

ADMINISTRATIVE OFFICIALS

Duties of Superintendent—Section 39 (4) (g)

The provision in Section 39, (4) (g) for the Superintendent of Bankruptcy auditing and examining trustees' accounts of receipts and disbursements and final statements and granting releases to trustees should be deleted and these functions left with the Court where they now rest. Oral explanation is often necessary in passing accounts, especially in large estates and the Courts are more accessible and provide more facility for oral explanations than the Superintendent in Ottawa acting for the whole of Canada. Moreover, while these proceedings are in the Court, creditors can intervene as the trustee must give them notice. Also, no provision is made for creditors and trustees appealing from the decision of the Superintendent, except in Section 91 (8).

No Trustee Bound to Act—Section 40 (3)

As the trustee is to be appointed in the first instance, he has not sufficient opportunity to investigate before appointment. Under Section 40 (3) he should not be bound to act until following his acceptance he has been confirmed at the first meeting of creditors.

DUTIES AND POWERS OF TRUSTEE

Insurance—Section 44 (1)

The trustee should not be required to take out theft insurance as is required by Section 44 (1). Frequently burglary insurance on the assets of a bankrupt estate cannot be obtained. Also assets are frequently of such nature that burglary insurance is not required and its cost would be an unnecessary burden on the estate.

Moneys to be Deposited in Bank—Section 44 (3)

It is impractical to limit all payments to cheques drawn on the estate account as is provided in Section 44 (3). Moreover, cheques are not legal tender.

Books and Records—Section 44 (5), (6) (7)

With regard to the books to be kept by the Trustee, Section 44 (5) is too detailed. It would require trustees with other good systems to conform to the particular method laid down. Also there is considerable doubt whether certain of the records mentioned should be kept separate for each estate. There are strong arguments in favour of their being kept in a general minute book of the trustee. Section 55 of the present Act is adequate and should be retained as the proposed subsection would be impractical in large and operating estates.

It would not be fair to require a trustee to surrender the records mentioned in ss. (6) and (7) to a new trustee or the Superintendent. Once the records were gone, the original trustee would be without the means of answering enquiries or protecting himself.

Persons Claiming Property in Possession of the Bankrupt—Section 53 (1)

The new provision in Section 53 (1) that the trustee may waive the filing of a proof of claim if satisfied a claimant is legally entitled to property, should be struck out as it is likely to lead to loose practice. A proof of claim should always be required.

How Filed Claim Disposed of—Section 53 (2)

The periods allowed the trustee in Section 53 (2) to admit or dispute claims and allowed the claimant to appeal should each be increased from 15 to 30 days. The trustee should have 30 days normally to complete investigations before being required to admit or dispute claims and, where necessary, a longer time