n boete van hoogstens vyftig pond of met gevangenisstraf van hoogstens ses maande, sonder keuse van 'n boete—

- (a) as hy skuldig is aan 'n handeling of versuim waarvoor hy volgens sub-artikel (2) of (3) van artikel *ses-en-sestig* wettig na die gevangenis verwys is of had verwys kan word; of
- (b) as hy sonder redelike verontskuldiging versuim om te voldoen aan 'n kennisgewing wat ingevolge sub-artikel (2) of (3) van artikel *honderd-en-vyftig* aan hom oorhandig is of in gebreke bly om volledig te antwoord op 'n vraag wat ingevolge sub-artikel (4) van daardie artikel aan hom gestel is; of
- (c) as hy, wanneer hy volgens voorskrif van so 'n kennisgewing voor die Meester, magistraat of ander amptenaar verskyn, 'n valse antwoord op so 'n vraag gee of 'n valse verklaring aflê aangaande die insolvent of sy bedoel, met wete dat daardie antwoord of verklaring vals is.

Versuim om te verskyn of getuienis af te lê of aflëgging van valse getuienis.

(2) Enigeen is skuldig aan 'n misdryf en strafbaar met die straf waarmee iemand regtens weens meened strafbaar is, as hy, wanneer hy kragtens hierdie Wet onder eed ondervra word, 'n valse antwoord op 'n wettige vraag gee met wete dat daardie antwoord vals is of enige valse verklaring hoegenaamd aangaande die onderwerp van die ondersoek maak, met wete dat daardie verklaring vals is.

138. 'n Insolvent of die eggenote of eggenoot van 'n insolvent is aan 'n misdryf skuldig en strafbaar met gevangenisstraf van hoogstens ses maande, as hy of sy, wanneer hy of sy gedagvaar geword het om getuienis af te lê in 'n geding deur of teen die kurator van die insolvent se boedel ingestel, homself of haarself verberg of die Unie verlaat of sonder redelike verontskuldiging versuim om daardie geding by te woon of weier om 'n vraag te beantwoord wat aan hom of haar in die loop van daardie geding wettig gestel mag word.

Versuim van insolvent of eggenote of verskyn om eggenoot om te getuienis af te lê.

Acceptance of consideration for certain illegal acts or omissions.

139. Any person shall be guilty of an offence and liable to a fine not exceeding fifty pounds or to imprisonment without the option of a fine for a period not exceeding six months if he accepts any benefit or the promise or offer of any benefit as a consideration for having refrained from or discontinued, or for his undertaking to refrain from or to discontinue any proceedings for the sequestration of an estate or for having agreed to, or not opposed, or for his undertaking to agree to or not to oppose a composition in an insolvent estate or the rehabilitation of an insolvent, or for having refrained or undertaken to refrain from investigating any matter relating to an insolvent or an insolvent estate or from disclosing any information in regard to an insolvent or an insolvent estate.

Removing or concealing property to defeat an attachment or failure to disclose property.

140. (1) A person shall be guilty of an offence and liable to imprisonment for a period not exceeding three years if, either before or after the sequestration of an estate, he removes, conceals, disposes of, deals with or receives any asset belonging to that estate with intent to defeat an attachment by virtue of a sequestration order, or with intent to prejudice the creditors in that estate: Provided that in any proceedings for an offence under this sub-section, any such removal, concealment, disposal of, dealing with or receipt of assets which had the effect of defeating or was calculated to defeat such attachment or which prejudiced or was calculated to prejudice the creditors of that estate, shall, unless the contrary is proved, be deemed to have been committed with intent to defeat the attachment or (as the case may be) to prejudice those creditors.

(2) Any person who has in his possession or custody or under his control any property belonging to an insolvent estate and who knows of the sequestration of the estate and that the property belongs to it, shall be guilty of an offence and liable to a fine not exceeding three hundred pounds or to imprisonment without the option of a fine for a period not exceeding one year if he fails to inform the trustee of the estate as soon as possible of the existence and whereabouts of the property and (subject to the provisions of section *eighty-three*) to deliver it to, or place it at the disposal of the trustee.

(3) The provisions of sub-sections (1) and (2) shall not apply to an insolvent in respect of any property belonging to his own insolvent estate.

(4) A secured creditor of an insolvent estate who has realized his security in terms of section *eighty-three* and who has failed forthwith to pay over to the trustee of that estate as provided in sub-section (10) of that section, the proceeds of the realization, shall, apart from any other offence which he may have committed in connection with those proceeds, be guilty of an offence and liable to the penalties mentioned in sub-section (2).

Criminal liability of partners¹ administrators, servants or agents.

141. (1) A person who—

- (a) is or was a member of a partnership and who does or omits to do in relation to any property or to the affairs of that partnership or of the insolvent estate of that partnership; or
- (b) is or was charged with the administration of an estate and who does or omits to do in relation to any property or to the affairs of that estate; or
- (c) as a servant or agent has or had the sole or practical control of any property or of the affairs of his employer or principal and who does or omits to do in relation to that property or to the affairs of his employer or principal or of the insolvent estate of his former employer or principal,

any act which, if done or omitted by him in the like circumstances in relation to his own property or affairs or to any property belonging to, or the affairs of his insolvent estate, would have constituted an offence under this Act, shall be deemed to have committed that offence.

(2) The liability under sub-section (1) of a partner, servant or agent shall not affect the liability under that sub-section or under any other provision of this Act, of another partner or of a servant or agent of the same partnership, or of the employer or principal of the employee or agent who is so liable.

Criminal liability of trustee for neglect of certain duties.

142. If it was the duty of a trustee to submit an account to the Master or to pay a sum of money to the Master or to a creditor, and he failed to submit that account or to pay that sum of money within a period of two months as from the

139. Enigeen is aan 'n misdryf skuldig en strafbaar met 'n boete van hoogstens vyftig pond of met gevangenisstraf van hoogstens ses maande sonder keuse van 'n boete as hy een of ander voordeel of die belofte of aanbod van 'n voordeel aan-
 5 neem as vergoeding daarvoor dat hy 'n geding tot sekwestrasie van 'n boedel agterweë gelaat of gestaak het of dat hy hom verbind het om so 'n geding agterweë te laat of te staak, of dat hy tot 'n akkoord in 'n insolvente boedel of tot die rehabilitasie van 'n insolvent toegestem of hom nie daarteen
 10 verset het nie of dat hy hom verbind het om tot so 'n akkoord of rehabilitasie toe te stem of hom nie daarteen te verset nie, of dat hy die ondersoek van 'n saak betreffende 'n insolvent of 'n insolvente boedel agterweë gelaat het of hom verbind het om dit agterweë te laat of dat hy gegewens betreffende 'n
 15 insolvent of 'n insolvente boedel verswyg het of hom verbind het om dit te verswyg.

Aanname van vergoeding vir sekere onwettige handelings of versuim.

140. (1) Enigeen is aan 'n misdryf skuldig en strafbaar met gevangenisstraf van hoogstens drie jaar as hy of voor of na
 die sekwestrasie van 'n boedel, bate wat tot daardie boedel
 20 behoort, verwyder, verberg, wegmaak, daarvoor beskik of ontvang met die bedoeling om 'n beslaglegging kragtens 'n sekwestrasie-order te verydel of met die bedoeling om die skuldeisers van daardie boedel te benadeel: Met dien verstande dat in 'n geding weens 'n misdryf volgens hierdie sub-artikel
 25 so 'n verwydering, verberging, wegmaking, beskikking of ontvangs van bate, wat die verydeling van so 'n beslaglegging ten gevolge gehad het of wat so 'n beslaglegging kon verydel het of wat die skuldeisers van daardie boedel benadeel het of kon benadeel het, behoudens teëbewys vermoed word begaan
 30 te wees met die bedoeling om, al na die geval, die beslaglegging te verydel of daardie skuldeisers te benadeel.

