***The Origins and Development of the Office of***

***Registrar in Bankruptcy of the High Court***

By

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&

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***Abstract***

*This article examines the history of the office of bankruptcy registrar of the High Court. It is argued that the power of the registrars to act judicially grew from their authorisation to act pursuant to delegated powers introduced in 1869 and that this began a major shift in their role from being largely administrative to their current status as fully fledged (and renamed) insolvency and companies court judges.*

*The fluidity of bankruptcy offices in the nineteenth century is also examined, demonstrating that certain bankruptcy officer-holders moved freely between functions in the course of the development in the office of registrar from what might be called its administrative phase to the judicial phase with the eventual creation of a Bankruptcy Court and more recently the creation of a specialist insolvency and companies list in the new Business and Property Courts (Chancery Division).*

*Finally, it is argued that a factor in the foregoing developments and the increasing reputation of the bankruptcy registrars was the extension of their jurisdiction from pure bankruptcy work to include company insolvency, directors’ disqualification cases and non-insolvency company work, a significant increase in their trial work and their acquisition of an appellate jurisdiction.*

**Introduction**

The judicial office of registrar in bankruptcy of the High Court has recently undergone a rebranding exercise. In 2018 these office-holders were re-designated: the title of registrar was abolished and replaced, with effect from 26 February 2018, by a new title, insolvency and companies court judge (ICCJ). This change warrants some exposition of the origins, history and development of the office[[3]](#footnote-3).

**Before the registrars: 1543-1820**

If the origins of the Chancery masters are obscure[[4]](#footnote-4) and there are problems of definition about the title of registrar (“[W]hat is and was a registrar?”[[5]](#footnote-5)), the same cannot be said of the bankruptcy registrars. They were firmly statutory creations whose origins can be dated by reference to the establishment of a bankruptcy court in the early nineteenth century and by statute. The title “registrar” has, however, been in use, it seems, since the thirteenth century, albeit originally in an ecclesiastical legal context:

*“The thirteenth century Consistory Court of Canterbury contained an official called the notaries consistorii who has been identified as a registrar”; and, “Registrars in the Archdeacon’s Court have been traced to the mid-fifteenth century”*[[6]](#footnote-6)

There were, however, no registrars in the early bankruptcy courts. Various officers were concerned in bankruptcy administration, some undertaking judicial tasks, others the administration of the bankruptcy.

The origins of bankruptcy law in England[[7]](#footnote-7) are commonly traced to the Act Against Such Persons As Do Make Bankrupts[[8]](#footnote-8) which was aimed at persons “who craftily obtaining into their hands great substance of other men[’]s goods do suddenly flee to parts unknown, or keep their houses, not minding to pay or return to any their own creditors, their debts and duties”. The Act allowed proceedings to be brought by written complaint which could be made to any three of the Lord Chancellor, the Lord President, the Lord Privy Seal, a member of the Privy Council and the two chief justices[[9]](#footnote-9). If the bankrupt failed to answer a summons for three months he could be declared “out of the King’s protection”, and his assets could be sold for the benefit of his creditors[[10]](#footnote-10). The Lord Chancellor and the other office-holders mentioned constituted “[a] quorum of…high officials [who] were empowered to dispose of all the debtor’s property and to pay all the debts in full, or, at least, rateably, the property to be distributed among the creditors”[[11]](#footnote-11).

The second bankruptcy law came in the form of an Act of 1571[[12]](#footnote-12) which limited the application of bankruptcy to traders and required the commission of an “act of bankruptcy”, a concept that remained part of English law as late as the Bankruptcy Act 1914. The Chancellor was empowered to appoint “wise, honest and discreet” persons as bankruptcy commissioners to supervise the administration of the bankruptcy. Such commissioners, alongside the judges, and later official assignees introduced under an Act of 1706, were the most important figures in bankruptcy law from the Tudor period[[13]](#footnote-13) and remained so until well into the nineteenth century[[14]](#footnote-14). Generally, seven were appointed, with a quorum of four, although the number could and did vary.

There were, of course, administrative tasks, clerical work, to be performed. This was not dealt with in the early statutes. “It was probably assumed that the task could be delegated”[[15]](#footnote-15). Some of these tasks would almost certainly have been the same as those undertaken by the early registrars. As W.J. Jones describes, an office of examiner and register of commissions was created in 1618: “The office was responsible for most of the necessary paper and procedural work for commissions executed in the City of London and its suburbs[[16]](#footnote-16).

