

claims provable under this Act", this provision would be too broad in its effect. Restriction of the definition of "creditor" to exclude unsecured creditors would cure this difficulty.

PART III

GENERAL

Section 26(1)—"stay of proceedings"

Here again the definition of "creditor" in section 2(o) to include a secured creditor would make impossible for the latter without leave of the court to realize upon his security or avail himself of any remedy in respect of the property covered thereby. This would be contrary to all previous practice and would constitute a complete reversal of the settled law that property of the bankrupt covered by security given to a secured creditor need not be affected by the bankruptcy.

Section 26(2)—"secured creditors"

As the corresponding provision stands in the present Act, it is intended to authorize the secured creditor to realize upon his security "unless the court otherwise orders". The effect, however, of making this right subject to the provisions of the preceding subsection would completely change its effect and as already stated would make it necessary for the secured creditor to obtain leave of the court before availing himself of his legal remedies in respect of the security. It will be readily appreciated that such a requirement would impose a considerable expense upon a bank which was seeking a speedy realization of its security and the delays which would almost certainly ensue in obtaining leave might result in serious depreciation of perishable goods upon which security had been given and consequent loss to the bank. The provision would be completely unworkable and would constitute an unjustifiable fettering of the rights of secured creditors.

PART IV

ADMINISTRATION OF ASSETS

Section 39(11)—(13)—"Administrative officials, Superintendent may examine bank accounts . . . private records and documents, outside investigations"

These provisions do not expressly empower the superintendent to authorize accountants and others to act on his behalf in these examinations and investigations. The banks by reason of the banker-customer relationship are obliged to maintain secrecy concerning their customers' affairs and are liable for any unauthorized disclosure. It is necessary therefore that any legislative authorization to any government official to obtain information from the bank concerning a customer's affairs be clear cut and explicit and if any examination or investigation is to be conducted by anyone other than the superintendent he should be expressly empowered to authorize in writing such person to act on his behalf.

Section 68(1)—Avoidance of preference in certain cases.

The combined effect of this provision and of section 69(2), which thrusts the onus of proof on the person asserting the validity of the transaction, is that no transaction during three months prior to bankruptcy, within the meaning of the broad definition in section 2(jj), could stand unless the creditor could maintain the onus of proof thrust upon him by section 69(2). All creditors would have to proceed on the tenuous footing that every transaction was bad until proven to have been good.

The new test of voidability would be whether the transaction resulted in any person, creditor, etc., obtaining a preference, advantage or benefit over the