Verwydering of verberging van goed om beslaglegging te verydel of versuim om goed te openbaar.

(2) Enigeen wat goed, wat tot 'n insolvente boedel behoort, in sy besit of bewaring of onder sy beheer het, en wat weet dat die boedel gesekwestreer is en dat die goed daartoe behoort,
 35 is aan 'n misdryf skuldig en strafbaar met 'n boete van hoogstens driehonderd pond of met gevangenisstraf van hoogstens een jaar, sonder die keuse van 'n boete, as hy versuim om so gou moontlik die kurator van die boedel kennis te gee van die bestaan van die goed en waar dit is en om dit aan die kurator
 40 te oorhandig of dit tot sy beskikking te stel dog behoudens die bepalings van artikel *drie-en-tagtig*.

(3) Die bepalings van sub-artikels (1) en (2) is nie van toepassing nie op 'n insolvent met betrekking tot goed wat tot sy eie insolvente boedel behoort.

45 (4) 'n Versekerde skuldeiser van 'n insolvente boedel wat sy sekuriteit te gelde gemaak het, volgens artikel *drie-en-tagtig* en wat versuim het om onverwyld volgens voorskrif van sub-artikel (10) van daardie artikel, die opbrings van die tegeldemaking aan die kurator oor te betaal, dit is, afgesien
 50 van enige ander misdryf wat hy in verband met daardie opbrings mog begaan het, aan 'n misdryf skuldig en strafbaar met die strawwe vermeld in sub-artikel (2).

141. (1) Iemand wat—

- 55 (a) lid van 'n vennootskap is of was en wat met betrekking tot goed of die sake van daardie vennootskap of van die insolvente boedel van daardie vennootskap; of
 (b) met die bereddering van 'n boedel belas is of was en wat met betrekking tot goed of die sake van daardie
 60 boedel; of
 (c) as dienaar of verteenwoordiger alleen of feitelik goed of die sake van sy baas of prinsipaal beheer of beheer het en wat met betrekking tot daardie goed of tot die sake van sy baas of prinsipaal of van die insolvente
 65 boedel van sy vorige baas of prinsipaal,

'n handeling verrig of nalaat wat, as hy dit in dergelike omstandighede met betrekking tot sy eie goed of sake of tot goed wat aan sy insolvente boedel behoort of tot die sake van sy insolvente boedel, verrig of nagelaat het, 'n misdryf volgens
 70 hierdie Wet sou uitgemaak het, word geag daardie misdryf te begaan het.

(2) Die aanspreeklikheid van 'n vennoot, dienaar of verteenwoordiger kragtens sub-artikel (1) is van geen invloed op die aanspreeklikheid, kragtens 'n ander bepaling van hierdie
 75 Wet, van 'n ander vennoot of van 'n dienaar of verteenwoordiger van dieselfde vennootskap of van die baas of prinsipaal van die dienaar of verteenwoordiger wat aldus aanspreeklik is.

142. As 'n kurator verplig was om 'n rekening aan die Meester voor te lê of om 'n geldsom aan die Meester of aan 'n
 80 skuldeiser te betaal en hy het versuim om daardie rekening voor te lê of om daardie geldsom te betaal binne 'n tydperk

Strafregtelike aanspreeklikheid van vennote, beredderaars, dienaar of verteenwoordigers.

Strafregtelike aanspreeklikheid van kurators weens versuim van sekere pligte.

time when that duty arose, he shall (apart from any other offence which he may have committed in connection with such sum of money) be guilty of an offence and liable to a fine not exceeding fifty pounds.

Obstructing trustee.

143. Any person who obstructs or hinders a trustee or his representative in the performance of his functions as such shall be guilty of an offence and liable to a fine not exceeding fifty pounds, or to imprisonment without the option of a fine for a period not exceeding six months.

Evidence of liability incurred by insolvent.

144. Whenever in any criminal proceedings under this Act any liability incurred by an insolvent or the date or time when the liability was incurred, is in issue or relevant to the issue, proof that a claim in respect of that liability has been admitted against the estate of the insolvent in accordance with any provision of this Act shall be sufficient evidence of the existence of the liability and any such liability shall be deemed to have been incurred upon the date or at the time alleged in any document submitted in accordance with any provision of this Act in support of that claim: Provided that the accused or the prosecutor in those proceedings may prove that no such liability or that a lesser or a greater liability was incurred or that it was incurred on a date or at a time other than the date or time so alleged.

Offences committed by insolvent in different provinces may be tried at his place of business or residence.

145. (1) Any court of law which has jurisdiction to try an insolvent in respect of an offence under this Act committed at the place where the insolvent mainly carried on business or resided at the time of the commission of the offence, shall have jurisdiction to try the insolvent in respect of such an offence committed anywhere in the Union.

(2) In sub-section (1) "insolvent" includes a person who is liable under sub-section (1) of section one hundred and forty-one.

Deportation of certain persons for certain offences.

146. If a person born elsewhere than in a part of South Africa which has been included in the Union, has been convicted of an offence under this Act or under the Insolvency Act, 1916, and in view of the circumstances of the offence the Minister of Justice deems him to be an undesirable inhabitant of the Union, the said Minister may, by warrant under his hand cause him to be removed from the Union and pending his removal, to be arrested and detained in custody.

Jurisdiction of the Court.

147. (1) The Court shall have jurisdiction under this Act over every debtor and in regard to the estate of every debtor who—

(a) on the date on which a petition for the acceptance of the surrender as for the sequestration of his estate is lodged with the registrar of the Court, is domiciled or owns or is entitled to property situate within the jurisdiction of the Court; or

(b) at any time within twelve months immediately preceding the lodging of the petition ordinarily resided or carried on business within the jurisdiction of the Court:

Provided that when it appears to the Court equitable or convenient that the estate of a person not domiciled in the Union be sequestrated elsewhere, or that the estate of a person over whom it has jurisdiction be sequestrated by another Court within the Union, the Court may refuse or postpone the acceptance of the surrender or the sequestration.

(2) The Court may rescind or vary any order made by it under the provisions of this Act.

Appeal.

148. (1) Any person aggrieved by a final order of sequestration or by an order setting aside an order of provisional sequestration may appeal against such order.

(2) Such appeal shall be noted and prosecuted as if it were an appeal from a judgment or order in a civil suit given by the Court which made such final order or set aside such provisional order, and all rules applicable to such lastmentioned appeal shall *mutatis mutandis*, but subject to the provisions of sub-section (3), apply to an appeal under this section.

(3) When an appeal has been noted (whether under this section or under any other law), against a final order of sequestration, the provisions of this Act shall nevertheless apply as if no appeal had been noted: Provided that no property belonging to the sequestrated estate shall be realized without the written consent of the insolvent concerned.

van twee maande vanaf die tydstop toe daardie verpligting ontstaan het, dan is hy (afgesien van enige ander misdryf wat hy in verband met daardie geldsom mog begaan het) aan 'n misdryf skuldig en strafbaar met 'n boete van hoogstens 5 vyftig pond.

143. Iemand wat 'n kurator of sy verteenwoordiger by die verrigting van sy werksaamhede as sodanig belemmer of hinder, is aan 'n misdryf skuldig en strafbaar met 'n boete van hoogstens vyftig pond of met gevangenisstraf van hoogstens ses 10 maande sonder keus van 'n boete.