The reign of James I saw exacting treatment for bankrupts, an Act of 1623[[17]](#footnote-17) providing for the pillory and the loss of an ear as punishment for perjury or the concealment of assets. The same Act gave the commissioners power to imprison. An amending Act passed in 1603[[18]](#footnote-18) introduced examination into the affairs of the bankrupt by the commissioners. It remained for the commissioners to conduct the bankruptcy, not the court. Whilst the early legislation on bankruptcy provided a legal remedy for creditors, the administration of the bankruptcy was not generally done through the courts:

*“Elizabethan and Jacobean parliaments did not endow bankruptcy commissions with the attributes of a court[[19]](#footnote-19). Procedures were crudely outlined, clerical requirements were ignored, and all the statutes were amorphous on the subject of ultimate administrative and legal responsibility. […] Bankruptcy commissioners were not judges”.*[[20]](#footnote-20)

Thus, for example, they could themselves be sued and “could not expect protection if their decisions or acts were declared wrong in law”[[21]](#footnote-21).

After 1624 a period of political inactivity in relation to bankruptcy meant that “the initiative in providing refinement passed from Parliament to the courts,” although, “It would be several decades before the existing bankruptcy statutes were reviewed”[[22]](#footnote-22).

The role of the Lord Chancellor probably made it inevitable that where recourse was required to a court it was to the Court of Chancery that those dealing with bankruptcy naturally turned. In fact, a Chancery jurisdiction appears to have developed even before 1571[[23]](#footnote-23). The Chancery Court had the power to order an account to be taken and to order discovery against a bankrupt and others; and its jurisdiction was sufficiently wide to enable it to exercise a supervisory role[[24]](#footnote-24). Chancery involvement in bankruptcy increased rapidly after the 1730s[[25]](#footnote-25), and Chancery retained its primacy until 1831 when bankruptcy jurisdiction was transferred to a chief judge in bankruptcy assisted by three judges and six commissioners, with appeal from the court to a court of review and only from there to the Lord Chancellor[[26]](#footnote-26) (although the court of review was itself abolished in 1847 and its jurisdiction passed to the Vice-Chancellor).

The early eighteenth century saw a softening of attitude towards bankrupts, “the gradual realization of the fact that in many cases the bankrupt might properly be an object of pity, and that the unlimited incarceration of the debtor did not tend to reimburse the creditors at all.”[[27]](#footnote-27) Two Acts of 1706 and 1707[[28]](#footnote-28) saw the beginnings of something that may be described as offering, for the first time, an element of relief and rehabilitation[[29]](#footnote-29). The 1706 Act gave the commissioners for the first time power to decide if the bankrupt had “conformed” with the requirements of the law. If he had done so, the commissioners could provide him with a certificate of discharge from his bankruptcy[[30]](#footnote-30). In certain circumstances they could also allow the bankrupt a sum not exceeding £200, giving him some prospect of a fresh start in life.[[31]](#footnote-31) The same Act required the commissioners to meet and choose an assignee or assignees of the bankrupt’s estate (thus creating an office that was the predecessor of the modern trustee in bankruptcy).

The day to day administration of any bankruptcy was, then, very much under the control of the commissioners (five in number for each bankruptcy), whose role was not simply administrative but also quasi-judicial in character: they not only acted in the recovery and realisation of assets and making distributions to creditors, but, for example, “The granting of the discharge was regarded as a judicial act to be exercised by the commissioners, the bankrupt being entitled to his discharge when the majority of the commissioners certified to the Great Seal that the bankrupt had conformed with the law”.[[32]](#footnote-32)

The office of commissioner was in the gift of the Lord Chancellor.[[33]](#footnote-33) Lists of commissioners were first published in 1720 (when there were six lists of five commissioners per list). By 1735 the number of lists had risen to eight and later ten, rising to fourteen in 1792, bringing the total number of commissioners to 70. Some insight into the developed nature of their role can be gleaned from the account of the opening of bankruptcy proceedings at the beginning of the nineteenth century in Chapter I of Ian P.H. Duffy’s *Bankruptcy and Insolvency in London During the Industrial Revolution*. The procedure began with the creditor’s solicitor making an affidavit of debt before a Chancery Master and taking it to the Bankrupt Office in Chancery Lane where a bond of £200 had to be given as security that the bankruptcy would be proved. The name of the debtor was entered into the Docket Book, and the affidavit, petition and bond were sent to the Lord Chancellor who signed the petition, after which the commission was sealed. One of the court messengers would then summon a meeting of three commissioners who examined the case and, if appropriate, declared the debtor bankrupt[[34]](#footnote-34). So again we see the commissioners acting quasi-judicially. Their powers appear to have been subject only to the Lord Chancellor who “had acquired domination of the process and was able to dismiss assignees and to hear appeals as a judge”[[35]](#footnote-35). No registrar is mentioned as carrying out any of the administrative or other tasks which Duffy describes.