144. Wanneer in 'n strafgeding ingevolge hierdie Wet 'n aanspreeklikheid, deur 'n insolvent aangegaan, of die dag of tyd wanneer die aanspreeklikheid aangegaan is, ter sake dien, dan word die bestaan van daardie aanspreeklikheid voldoende bewys deur die bewys dat 'n vordering op grond van daardie aanspreeklikheid volgens een of ander bepaling van hierdie Wet teen die boedel van die insolvent toegelaat is en word vermoed dat daardie aanspreeklikheid aangegaan is op die dag of tydstop aangegee in een of ander geskrif wat volgens een of ander bepaling van hierdie Wet tot staving van daardie vordering voorgelê is: Met dien verstande dat die beskuldigde of die vervolger in daardie geding kan bewys dat geen sodanige aanspreeklikheid of dat 'n kleiner of groter aanspreeklikheid aangegaan is of dat dit aangegaan is op 'n ander dag of tydstop 25 as die aldus aangegewe dag of tydstop.

145. (1) 'n Geregshof wat bevoeg is om 'n insolvent tereg te stel weens 'n misdryf volgens hierdie Wet, wat begaan is op die plek waar die insolvent vernaamlik besigheid gedrywe het of woonagtig was tydens die begaan van die misdryf, is bevoeg om die insolvent tereg te stel weens 'n sodanige misdryf 30 waar ook al in die Unie begaan.

(2) In sub-artikel (1) omvat „insolvent” iemand wat kragtens sub-artikel (1) van artikel honderd-een-en-veertig aanspreeklik is.

146. As iemand, wat elders gebore is as in 'n deel van Suid-Afrika wat in die Unie opgeneem is, skuldig bevind is aan 'n misdryf volgens hierdie Wet of volgens die „Insolventie Wet, 1916” en die Minister van Justisie hom, met die oog op die omstandighede van die misdryf, as 'n ongewenste inwoner van die Unie beskou, dan kan bedoelde Minister hom kragtens 40 'n deur die Minister ondertekende lasbrief uit die Unie laat verwyder en in afwagting van sy verwydering laat arresteer en in hegtenis hou.

147. (1) Die Hof is kragtens hierdie Wet bevoeg met betrekking tot elke skuldenaar en tot die boedel van elke skuldenaar 45 wat—

- (a) op die dag waarop 'n versoekskrif om aanname van die oorgawe of om sekwestrasie van sy boedel, by die griffier van die Hof ingedien word, in die regsgebied van die Hof gedomisileer is of die eienaar is van goed of geregtig is op goed wat daarin geleë is; of
- (b) te eniger tyd binne die twaalf maande wat aan die indiening van die versoekskrif onmiddellik voorafgaan, gewoonlik woonagtig was of besigheid gedryf het in die regsgebied van die Hof:

55 Met dien verstande dat as dit aan die Hof billik of gerieflik voorkom dat die boedel van iemand wat nie in die Unie gedomisileer is nie, elders gesekwestreer word, of dat die boedel van iemand ten opsigte van wie die Hof bevoeg is, deur 'n ander hof in die Unie gesekwestreer word, die Hof die aan- 60 name van die oorgawe of die sekwestrasie kan weier of uitstel.

(2) Die Hof kan elke order wat hy kragtens hierdie Wet uitgevaardig het, vernietig of wysig.

148. (1) Iemand wat homself verongelyk ag deur 'n finale sekwestrasie-order of deur 'n order wat 'n order van voorlopige 65 sekwestrasie vernietig, kan teen daardie order appelleer.

(2) So 'n appèl moet aangeteken en voortgesit word asof dit 'n appèl was van 'n vonnis of order in 'n siviele geding uitgevaardig deur die Hof wat daardie finale order uitgevaardig of daardie voorlopige order vernietig het en alle reëls wat op 70 laasbedoelde appèl van toepassing is, is *mutatis mutandis* dog behoudens die bepalings van sub-artikel (3), van toepassing op 'n appèl kragtens hierdie artikel.

(3) Wanneer 'n appèl aangeteken is (onverskillig of kragtens hierdie artikel of ingevolge 'n ander regsbeplating) teen 'n finale sekwestrasie-order, dan is die bepalings van hierdie Wet nogtans 75 van toepassing asof geen appèl aangeteken was nie: Met dien verstande dat geen goed wat tot die gesekwestreerde boedel behoort, te gelde gemaak kan word nie, sonder skriftelike toestemming van die betrokke insolvent.

Belemmering van kurator.

Bewys van aanspreeklikheid deur insolvent aangegaan.

Misdrywe deur insolvent in verskillende provinsies begaan kan op sy besigheids- of woonplek bereg word.

Deportasie van sekere persone weens sekere misdrywe.

Bevoegdheid van Hof.

Appèl.

(4) If an appeal against a final order of sequestration is allowed, the Court allowing such appeal may order the respondent to pay the costs of administering the estate.

Review.

149. Any person aggrieved by any decision, ruling, order, appointment or taxation of the Master or by a decision, ruling or order of an officer presiding at a meeting of creditors may bring it under review by the Court and to that end may apply to the Court by motion, after notice to the Master or to the presiding officer, as the case may be, and to any person whose interests are affected: Provided that if all or most of the creditors are affected, notice to the trustee shall be deemed to be notice to all such creditors; and provided further that the Court shall not re-open any duly confirmed trustee's account otherwise than as is provided in section *one hundred and nine*.

Master may direct trustee to deliver documents or property or call upon any person to furnish certain information.

150. (1) The Master may at any time direct a trustee to deliver to him any book or document relating or any property belonging to the insolvent estate of which he is trustee.

(2) If at any time after the sequestration of the estate of a debtor and before his rehabilitation, the Master is of the opinion that the insolvent or the trustee of that estate or any other person is able to give any information which the Master considers desirable to obtain, concerning the insolvent, or concerning his estate or the administration of the estate, he may by notice in writing delivered to the insolvent or the trustee or such other person direct him to appear before the Master or before a magistrate or an officer holding the rank of chief or principal clerk mentioned in such notice, at the place and on the date and hour stated in such notice, and to furnish the Master or other officer before whom he is directed to appear with all the information within his knowledge concerning the insolvent or concerning the insolvent's estate or the administration of the estate.

(3) After having questioned the person summoned as aforesaid the Master or other officer concerned may deliver to him a written notice to appear again before the Master or other officer at a place and upon a date and hour stated in such notice and to submit to the Master or such other officer any further information or any book or document specified in such notice.

(4) When any person summoned as aforesaid appears before the Master or other officer in question in compliance with a notice issued under sub-section (2) or (3) the Master or such other officer and if a person other than the trustee was summoned, also the trustee (or his agent) may question the person summoned in regard to any matter relating to the insolvent or his estate or the administration of the estate.

(5) The provisions of sub-section (2) of section *sixty-five* shall *mutatis mutandis* apply in connection with the production of any book or document or with the questioning of any person under the preceding provisions of this section.

Fees of office and certain costs.

151. (1) The Master shall recover in respect of the several matters mentioned in the Third Schedule to this Act the fees therein specified.

(2) Any expenses incurred by the Master or by an officer who is to preside or presides or has presided at a meeting of the creditors of an insolvent estate in the protection of the assets of an insolvent estate or in carrying out any provision of this Act shall, unless the Court otherwise orders, be regarded as part of the costs of the sequestration of that estate.

Custody of documents. Admissibility of copies or certificates.

152. (1) The Master shall have the custody of all documents relating to insolvent estates.

(2) If there is endorsed upon or attached to any document or record a certificate purporting to have been signed by a person describing himself as Master, wherein he describes the nature of the document or record and states that it relates to a specified insolvent or insolvent estate, that document or record shall on its mere production by any person *prima facie* be deemed to be what the certificate describes it to be.

(3) Any document or record upon which there is endorsed or to which there is attached a statement purporting to have been signed by a person describing himself as Master, wherein he certifies that the document is a true copy of or extract from a document or record relating to a specified insolvent or insol-

(4) As 'n appèl teen 'n finale sekwestrasie-order toegestaan word, kan die hof wat die appèl toestaan, die respondent veroordeel tot betaling van die koste van die bereddering van die boedel.

- 5 149. (1) Iemand wat homself verongelyk ag deur 'n beslissing, beskikking, bevel, aanstelling of taksasie van die Meester of deur 'n beslissing, beskikking of bevel van 'n amptenaar wat by 'n byeenkoms van skuldeisers voorsit, kan dit by die Hof in revisie bring en kan te dien einde by die Hof by wyse
10 van mosie aansoek doen, na kennisgewing aan die Meester of aan die voorsittende amptenaar, al na die geval, en aan enige ander persoon wie se belange daarmee gemoei is: Met dien verstande dat as al die skuldeisers of die meeste van hulle daarmee gemoei is, kennisgewing aan die kurator as
15 kennisgewing aan al daardie skuldeisers aangemerkt word; en met dien verstande, voorts, dat die Hof nie 'n behoorlik bekrachtigde kuratorsrekening kan heropen nie, dan alleen maar volgens voorskrif van artikel *honderd-en-nege*.

Revisie.

- 20 150. (1) Die Meester kan te eniger tyd 'n kurator gelas om aan hom te oorhandig een of ander boek of geskrif of goed wat betrekking het op, of behoort tot die boedel waarvan hy kurator is.

Meester kan kurator gelas om geskrifte of goed te oorhandig of enigeen aansê om sekere inligtings te verstrek.

- (2) As die Meester te eniger tyd voor die sekwestrasie van 'n boedel van 'n skuldenaar en voor sy rehabilitasie van mening
25 is dat die insolvent of die kurator van daardie boedel of enige ander persoon in staat is om inligtings te verstrek, wat die Meester wenslik ag om te verkry, aangaande die insolvent of aangaande sy boedel of die beheer van die boedel, dan kan hy by skriftelike kennisgewing, aan die insolvent of die kurator of
30 daardie ander persoon oorhandig, hom gelas om voor die Meester of voor 'n magistraat of 'n in daardie kennisgewing vermelde amptenaar wat die rang van hoofklerk of eerste klerk beklee, te verskyn op 'n plek, dag en uur in daardie kennisgewing aangegee, en om aan die Meester of ander amptenaar voor wie
35 hy gelas word om te verskyn, al die inligtings te verstrek waarvan hy kennis dra aangaande die insolvent of aangaande die boedel van die insolvent of die beheer van die boedel.

- (3) Na ondervraging van die persoon wat soas voormeld opgeroep is, kan die Meester of ander betrokke amptenaar aan
40 hom 'n skriftelike kennisgewing oorhandig dat hy weer voor die Meester of ander amptenaar moet verskyn op 'n plek, dag en uur in daardie kennisgewing aangegee en aan die Meester of daardie ander amptenaar die verdere inligtings of die boek of geskrif in daardie kennisgewing omskrywe, moet verstrek.

- 45 (4) Wanneer 'n soas voormeld opgeroepe persoon aan 'n kragtens sub-artikel (2) of (3) uitgevaardigde kennisgewing gevolg gee en voor die Meester of ander betrokke amptenaar verskyn, dan kan die Meester of daardie ander amptenaar, en as 'n ander persoon as die kurator opgeroep is, dan ook die
50 kurator (of sy verteenwoordiger) die opgeroepe persoon ondervra omtrent enige saak wat betrekking het op die insolvent of sy boedel of die beheer van die boedel.

- (5) Die bepalinge van sub-artikel (2) van artikel *vyf-en-sestig* is *mutatis mutandis* van toepassing in verband met die oorlegging
55 van 'n boek of geskrif of met die ondervraging van iemand kragtens voorgaande bepalinge van hierdie artikel.

151. (1) Die Meester moet met betrekking tot die aangeleenthede vermeld in die Derde Bylae tot hierdie Wet, die daarin aangegeve leges invorder.

Leges en sekere koste.

- 60 (2) Alle onkoste deur die Meester of deur 'n amptenaar wat by 'n byeenkoms van die skuldeisers van 'n insolvente boedel sal voorsit of voorgesit het, gemaak tot beskerming van die bate van 'n insolvente boedel of tot uitvoering van 'n bepaling van hierdie Wet, word beskou as 'n deel van die koste
65 van die sekwestrasie van daardie boedel, tensy die Hof anders gelas.

152. (1) Die Meester is belas met die bewaring van alle geskrifte wat op insolvente boedels betrekking het.

Bewaring van stukke.

- (2) As op 'n geskrif of verslag aangeteken is of daaraan geheg
70 is 'n sertifikaat wat heet onderteken te wees deur iemand wat homself Meester noem, waarin hy die aard van die geskrif of verslag omskrywe en verklaar dat dit tot 'n genoemde insolvent of insolvente boedel betrekking het, dan word daardie geskrif of verslag by sy blote vertoning, deur wie ook al, *prima facie*
75 geag te wees wat die sertifikaat verklaar dat dit is.

- (3) 'n Geskrif of verslag waarop aangeteken of waaraan geheg is 'n verklaring wat heet onderteken te wees deur iemand wat homself Meester noem, waarin hy sertifiseer dat die geskrif of verslag 'n juiste afskrif of uittreksel is van 'n geskrif of
80 verslag wat op 'n genoemde insolvent of insolvente boedel

vent estate, and wherein he describes the nature of the original document or record, shall on its mere production, by any person be as admissible in evidence in any court of law and be of the same force and effect as the original document or record would be if it bore or had attached to it the certificate mentioned in sub-section (2). 5

(4) A certificate, purporting to have been signed by a person describing himself as Master, stating that the estate of a person or partnership mentioned therein was sequestered on a date therein specified, or that an insolvent named therein has or has not been rehabilitated, or that any person named therein has or has not complied with any particular requirement of this Act, shall upon its mere production by any person be received as *prima facie* evidence of the facts therein stated. 10

Destruction of documents.

153. (1) After six months have elapsed as from the confirmation by the Master of the final trustees' account in any insolvent estate, the trustee may, with the consent in writing of the Master, destroy all books and documents in his possession relating to the estate. 15

(2) After five years have elapsed as from the rehabilitation of an insolvent the Master may destroy all records in his office relating to the estate of that insolvent. 20

(3) This section shall apply to all insolvent estates which have been finally liquidated or are in course of liquidation at the commencement of this Act. 25

Insurer obliged to pay third party's claim against insolvent.

154. Whenever any person (hereinafter called the insurer) is obliged to indemnify another person (hereinafter called the insured) in respect of any liability incurred by the insured towards a third party, the latter shall, on the sequestration of the estate of the insured, be entitled to recover from the insurer the amount of the insured's liability towards the third party but not exceeding the maximum amount for which the insurer has bound himself to indemnify the insured. 30

Formal defects.

155. (1) Nothing done under this Act shall be invalid by reason of a formal defect or irregularity, unless a substantial injustice has been thereby done, which in the opinion of the Court cannot be remedied by any order of the Court. 35

(2) No defect or irregularity in the election or appointment of a trustee shall vitiate anything done by him in good faith.

Regulations.

156. The Governor-General may from time to time make 40 regulations not inconsistent with the provisions of this Act, prescribing—

- (a) the procedure to be observed in any Master's office in connection with insolvent estates;
- (b) the form of, and manner of conducting proceedings under this Act;
- (c) the manner in which fees payable under this Act shall be paid and brought to account. 45

Short title and date of commencement.

157. This Act shall be called the Insolvency Act, 1936, and shall come into operation on the first day of January, 1937. 50

First Schedule.

FORMS.

FORM A.

Notice of Surrender of a Debtor's Estate (Section 4 (1)).

Notice is hereby given that application will be made to the of the Supreme Court on the day of 19..... at o'clock in the forenoon or as soon thereafter as the matter can be heard, for the acceptance of the surrender of the estate of* of and that a statement of his affairs will lie for inspection at the office of the Master of the Supreme Court at† (and at the office of) for a period of fourteen days as from the day of 19.....