Unfortunately, commissionership was more often than not conferred as political patronage, “treated as a political sinecure”;[[36]](#footnote-36) and as a result, although some commissioners were conscientious and well informed, most were not adequately qualified for the work they were called upon to do. “One of the commissioners described his colleagues, in 1829, as ‘the worst constituted court of justice that can well be imagined’”.[[37]](#footnote-37) Inadequate remuneration and a large number of elderly commissioners (there was no compulsory retirement) were other reasons that affected the caliber of those appointed[[38]](#footnote-38).

Although it may be argued that the commissioners’ role was or became partly judicial in nature, the commissioners never developed so as to constitute themselves a court. By the eighteenth and nineteenth centuries they were independent, although by then subject to regulation, and “their actions could be reviewed in Chancery if there was unfair dealing in the distribution of dividends, or in the common law courts for construction of statutes”[[39]](#footnote-39).

There were other officers besides the commissioners, for example, the secretary of bankrupts who was appointed by the Lord Chancellor but who took no oath of office and was removable from office at pleasure. He was “an ancient officer” whose duty was

*“to lay before the Lord Chancellor the affidavits, petitions and bonds upon which commissions of bankrupts [were] to be founded, and to write his lordship’s orders upon such petitions, to enter them in books kept for that purpose, and to attend his lordship in court on hearing all petitions relating to bankrupts, and to draw up and to enter the orders thereon, and to attend his lordship in turn with other his secretaries”.*[[40]](#footnote-40)

The same source records the appointment of Vigerus Edwards to the office of clerk of the inrolments on 10 August 1732. His house in Shire Lane was to be “the place where all commissions of bankruptcy, depositions, proceedings, and certificates, and other matters and things aforesaid, should be entered of record”, Mr Edwards to be the person responsible for those tasks[[41]](#footnote-41). There was a patentee “to execute the office of the execution of the laws and statutes concerning bankrupts”, and whose task was “to write, engross and procure to be passed by and under the great seal all commissions, writs of supersedeas, procedendo and all other writs and things incident and necessary to the due execution of the law against bankrupts”.[[42]](#footnote-42)

The administration of bankruptcy grew steadily in the following period. Some insight into the array of court officers dealing with the administration of bankruptcy (and the courts in general) less than a century later can be gleaned from a parliamentary report published in 1816[[43]](#footnote-43). It mentions fourteen lists of five commissioners per list[[44]](#footnote-44). It refers to the secretary of commissions of bankrupts, implying that the office was already by then of long usage.[[45]](#footnote-45) The job description refers generally to keeping records on behalf of the Lord Chancellor. There was also an “office of the execution of the law and statutes concerning bankruptcy”, which appears to have taken the form of a person whose work was carried out by a deputy and which consisted of writing and engrossing the commissions in bankruptcy and dealing with other documents[[46]](#footnote-46). Finally, it mentions the role of the clerk of the inrolment in bankruptcy whose job it was to receive fees and act as a kind of record keeper[[47]](#footnote-47). Although the *Report* says that the office goes back to the 1732 Act[[48]](#footnote-48) it seems to have had its origins in an Act of 1718:[[49]](#footnote-49) “The office of the clerk of inrolments cannot…be more ancient than that statute. It appears in fact not to be more ancient than this, or that the first clerk of inrolment was appointed by Lord Chancellor King in 1732”[[50]](#footnote-50). The office of clerk of the inrolments was abolished by 2 & 3 William IV c. 3 but was allowed to run until the death of the clerk in office at the time.[[51]](#footnote-51)

**The first registrars: 1821**[[52]](#footnote-52)

Registrars in bankruptcy are first mentioned in an Act of 1821[[53]](#footnote-53), which Archbold credits with their creation[[54]](#footnote-54). At least he appears to do so, for he refers to the creation of what he describes as “The Registrar’s Office”:

*“This office, which was established and is regulated by stat. 1 and 2 Geo 4. c. 115, is situate in the Court of Commissions of Bankrupt in Basinghall Street, London”. He goes on, “The Registrar is appointed by the Lord Chancellor”.*

The main purpose of the 1821 Act was to pave the way for the creation of a bankruptcy court,[[55]](#footnote-55) but among the Act’s many ancillary provisions is section 11 which provided:

*“And be it further enacted, That for the better carrying into effect the Purposes of this Act it shall be lawful for the…Lord High Chancellor, Lord Keepers or Lord Commissioners of the Great Seal for the time being, to nominate and appoint some competent and proper Person to the Office of Registrar of the Meetings of the Commissioners of Bankrupt, who shall be resident in such Part of the said Building as the Commissioners shall direct, and who shall also have an Office in some convenient and public Part of the said Building; and whose Duty it shall be to be in Attendance in his said Office from the hours of Ten o’Clock in the Forenoon till Four o’Clock in the Afternoon, and also during the Sitting of any Commission of Bankrupt\ or during the Continuance of any Meeting in Bankruptcy holden in any Part of the Building, and during such other times as the Lord High Chancellor, Lord Keeper or Lords Commissioner of the Great Seal, shall from time to time direct; and it shall further be the duty of the said registrar so to be appointed, to take and keep a daily journal, registry and account of meetings in bankruptcy which shall be holden in the said buildings, or any office belonging to the same; in which registry shall be entered the names of the bankrupt or bankrupts, the solicitor or solicitors to the commission, the messenger and the number of the list of commissioners to which the commission is directed, and the names of the assignees, the hours of meeting and the time to which any such meeting shall be adjourned, and a minute of the nature or purpose for which such meeting was held, the amount of any dividend which shall be declared theareat; and the solicitor or clerk to every commission is hereby required to furnish the said registrar with the necessary information in writing to enable the said registrar to make a proper entry in such journal or registry of the nature and purpose of every such meeting; and shall also keep one or more book or books containing an entry or notice of all meetings, which shall be appointed or called by public advertisement, either of the commissioners or creditors; which book or books shall be kept open in the office of the said registrar, for the consultation of all persons desiring to consult the same, during office hours, without fee or reward; and it shall further be his duty to receive and account for all fees and payments which shall be payable under this Act as hereinafter mentioned; and when such fees or payments shall amount to the sum of one hundred pounds in his hands, to pay the same into the Bank of England under an order of the High Court of Chancery to be made for that purpose, in the name of the Accountant General of the said Court, to a separate account, to be entitled ‘Fund arising from Fees in Bankruptcy,’ to be laid out or invested in the purchase of bank three pounds per centum annuities, in the name of the said Accountant General, together with all accumulations thereof, to be carried to the like account; and that such registrar shall at all times when required by the Lord High Chancellor, Lord Keeper or Lords Commissioners of the Great Seal or by any two of the commissioners under this Act, render and give a just and true account of his receipts and payments and of the monies actually in his hands, and once in every year, between the fifth day of April and the fifth day of July shall (without being thereunto specially required) make and give a just and true account of all monies received and paid by him during the year, which account shall be audited and settled and finally allowed by the Lord High Chancellor, Lord Keeper or Lords Commissioners of the Great Seal for the time being, or by such other person or persons as he or they shall for that purpose nominate and appoint”.*

The registrar was required to give security to the satisfaction of the court for his accounting duties[[56]](#footnote-56) and had to take oaths “truly and faithfully [to] execute and exercise the office of registrar” and “to render and give a just and true account of the monies that came into his hands”[[57]](#footnote-57).

The connection between this office and that of the registrars of earlier periods is clear in that the job remained administrative in character, concerning record keeping and funds, and had no judicial content whatsoever. Indeed, the relatively low status of the registrar can be discerned from the fact that the provisions dealing with his appointment came just before that dealing with the appointment of a housekeeper[[58]](#footnote-58). Subsequent sections of the Act put the two on almost the same footing: both the registrar and the housekeeper could be removed from office by reason of permanent illness or infirmity, misconduct, neglecting their duties, incompetence or unfitness[[59]](#footnote-59). Their salaries were fixed by the same section: £200 for the registrar, £50 for the housekeeper, in addition to which both were to receive an allowance for coal and candles[[60]](#footnote-60). *General Rules and Orders for regulating the practice of His Majesty’s Court of Bankruptcy*[[61]](#footnote-61), made by the judges of the Court of Review with the consent of the Lord Chancellor[[62]](#footnote-62) emphasise the administrative nature of their work: being at the office and keeping it open between ten and four o’clock and from seven to nine o’clock in the evening; receiving affidavits filed at court; maintaining a roll of attorneys and solicitors admitted to practise in the court; keeping records of proceedings; and allotting fiats to commissioners[[63]](#footnote-63).