Attorney for.....

19.....

* Here insert the name in full of the debtor and his occupation and address, and if the debtor is a partnership, its style or firm and the name in full and address of every partner, other than a partner en commandite or a special partner as defined in the Cape Act No. 24 of 1861 or the Natal Law No. 1 of 1865.

† If the statement of the debtor's affairs is to lie for inspection only in a Master's office, delete the words in brackets.

betrekking het en waarin hy die aard van die oorspronklike geskrif of verslag omskrywe, is by sy blote vertoning deur wie ook al, in enige geregshof ewe toelaatbaar as bewysstuk en ewe geldig as wat die oorspronklike geskrif of verslag sou wees 5 as die sertifikaat, bedoel in sub-artikel (2), daarop aangeteken of daaraan geheg was.

(4) 'n Sertifikaat wat heet onderteken te wees deur iemand wat homself Meester noem, waarin verklaar word dat die boedel van 'n daarin genoemde persoon of vennootskap op 'n daarin 10 aangegeewe dag gesekwestreer is, of dat 'n daarin genoemde insolvent al dan nie gerehabiliteer is, of dat 'n daarin genoemde persoon al dan nie voldoen het aan een of ander vereiste van hierdie Wet, word by sy blote vertoning, deur wie ook al, ontvang as bewys *prima facie* van die daarin beweerde feite.

15 153. (1) Na verloop van ses maande vanaf die bekragtiging, deur die Meester, van die finale kuratorsrekening in 'n insolvente boedel, kan die kurator met die skriftelike toestemming van die Meester alle boeke en geskrifte in sy besit, wat op die boedel 20 betrekking het, vernietig.

Vernietiging van stukke.

(2) Na verloop van vyf jaar vanaf die rehabilitasie van 'n insolvent kan die Meester alle stukke in sy kantoor, wat op die boedel van daardie insolvent betrekking het, vernietig.

(3) Hierdie artikel is van toepassing op alle insolvente boedels wat finaal gelikwideer of waarvan die likwidasie nog 25 aan die gang is by die inwerkingtreding van hierdie Wet.

154. Wanneer iemand (hieronder die versekeraar genoem) verplig is om iemand anders (hieronder die versekerde genoem) skadeloos te stel weens een of ander aanspreeklikheid wat die versekerde teenoor 'n derde party opgeleë het, dan is laasbe- 30 doelde by sekwestrasie van die boedel van die versekerde gereg- tig om van die versekeraar in te vorder die bedrag van die aanspreeklikheid van die versekerde teenoor die derde party, dog nie meer as die maksimum-bedrag waarvoor die versekeraar homself tot skadeloosstelling van die versekerde verbind het.

Versekeraar verplig tot betaling van vordering van derde party teen insolvent.

35 155. (1) Geen verrigting ingevolge hierdie Wet is weens 'n formele gebrek of onreëlmatigheid ongeldig nie, tensy daar- deur 'n aanmerklike onreg aangedaan is wat volgens die oordeel van die Hof nie deur 'n order van die Hof herstel kan word nie.

Formele gebreke.

(2) Geen gebrek of onreëlmatigheid by die verkiesing of 40 aanstelling van 'n kurator maak ongeldig wat hy te goeder trou verrig het.

156. Die Goewerneur-generaal kan van tyd tot tyd regulasies 50 uitvaardig wat nie met die bepalinge van hierdie Wet in stryd is nie, waarin voorgeskrywe word—

Regulasies.

(a) die prosedure wat in 'n Meesterskantoor in verband met insolvente boedels gevolg moet word;

(b) die vorm en wyse van uitvoering van verrigtings inge- volge hierdie Wet;

(c) die wyse waarop leges wat ingevolge hierdie Wet 50 verskuldig is, betaal en verantwoord moet word.

157. Hierdie Wet heet die Insolvensiewet, 1936, en tree op 20 die eerste dag van Januarie 1937 in werking.

Kort titel en dag van inwerking- treding.

Eerste Bylae.

FORMULIERE.

FORMULIER A.

Kenninggewing van Oorgawe van 'n Skuldenaar se Boedel (Artikel 4 (1)).
Hiermee word kennis gegee dat op die.....dag vanom.....uur voormiddags, of so spoedig daarna as wat die saak verhoor kan word, by die.....van die Hooggeregshof aansoek gedoen sal word om aanname van die oorgawe van die boedel van.....* en dat sy vermoëstaats op die kantoor van die Meester van die Hooggeregshof te† (en op die kantoor van.....) ter insage sal lê gedurende 'n termyn van veertien dae vanaf diedag van.....19.....

Prokureur van.....

19.....

* Vul hier in die naam voluit van die skuldenaar en sy beroep en adres en as die skuldenaar 'n vennootskap is, sy firmanaam en die naam voluit en adres van elke vennoot, behalwe 'n kommanditêre vennoot of 'n „special partner” soos omskrywe in die Kaapse Wet No. 24 van 1861 of die Natalse Wet No. 1 van 1865.

† As die skuldenaar se vermoëstaats alleen in 'n Meesterskantoor ter insage sal lê, skrap dan die woorde tussen hakies.

FORM B.

Statement of Debtor's Affairs (Sections 4 (2) and 16).

Balance Sheet of*

<i>Liabilities.</i>			<i>Assets.</i>		
	£	s. d.		£	s. d.
Debts due as per Annexure IV.			Immovable property as per Annexure I		
			Movable property, furniture, stock-in-trade etc. as per Annexure II.		
			Outstanding claims, etc., as per Annexure III.		
			Deficiency.		
Total			Total		

* Here insert the name in full of the debtor.

ANNEXURE I.

Immovable Property.

	Description of property.	Situation and extent.	Mortgages thereon.	Estimated values.
				£ s. d.
Property situate in the Union				
Property situate elsewhere				
			Total	

ANNEXURE II.

Furniture, Stock-in-Trade, Live Stock, Implements, Shares, Insurance Policies and all other Movable Property not included in Annexure III.

	Description of property.	Estimated values.
		£ s. d.
Property situate in the Union		
Property situate elsewhere		
	Total	

Note.—Any merchandise mentioned in the foregoing statement shall be valued at its cost price or at its market value at the time of the making of the affidavit verifying this statement, whichever is the lower, and the statement shall be supported by detailed stock sheets relating to such merchandise.

ANNEXURE III.

Outstanding Claims, Bills, Bonds and other Securities.

	Name and residential and postal address of the debtor.	Particulars of claim.	Estimated amount good.	Estimated amount bad or doubtful.
			£ s. d.	£ s. d.
In the Union				
Elsewhere				
		Total		

ANNEXURE IV.

List of Creditors.

Name and address of creditor.	Nature and value of security for claim.	Nature of claim.	Amount of Claim.
			£ s. d.
		Total	

FORMULIER B.

Vermoëstaat van Skuldenaar (Artikels 4 (2) en 16).

Balansstaat van

Skulde.	Bate.
£ s. d.	£ s. d.
Skulde soas aangegee in Aanhangel IV ..	Onroerende goed soas aangegee in Aanhangel I
	Roerende goed soas aangegee in Aanhangel II
	Uitstaande vorderings, ens. soas aangegee in Aanhangel III. ..
	Tekort
Totaal	Totaal

* * Vul hier in naam van skuldenaar voluit.

AANHANGSEL I.

Onroerende Goed.

	Beskrywing van goed.	Ligging en grootte.	Verbande daarop.	Geskatte waarde.
				£ s. d.
In die Unie geleë goed				
Elders geleë goed ..				
			Totaal	

AANHANGSEL II.

Meubels, Handelsvoorraad, Vee, Gereedskap, Aandeel, Assuransiepolis en alle ander roerende goed wat nie in Aanhangel III aangegee word nie.