The dividing line between administrative and judicial acts was, however, uneasy at times even at an early stage, as is demonstrated by a short passage in Deacon[[64]](#footnote-64) dealing with a case called *Russell v Sharp*[[65]](#footnote-65):

*“After the usual decree for an account against executors, one of the defendants became bankrupt. The assignees by petition prayed that they might be at liberty to go before the Master upon taking the accounts, and be admitted on behalf of the bankrupt’s creditors to support his discharge. The registrar declined, drawing up the order, objecting that the suit being abated by the bankruptcy, the plaintiffs could not proceed in the accounts, until they had filed a supplementary bill in the nature of a bill of reviver, - and the Lord Chancellor upon this refused to make the order”[[66]](#footnote-66).*

**Developments: 1831-1892**

An Act of 1831[[67]](#footnote-67), often called the Bankruptcy Court Act, largely removed the jurisdiction of the commissioners and put in place a Court of Bankruptcy consisting of four judges, including one chief judge, and just six commissioners. District courts dealt with the work out of London[[68]](#footnote-68). Appeals lay to a Court of Review, although this was abolished after a short life in 1847.

Section 9 of the 1831 Act fixed the number of registrars at two (plus eight deputies) whose role was to attend on and assist the judges and commissioners. They were to hold office during good behaviour and could be removed from office on a certificate from the Court of Review or one of the sub-division courts for sufficient cause. By the *General rules and Orders made under the Act*[[69]](#footnote-69) they were required to keep a roll of attorneys and solicitors admitted to the court, and a deputy registrar was to attend on each commissioner to take minutes of, draw up and have charge of the proceedings before him under the supervision of the chief registrar[[70]](#footnote-70).

Something of the nature and scope of the work of the bankruptcy registrars can be gleaned from evidence given to a committee of the House of Commons by a Mr Vizard in 1834. Asked by the committee to give it some details of the working of the new Bankruptcy Court, Vizard gave the following account[[71]](#footnote-71):

*“When the Court of Bankruptcy was first established, there were four Judges of the Court of Review, and six Commissioners appointed. Those six Commissioners were to discharge the duties theretofore performed by the fourteen lists of Commissioners; and upon a calculation then made, after a conference with gentlemen who had principally acted in bankruptcy, both at the Bar and as Commissioners, it was thought that six Commissioners would not be able to get through the duties with sufficient punctuality and dispatch, and therefore it was part of the plan that the Puisne Judges of the Court of Review should occasionally act as Commissioners, and a clause was inserted in the act for that purpose. For every Commissioner it was necessary to have a Registrar or Deputy Registrar, and the number of Registrars and Deputy Registrars was therefore founded upon a calculation that some one or more of these Judges would be almost constantly sitting as Commissioners, and would want a Registrar or Deputy Registrar to attend them. One Registrar and one Deputy Registrar were appointed for the Court of Review, in order that one might always be in Court attending to the business there, while the other in the office was receiving instructions for orders, settling minutes, drawing up the orders, and delivering them out. The Registrar and Deputy Registrar are, Mr Barber and Mr John Vizard; and I believe it will be agreed by all parties who know anything of the Court, that it is impossible the business can be transacted with less than two. The six Commissioners have each a Deputy Registrar attending them, and his employment, I believe, is to check proofs about which there is no great dispute, while the Commissioner himself is deciding questions which are submitted to him; and the Deputy Registrar also, I believe, administers oaths, and does all the miscellaneous business of the Court, and I apprehend the Commissioners could not go on without their assistance. There remains to be accounted for the Chief Registrar of the Court, and another Deputy Registrar: these are Mr Serjeant Lawes and Mr Gregg. Mr Gregg was to have attended one of the Judges as Commissioner, when any one had been called upon to act in that capacity; but for the reasons I have before stated, and because the number of bankruptcies has also very much diminished, to the extent of one-third, no Judge, except for a very short period, has been called upon to act as a Commissioner, and in consequence, when a vacancy occurred by the death of Mr Serjeant Pell, who was one of the Judges, the Lord Chancellor, finding that a greater number had been appointed than experience proved to have been necessary, has never filled up the vacancy occasioned by his death. In the meantime new and important duties have been given to Mr Gregg. The Court of Bankruptcy has made him a referee in a variety of matters, which, without his assistance, must have been sent to a Master in Chancery. He has also been made the officer to tax the costs in the Court, which in like manner must have gone to a Master in Chancery, but for his services. I believe, therefore, that a great saving to the suitors n bankruptcy has been occasioned by the services of Mr Gregg. Of the duties of Mr Serjeant Lawes I am not able to speak so particularly. I know that all fiats when issued are taken to him; that he arranges the Commissioner to show each fiat is to be given, whose duty it is to work the fiat. I believe all the proceedings of the Court are kept by him and arranged, and I know that when dividends are declared, and when an official assignee has made out a list of creditors entitled to dividends, and that list has been sanctioned by the Commissioner, the official assignee draws for the payment to be made to each creditor, and his drafts, before they are made payable at the Bank, must be countersigned by Mr Serjeant Lawes, as the Chief Registrar of the Court. It is his duty therefore, before he countersigns these drafts, to examine them with the dividend list, see that they are made payable to the creditors to whom the dividends are due, and that they are drawn for the sums ordered to be paid to each creditor. I believe he has other duties to perform, but I am not able to particularize them, but should an Accountant General be appointed in bankruptcy, I think a part of the duties now discharged by Mr Serjeant Lawes might and would go to the Accountant General; and looking to the present diminished state of business in bankruptcy, I believe that the duties of both Mr Serjeant Lawes and Mr Gregg might then be discharged by one”.*