	Beskrywing van goed.	Geskatte waarde.
		£ s. d.
In die Unie geleë goed ..		
Elders geleë goed ..		
	Totaal	

Aanmerking.—Alle handelware, in voorgaande staat aangegee, moet gewaardeer word op sy kosteprys of op sy markwaarde op die tydstip waarop die beëdigde verklaring tot bevestiging van hierdie staat afgeleë word, na gelang die een of die ander laer is, en die tsaat moet gestaaf wees deur gespesifiseerde voorraadstate wat op daardie handelware betrekking het.

AANHANGSEL III.

Inskulde, Wissels, Verbande en ander Sekuriteite.

	Naam, woon- en posadres van skuldenaar.	Besonderhede van inskuld.	Geskatte bedrag inbaar.	Geskatte bedrag oninbaar of twyfelagtig.
			£ s. d.	£ s. d.
In die Unie ..				
Elders ..				
		Totaal ..		

AANHANGSEL IV.

Lys van Skuldeisers.

Naam en adres van skuldeiser.	Aard en waarde van sekuriteit vir vordering.	Aard van Vordering.	Bedrag van Vordering.
			£ s. d.
		Totaal ..	

ANNEXURE V.

Movable Assets Pledged, Hypothecated, Subject to a Right of Retention or under Attachment in Execution of a Judgment.

Description of asset.	Estimated value of asset.	Nature of charge on asset.	Amount of debt to which charge relates.	Name of creditor in whose favour charge is.

ANNEXURE VI.

Enumeration and description of every book in use by the debtor at time of notice of surrender or sequestration, or at the time when he ceased carrying on business.

ANNEXURE VII.

Detailed Statement of Causes of Debtor's Insolvency.

ANNEXURE VIII.

Personal Information.

State whether the debtor is married, widowed or divorced.....

If the debtor is or was married, state—

(a) name or names of spouse or spouses.....

.....; and
(b) whether the debtor is or was married in or without community of property.....

State the debtor's race and nationality.....

State the debtor's place of birth.....

Was the debtor's estate or the estate of a partnership in which the debtor is or was a partner previously sequestrated or placed in bankruptcy, whether in the Union or elsewhere?

If the preceding answer is in the affirmative, state—

(a) whether debtor's own estate or his partnership's estate was
(i) sequestrated; or (ii) placed in bankruptcy.....

.....;
(b) the place where and the date when that estate was sequestrated,
or placed in bankruptcy.....

.....;
(c) whether the debtor has been rehabilitated or his estate released;
if so when.....

The foregoing balance sheet and statements shall be verified by an affidavit in the subjoined form, made by the debtor or by the person who on behalf of the debtor presented the petition tendering the surrender of the debtor's estate, or who is the representative of the debtor or his estate.

AFFIDAVIT.

declare under oath*

I,

solemnly and sincerely declare that to the best of my knowledge and belief the statements contained in the foregoing balance sheet and the Annexures thereto are true and complete, and that every estimated amount therein contained is fairly and correctly estimated.

Signature of declarant.....

Sworn

* before me on the.....

Solemnly declared

day of..... at

Commissioner of Oaths.

* Delete inappropriate words.

FORM C.

Affidavit for the Proof of any Claim other than a Claim based on a Promissory Note or other Bill of Exchange (Section 44 (4)).

In the Insolvent Estate of.....

Name in full of creditor.....

Address in full.....

Total amount of claim..... £.....

declare under oath

I,

solemnly and sincerely declare*

(1) That....., whose estate has been sequestrated, was at the date of sequestration, and still is, indebted to..... in the sum of..... for.....

(2) That the said debt arose in the manner and at the time set forth in the account hereunto annexed.

AANHANGSEL V.

Roerende Bate wat Verpand, met Hipoteek Beswaar, aan 'n Retensiereg Onderworpe of tot Uitvoering van 'n Vonnis met Beslag belê is.

Beskrywing van bate.	Geskatte waarde van bate.	Aard van beswaring van bate.	Bedrag van skuld waarvoor bate beswaar is.	Naam van skuldeiser ten gunste van wie bate beswaar is.

AANHANGSEL VI.

Opgawe en beskrywing van elke boek in gebruik van skuldenaar op tydstip van kennisgewing van boedeloorgawe of sekwestrasie of toe hy opgehou het om besigheid te dryf.

AANHANGSEL VII.

Uitvoerige Beskrywing van Oorsake van Skuldenaar se Insolvensie.

AANHANGSEL VIII.

Persoonlike Gegewens.

Vermeld of skuldenaar getroud, wedunaar of weduwee of geskeie is

As skuldenaar getroud is of was, vermeld—

(a) naam of name van eggenoot of eggenote

(b) of die skuldenaar in of buite gemeenskap van goedere getroud is of was

Vermeld skuldenaar se ras en nasionaliteit

Vermeld skuldenaar se geboorteplek

Was die skuldenaar se boedel of die boedel van 'n vennootskap waarvan die skuldenaar 'n vennoot is of was, voorheen gesekwestreer of bankrot verklaar, hetsy in die Unie of elders?

As voorgaande antwoord bevestigend is, vermeld—

(a) of skuldenaar se eie boedel dan wel die boedel van sy vennootskap (i) gesekwestreer; of (ii) bankrot verklaar is

(b) waar en wanneer daardie boedel gesekwestreer of bankrot verklaar is

(c) of die skuldenaar gerehabiliteer of sy boedel vrygegee is, en indien van wel, wanneer

Die voorgaande balansstaat en verklaringe moet bevestig word deur 'n beëdigde verklaring in onderstaande vorm, afgelê deur die skuldenaar of deur die persoon wat namens die skuldenaar die versoekskrif ingedien het waarin die oorgawe van die skuldenaar se boedel aangebied word of wat die skuldenaar of sy boedel verteenwoordig.

BEËDIGDE VERKLARING.

verklaar onder eed*

Ek

plegtig en na waarheid

dat die bewerings in die voorgaande balansstaat en sy aanhangsels vir so ver as wat ek weet en glo waar en volledig is en dat elke daarin voorkomende geskatte bedrag billik en juis geskat is.

Handtekening van Verklaarder.

beëdig

Voor my te

plegtig verklaar

op die dag van

Kommissaris van Ede.

* Skrap wat nie toepaslik is nie.

FORMULIER C.

Beëdigde Verklaring tot Bewys van 'n Ander Vordering as 'n Vordering op Grond van 'n Promesse of ander Wissel (Artikel 44 (4)).

In die Insolvente Boedel van

Naam voluit van skuldeiser

Adress voluit

Totale bedrag van vordering

verklaar onder eed*

Ek

plegtig en na waarheid

(1) Dat, wie se boedel gesekwestreer is, op die dag van die sekwestrasie aan die som van geskuld het (en dit nou nog skuld) weens

(2) Dat voornelde skuld ontstaan het op die wyse en tydstip vermeld in aangehegte rekening.

(3) That no other person besides the said.....
is liable (otherwise than as surety) for the said debt on any part thereof.

(4) That I have
the said..... has * not, nor has any
other person, to my knowledge on $\frac{\text{my}}{\text{his}}$ * behalf received any security
for the said debt or any part thereof, save and except †.....

Signature of declarant.....

Sworn
Solemnly declared * before me on the..... day of

at

Commissioner of Oaths.

* Strike out inappropriate words according to the facts of the case.
† Here insert nature, particulars and value of mortgage, pledge or other security.

FORM D.

Affidavit for the Proof of a Claim based on a Promissory Note or other Bill of Exchange. (Section forty-four (4).)

In the Insolvent Estate of.....

Name in full of creditor.....

Address in full.....

Total amount of claim.....