The reference to a chief registrar and deputy registrars is to be noted: the 1831 Act had already enacted that two registrars and up to eight deputies should be attached to the Bankruptcy Court[[72]](#footnote-72). Archbold records them by name:

“REGISTRARS

 Edward Lawes, Serj, Chief W. Barber

DEPUTY REGİSTRARS (of the Commissioners)

 F.C. Perry W.H. Whitehead

 D.H Richardson John Barnes

 S. Ayrton John Campbell

DEPUTY REGİSTRARS (of the Court of Review)

 Francis Gregg John Vizard”[[73]](#footnote-73).

The fact that a serjeant was appointed to the office of registrar underlines the growing status attaching to the job. The John Vizard referred to above and William Vizard, who was to take office as registrar in 1851, were, however, mere solicitors. This is noteworthy, for at this time,

*“One of the most persistently voiced grievances of solicitors was the bar’s near-monopoly of legal and judicial offices, whether secured by formal reservation or practice. Only a few (chief clerks and taxing masters in Chancery and county court registrars) were reserved to solicitors […].[[74]](#footnote-74)”*

(Whilst the bar continued to dominate the appointment, a number of solicitors were appointed and continued to be appointed into the late 1990s, although thereafter the bar began to dominate again.) The case of William Vizard also illustrates the fluidity of certain offices at this time: When Henry Brougham became Chancellor in 1830 he appointed William Vizard to his private office as secretary of bankrupts, “a post which had hitherto been filled by a barrister”[[75]](#footnote-75).

The registrars’ duties did not significantly change in the early years of the office, although from 1832 a deputy was to attend each commissioner to take minutes and to draw up and have charge of proceedings under the supervision of the chief registrar[[76]](#footnote-76). The *Law Lists* published around this time and later record registrars to the court and registrars to the commissioner. Whether the two roles were quite separate or overlapped is not entirely clear. Generally, the operation of the Bankruptcy Court seems to have been somewhat fluid at around this time, judges being prepared to act as commissioners when required, for example. Plainly, however, the duties of the registrars and their deputies remained administrative in nature, although even at this early stage the checking of proofs might be said to point towards a future role of greater substance. Any serious development in the role remained, however, some way off. The 1825 Act[[77]](#footnote-77) contains references to the Lord Chancellor’s secretary of bankrupts, provides for debts to be proved by affidavit before a master (who continued to deal with matters of costs) and makes provision for various matters to be dealt with by the judge and the commissioners, but the closest it comes to dealing with the registrars is in a reference to the office for registering proceedings in bankruptcy[[78]](#footnote-78). The bankruptcy system continued to be managed primarily by 70 part-time commissioners and assignees, who came into existence on the passing of the 1831 Act[[79]](#footnote-79). Real power remained with the commissioners. Officials tended to remain in office for lengthy periods[[80]](#footnote-80). The new assignees managed the bankruptcy estates, but

*“Numerous other officials assisted. Registrars and deputy registrars, salaried employees of the bankruptcy court, attended the commissioners at all sittings, examined depositions and exhibits, assisted in taxing solicitors’ bills, and kept minutes of daily sittings”[[81]](#footnote-81).*

By the Bankruptcy Amendment Act 1842[[82]](#footnote-82) the duties of the registrars and their deputies (all henceforth to be known simply as registrars[[83]](#footnote-83)) were increased by including an obligation for them to keep an abstract of proceedings in the Bankruptcy Court[[84]](#footnote-84). This was to be sufficient “to give a correct view of the estate to which [the] proceedings...relate”[[85]](#footnote-85). The role remained menial and administrative: the duties of the clerk of enrolments had to be performed by the registrar if a vacancy occurred in that office[[86]](#footnote-86), and many of the tasks still concerned fees[[87]](#footnote-87). However, the chief registrar had responsibility not just for the fees of his own court but also for those “of the country courts”.