I..... declare under oath
solemnly and sincerely declare*

(1) That....., whose estate has been sequestrated,
was on the date of sequestration, and still is, indebted to
..... in the sum of....., by virtue
of the following $\frac{\text{promissory note}}{\text{bill of exchange}}$ *

Date of note or bill.	Name of maker or drawer.	Name of acceptor.	Name of person to whom payable.	Date when payable.	Name of endorser.	Amount.

(2) That the said debt arose in the manner and at the time set forth in the account hereunto annexed.

(3) That I have
the said..... has* not, nor has any other person
to my knowledge on $\frac{\text{my}}{\text{his}}$ * behalf received any security for the
said debt or any part thereof, save and except †.....

(4) That besides the said..... one.....
mentioned above, is liable to me
the said..... * as.....
of the said $\frac{\text{note}}{\text{bill}}$ *, as aforesaid.

(5) That the said $\frac{\text{note}}{\text{bill}}$ * is in all respects genuine and valid.

Signature of declarant.....

Sworn
Solemnly declared* before me on the..... day of

at

Commissioner of Oaths.

*Strike out inappropriate words, according to the facts of the case.
†Here insert nature, particulars and value of mortgage, pledge or other security.

- (3) Dat niemand anders as genoemde.....
vir voormelde skuld of 'n deel daarvan aanspreeklik is nie (behalwe
as borg).
- (4) Dat nog ek
genoemde....., * nog, so ver ek weet,
iemand anders namens my
hom sekuriteit vir voormelde skuld of 'n
deel daarvan ontvang het nie behalwe†.....

Handtekening van verklaarder.

Voor my te..... beëdig
plegtig verklaar
op die..... dag van.....

Kommissaris van Ede.

* Skrap wat nie toepaslik is nie, al na die feite van die geval.
† Vul hier in die aard, besonderhede en waarde van verband, pand
of ander sekuriteit.

FORMULIER D.

Beëdigde Verklaring tot Bewys van 'n Vordering op Grond van 'n Promesse
of ander Wissel. (Artikel vier-en-veertig (4).)

In die Insolvente Boedel van.....
Naam voluit van skuldeiser.....
Adres voluit.....
Totale bedrag van vordering.....

Ek..... verklaar onder eed
plegtig en na waarheid*

- (1) Dat..... wie se boedel gesekwestreer is,
op die dag van die sekwestrasie aan..... die
som van..... geskuld het (en dit nou nog
skuld) op grond van die volgende promesse:
wissel.

Datum van pro- messe of wissel.	Naam van onder- tekenaar of trekker.	Naam van aksep- tant.	Naam van gereg- tigde.	Datum waarop betaal- baar.	Naam van endos- seerder.	Bedrag.

- (2) Dat voormelde skuld ontstaan het op die wyse en tydstip vermeld
in aangehegte rekening.

- (3) Dat nog ek,
genoemde..... * nog, so ver ek weet, iemand
anders namens my
hom* sekuriteit vir voormelde skuld of 'n deel daarvan
ontvang het nie, behalwe†.....

- (4) Dat afgesien van genoemde..... ene.....
hierbo vermeld, teenoor my
genoemde..... * aanspreeklik is
as..... van voormelde promesse,
wissel* soas hierbo

- (5) Dat bedoelde promesse
wissel* in alle opsigte eg en geldig is.

Handtekening van verklaarder

Voor my te..... beëdig
plegtig verklaar * op die.....
dag van.....

Kommissaris van Ede.

*Skrap wat nie toepaslik is nie, al na die feite van die geval.
†Vul hier in die aard, besonderhede en waarde van verband, pand
of ander sekuriteit.

Second Schedule.

TARIFF A.

Deputy Sheriff's Fees (section nineteen (5).)

	£	s.	d.
For the attachment of movable property on one set of premises, from 10s. 6d. to	1	1	0
For the attachment of movable property on each further set of premises beyond the first, 5s. to	10	6	
For making of an inventory, per 100 words, or portion thereof	5	0	
For every copy thereof, if necessary, per 100 words, or portion thereof	1	0	
For assistance (if necessary) in making inventory:			
(a) if within 3 miles from the deputy-sheriff's office per day (inclusive)	10	6	
(b) if beyond that distance per day (inclusive)	1	1	0
For notice of attachment of movable property, if necessary	5	0	
For each separate possession (as defined in the rules for the construction of this tariff) per day or portion thereof: a reasonable inclusive fee not exceeding	10	6	
For removal and storage: the necessary costs thereof.			
For herding and tending of livestock: the necessary costs thereof, and in addition thereto, a commission of 1½ per cent. of the value of the livestock.			
Travelling allowance per mile or fraction thereof	1	0	
If the deputy-sheriff is necessarily accompanied by an officer or assistant, additional travelling allowance may be charged at half the above rate.			
For any work necessarily done by as on behalf of the deputy-sheriff in performing his duties under section <i>nineteen</i> of the Act, for which no provision is made in this tariff: an amount to be determined by the Master.			

Rules for the Construction on the Tariff and the Guidance of the Deputy-sheriff.

- (1) In the Tariff "possession" means the continuous and necessary presence on the premises in question for the period in respect of which possession is charged of a person employed and paid by the deputy-sheriff for the sole purpose of retaining possession.
- (2) When a charge is made for possession of any property, no charge shall be allowed for herding and tending of livestock if one and the same person could render both services.
- (3) If there are more ways than one of doing any particular act, the least expensive way shall be adopted unless there is some reasonable objection thereto.
- (4) No travelling allowance shall be charged unless it was necessary for the deputy-sheriff to go beyond a distance of three miles from his office; but when any such allowance is payable, it shall be paid for the actual distance travelled in going from and returning to the office.
- (5) No charge shall be made for the cost of any transport, railway fare, etc., in addition to a charge for travelling allowance.
- (6) If more services than one can be performed on the same journey, the distance to the first place of service may be brought into account only once, and shall be apportioned equally to the respective services; and the distance from the first place of service to the next place of service shall similarly be apportioned equally to the remaining services, and so forth.
- (7) The deputy-sheriff may not charge for an inventory for his own use.
- (8) If the execution of a judgment has been stayed by publication of notice of surrender or by sequestration after an inventory has been made, for the purpose of the execution, no charge shall be made for a second inventory of the same goods. The deputy-sheriff's fees for making the inventory shall be charged to the insolvent estate in question, according to the tariff, and not to the execution creditor, unless the estate is unable to pay those fees.
- (9) The deputy-sheriff may pay rent, if necessary for premises required for the storage of goods attached, for a period of one month or such longer period as the Master shall authorize.
- (10) Every question arising under or relative to the tariff shall be determined by the Master.

TARIFF B.

Remuneration of Trustee (section sixty-three).

Upon the proceeds of movable property (other than shares or similar securities) sold, or upon the amount collected under promissory notes or book debts, or as rent, interest, or other income	5 per cent.
Upon the proceeds of immovable property, shares and similar securities sold, life insurance policies and mortgage bonds recovered:	
Upon the first £5,000	2½ per cent.
Upon any amount in excess of the first £5,000	1½ per cent.
Upon cash in the estate	1 per cent.
If the total remuneration of a trustee under this tariff is less than £40 in all, he shall be entitled, up to that amount, to remuneration at the rate of 5 per cent. on the value of all the assets of the estate, with a minimum of £5 5s.	

Remuneration of Curator Bonis and Provisional Trustee.

A reasonable remuneration to be determined by the Master, not to exceed the rates of remuneration of a trustee under this tariff.