 The Act made three further changes of great significance. The first was to create District Courts of Bankruptcy to deal with bankruptcy work outside London. The second was to create up to twelve county registrars to attend the commissioners in the provinces. The third was to give the registrars judicial power to act “in the prosecution of [a] fiat or petition for proof of debt” and to examine the parties or witnesses on oath; and “such officer so acting shall have and exercise all the power vested in such court for proof of debts and examination of witnesses, except the power of commitment”[[88]](#footnote-88).

By the Execution Act 1844[[89]](#footnote-89) the registrars were to be paid in future only by salary and not on the basis of a cut of fees, as had been the case for some time. The salary of the two chief registrars[[90]](#footnote-90) was raised to £1,200 per annum and those of the deputies to £1,000 (£800 in the country)[[91]](#footnote-91). The post also attracted an annuity (effectively a pension)[[92]](#footnote-92). Still, however, there was no significant movement to change the nature of the office or increase the scope of the role, a fact evidenced by Deacon’s devoting just a few pages of his two-volume work to the registrars[[93]](#footnote-93). In 1849, however, by the Bankruptcy Amendment and Consolidation Act of that year[[94]](#footnote-94) the number of London registrars was reduced to four, but their powers were increased:

*“The Registrar of the Court may, in certain cases, act for the Commissioner or his deputy, and, subject to...limitations..., exercise all his jurisdiction; and orders made by the Registrar, even for the bankrupt’s order of discharge, if made without opposition, have been held to be valid”*[[95]](#footnote-95).

It is debateable whether that move represented an increase in status or was simply a reflection of a continued fluidity in bankruptcy offices alluded to above. After the creation of the county courts (by the County Courts Act 1846)[[96]](#footnote-96) registrars in bankruptcy, at least in the county courts, were regarded as significant judicial figures, having become such by acquiring new duties generated by efforts to modernise bankruptcy law and adapt it to changing economic circumstances”[[97]](#footnote-97). Query whether the London registrars were held in the same estimation.

In 1852 it was enacted[[98]](#footnote-98) that the office of Lord Chancellor’s secretary of bankrupts should be abolished, and that the chief registrar should in future perform the duties he had undertaken[[99]](#footnote-99). Those changes had been on the cards for some time. A debate in the House of Commons on 15 February 1850 on the subject of the Registrars’ Office Bankruptcy Bill records a Mr Henley saying:

*“[H]e could not understand what the secretary of bankrupts had to do. This person received a salary of £1,200, his chief clerk £500, and the second clerk £300 a year. All the duties of secretary of bankrupts were capable of being done by one of the six gentlemen in the London district”[[100]](#footnote-100).*

Henley made similar points about other bankruptcy offices, including the office of registrar. In response, the Attorney General “quite agreed that the office of chief registrar was a sinecure” and should be abolished[[101]](#footnote-101). The subsequent vote on a proposed amendment was not, however, carried.

 This again tells us something about the fluidity of bankruptcy offices in the nineteenth century but also makes clear that the role of registrar remained largely administrative or clerical. Section 2 of the Act provided that “From and after the commencement of this Act [...] one of the registrars of the Court of Bankruptcy shall be the Chief Registrar of the said Court, and he and his successors in office shall perform all of the duties that have hitherto been performed by the Lord Chancellor’s secretary in bankruptcy”. However, the Act also seems to have formalised the office of chief registrar for the first time[[102]](#footnote-102).

In 1854 a further Bankruptcy Act repealed the earlier provision as to the removal of registrars from office and provided that they could be removed by a certificate of the Lord Justices of the Court of Appeal in Chancery “of some sufficient reason...for such removal”[[103]](#footnote-103). Other provisions dealt with the power to appoint substitutes during periods of illness and their remuneration.[[104]](#footnote-104) The powers of the deputy registrars were the same as those of the principal registrars[[105]](#footnote-105). Section 13 gave the Lord Chancellor the power to regulate a percentage fee payable to the chief registrar under section 54 Bankrupt Law Consolidation Act 1849, a curious move back to turnover-related pay rather than a fixed salary.

The Bankruptcy Act 1861[[106]](#footnote-106) widened the powers of the registrars and extended to them investigatory powers in certain interlocutory matters. (They were not, however, empowered to hear disputed adjudications in bankruptcy.) The same powers were extended to Chancery registrars in 1865 in a manner that

*“was neither more nor less than a reproduction of similar clauses in the recent County Courts Equitable Jurisdiction Act, 1865 and the Bankruptcy Act, 1861. These recent precedents for registrars having far-reaching investigative powers in interlocutory matters, pertaining to finance, may have persuaded the Judge Ordinary to make similar extensions to the registrars’ authority which would, simultaneously, materially reduce the judges’ workload ...].* [[107]](#footnote-107)”

Nonetheless, still much of the work the registrars did remained of what would now be thought of as administrative or at best supervisory[[108]](#footnote-108).