Tweede Bylae.**TWEDE BYLAAG.****TARIEF A.***Foos van Adjunk-Balju (artikel negentien (5).)*

	f	s.	d.
Vir beslaglegging op roerende goed op een perseel van 10s. 6d. tot	1	1	0
Vir beslaglegging op roerende goed op elke verdere perseel na die eerste, van 5s. tot	10	6	
Vir opmaak van 'n inventaris, per 100 woorde of 'n deel daarvan	5	0	
Vir elke afskrif daarvan, indien nodig, per honderd woorde of 'n deel daarvan	1	0	
Vir hulp, indien nodig, by die opmaak van 'n inventaris—			
(a) indien binne 3 myl van die adjunk-balju se kantoor, per dag (alles inbegrepe)	10	6	
(b) indien verder, per dag (alles inbegrepe)	1	1	0
Vir kennisgewing van beslaglegging op roerende goed, indien nodig	5	0	
Vir elke afsonderlike besit (soos omskrywe in die reëls vir die toepassing van hierdie tarief), per dag of deel van 'n dag: 'n redelike alles insluitende fooi van nie meer as	10	6	
Vir vervoer en berging: die nodige koste daarvan			
Vir oppas van vee: die nodige koste daarvan en buitendien 'n kommissie van 1½ persent van die waarde van die vee.	1	0	
'n Reistoelae per myl of 'n deel daarvan			
As 'n amptenaar of helper die adjunk-balju noodsaaklik moet vergesel, dan kan vir hom 'n verdere reistoelae bereken word teen die helfte van voormelde skaal.			
Vir alle werk deur of namens die adjunk-balju noodsaaklik verrig tot nakoming van sy verpligtings ingevolge artikel negentien van die Wet, waarin hierdie tarief nie voorsien nie: 'n bedrag deur die Meester vas te stel.			

Reëls vir die toepassing van die Tarief en as Leidraad vir die Adjunk-Balju.

- (1) In die Tarief beteken „besit” die voortdurende en nodige aanwezigheid op die betrokke perseel, gedurende die tydperk waarvoor „besit” in rekening gebring word, van iemand wat deur die adjunk-balju gehuur en betaal is uitsluitend om in besit te bly.
- (2) Wanneer besit van een of ander goed in rekening gebring word, dan mag geen loon vir oppas van vee in rekening gebring word nie, as een en dieselfde persoon albei dienste kon verrig het.
- (3) As 'n bepaalde handeling op meer as een wyse verrig kan word, moet die goedkoopste wyse toegepas word, tensy 'n redelike beswaar daarteen bestaan.
- (4) Geen reistoelae mag in rekening gebring word nie, tensy die adjunk-balju noodsaaklik verder as drie myl van sy kantoor af moes gaan; maar as so 'n toelae verskuldig is, word dit betaal vir die werklik afgelegde afstand vanaf die kantoor tot weer terug daarheen.
- (5) Geen koste van transport, spoorgeld, ens. mag benewens 'n reistoelae in rekening gebring word nie.
- (6) As meer as een diens op dieselfde reis verrig kan word, dan kan die afstand na die eerste diensplek net eenmaal in rekening gebring word en moet gelykop oor die betrokke dienste omgeslaan word. Die afstand van die eerste diensplek tot by die volgende diensplek moet op gelyke wyse gelyk op oor die orige dienste omgeslaan word en so voort.
- (7) Die adjunk-balju mag nie 'n inventaris vir sy eie gebruik in rekening bring nie.
- (8) As die tenuitvoerlegging van 'n vonnis gestaak is deur die publikasie van 'n kennisgewing van boedeloorgawe of deur sekwestrasie nadat 'n inventaris opgemaak is na aanleiding van die tenuitvoerlegging, dan kan die opmaak van 'n tweede inventaris nie in rekening gebring word nie. Die adjunk-balju se fooi vir die opmaak van die inventaris moet teen die betrokke insolvente boedel in rekening gebring word en nie teen die eksekusie-skuldeiser nie, tensy die boedel nie daardie fooi kan betaal nie.
- (9) Die adjunk-balju kan, indien nodig, huur betaal vir die bewaring van in beslag genome goed gedurende 'n tydperk van 'n maand of so 'n langer tydperk as wat die Meester mag veroorloof.
- (10) Elke kwessie wat uit die tarief ontstaan of daarop betrekking het, word deur die Meester beslis.

TARIEF B.*Vergoeding van Kurator (artikel drie-en-sestig).*

- Op die opbrings van verkoopte roerende goed (buiten aandele of soortgelyke effekte) of op die bedrag wat kragtens promesse of boekskulde of as huur, rente of ander inkomste ingevorder is 5 persent.
- Op die opbrings van verkoopte onroerende goed, aandele en soortgelyke effekte en op ingevorderde lewens-assuransiepolis en verbande:
- Op die eerste £5,000 2½ persent.
- Op enige bedrag bo die eerste £5,000 1½ persent.
- Op kontant geld in die boedel 1 persent.
- As die totaal-vergoeding van 'n kurator volgens hierdie tarief alles tesame minder bedra as £40, dan is hy geregtig op vergoeding, tot op daardie bedrag, teen 5 persent van die waarde van al die bate in die boedel, met 'n minimum van £5 5s.

Vergoeding van Curator Bonis en Voorlopige Kurator.

'n Redelike vergoeding, deur die Meester te bepaal, dog nie meer as volgens die skaal van vergoeding van 'n kurator ingevolge hierdie tarief.

Third Schedule.

MASTER'S FEES OF OFFICE (SECTION one hundred and fifty-one).

	£	s.	d.
For every certificate under the hand of the Master	5	0	
For every report submitted by the Master, an amount in the discretion of the Master, but subject to taxation by the Court, and not less than	10	0	
For inspection of documents in any one estate, excepting by or on behalf of a trustee	2	0	
For binding documents in each estate according to the size of the estate, in the discretion of the Master from 7s. to	1	10	0
For taxing a trustee's remuneration or a bill of costs on every one pound or fraction of a pound of the amount taxed	1	0	
Upon the assets in an insolvent estate available for distribution among creditors :			
Upon the first £5,000 : $\frac{1}{4}$ per cent, with a minimum of £1.			
Upon any amount in excess of the first £5,000 : $\frac{1}{4}$ per cent.			
For extracts or copies of documents made or certified in the office of a Master, in addition to the fee mentioned in the first item of the Schedule :			
For the first 100 words	2	0	
For each subsequent 100 words or part thereof	1	0	
On any amount paid by the trustee into the Guardians' Fund, for account of creditors 5 per cent.			

Derde Bylae.**LEGES VAN DIE MEESTER (ARTIKEL honderd-een-en-vyftig).**

	£	s.	d.
Vir elke deur die Meester ondertekende sertifikaat ..	5	0	
Vir elke deur die Meester voorgelegde verslag, 'n bedrag deur die Meester na goedvinde vasgestel, dog dit kan deur die Hof getakseer word en mag nie minder bedra as ..	10	0	
Vir die insage van stukke in een bepaalde boedel, behalwe deur of namens 'n kurator ..	2	0	
Vir die inbinde van stukke in elke boedel, al na die grootte van die boedel, volgens goedvinde van die Meester : 7s. tot	1	10	0
Vir die takseer van 'n kurator se vergoeding of van 'n kosterekening, op elke pond of breukdeel van 'n pond van die getakseerde bedrag ..	1	0	
Op die bate in 'n insolvente boedel wat ter verdeling onder skuldeisers beskikbaar is : Op die eerste £5,000 : $\frac{1}{4}$ persent met 'n minimum van £1 Op enige bedrag bo die eerste £5,000 : $\frac{1}{4}$ persent.			
Vir uittreksels of afskrifte van geskrifte wat in die kantoor van 'n Meester gemaak of gesertifiseer is; buiten die leges boedel in die eerste item van hierdie Bylae :			
Vir die eerste 100 woorde ..	2	0	
Vir elke volgende honderdtal woorde of deel daarvan	1	0	
Op elke bedrag wat die kurator op rekening van skuldeisers in die Voogdyfonds stort 5 persent.			



PRINTED IN THE
UNION OF SOUTH AFRICA
BY CAPE TIMES LTD.,
KEEROM STREET,
CAPE TOWN.