1869[[109]](#footnote-109) saw further major change in the officers entrusted with bankruptcy administration. The commissioners and official assignees were abolished, and the latter replaced by creditors’ trustees. The registrars and other officials of the former London Bankruptcy Court were transferred to a new building[[110]](#footnote-110). The County Court District Courts of Bankruptcy were abolished along with their registrars[[111]](#footnote-111). Jurisdiction was defined by sections 59 and 61 which provided thenceforth that if the debtor resided or carried on business within a prescribed London area (called the London Bankruptcy District) or was not resident in England and Wales, the proper court was to be the new London Bankruptcy Court; if the debtor resided or carried on business outside that district, jurisdiction would lie with the appropriate county court[[112]](#footnote-112).

The Act further provided for the London Bankruptcy Court to consist of a judge called the Chief Judge in Bankruptcy assisted by up to four registrars, clerks and “other subordinate officers, as may be determined by the Chief Judge with the sanction of the Treasury”.[[113]](#footnote-113) The Chief Judge was to be appointed from among the existing commissioners[[114]](#footnote-114) and had the power to appoint the registrars and other officers who could “be removed by him and others appointed in their stead if the judge is of opinion that they are negligent, unskilful, or untrustworthy in their performance of their duties, or ought in his opinion to be removed for any other just cause”.[[115]](#footnote-115) All were to “perform such duties as may from time to time be assigned to them by the Chief Judge with the assent of the Lord Chancellor”[[116]](#footnote-116). The chief judge was able to delegate to the registrar or other court officers “such of the powers vested in him by this Act as it may be expedient for the judge to delegate to him, save for power to commit for contempt”[[117]](#footnote-117). The registrars were thus still very much employees of the court rather than judges, although the Act contains some signs of their undertaking work to which some legal responsibility attached (e.g. to deal with meeting of creditors[[118]](#footnote-118)) as well as more mundane administrative work (such as making returns on the business of the court to the comptroller in bankruptcy and issuing certificates of discharge).[[119]](#footnote-119) It was, however, the ability of the registrars to act pursuant to delegated power that began the major shift from administrative to judicial responsibility. This was also reflected in the way in which they were addressed: usually as “your honour”, nominally affording to them the status of circuit judges[[120]](#footnote-120).

The 1869 reforms represented a shift in power but were in many respects otherwise unsuccessful in their aims. A committee appointed to inquire into the workings of the Act reported that it was working badly by reason of

*“the very great delay and expense almost invariably incurred, and the nearly total irresponsibility of the trustees, the effect of which was that in many cases the whole of the details as to the mode in which a debtor’s estate was to be realised were practically arranged at the will and discretion of one man, who, by means of the proxies he might have obtained, was able even to vote himself trustee, fix his own remuneration, and nominate the committee of inspection”.[[121]](#footnote-121)*

The failure of the trustee system and attendant concerns about costs and efficiency were among the factors that led to the Bankruptcy Act 1883[[122]](#footnote-122) which repealed the 1869 Act and, following the Victorian principle of “officialism,” put bankruptcy under the control of the Board of Trade, created official receivers to investigate a debtor’s conduct and administer his estate, and introduced strict control over trustees[[123]](#footnote-123). Jurisdiction was changed yet again by the Act of 1883 which continued the division of bankruptcy jurisdiction between the High Court and the county courts, giving each almost identical powers and providing for appeals to lie to the Divisional Court. The jurisdiction of the London Bankruptcy Court was transferred to the High Court for that purpose and initially assigned to the Queen’s Bench Division. . Mr Justice Cave,[[124]](#footnote-124) “an especially good bankruptcy judge”,[[125]](#footnote-125) was nominated to take charge of it.

 The 1883 Act was specific about the powers of the registrars. Section 99 provided:

*“(1) The registrars in bankruptcy of the High Court, and the registrars of a county court having jurisdiction in bankruptcy, shall have the powers and jurisdiction in this section mentioned and any order made or act done by such registrars in the exercise of the said powers and jurisdiction shall be deemed the order or act of the court.*

*(2) Subject to general rules limiting the powers conferred by this section, a registrar shall have power –*

1. *To hear bankruptcy petitions, and to make receiving orders and adjudications thereon;*
2. *To hold the public examination of debtors;*
3. *To grant orders of discharge where the application is not opposed;*
4. *To approve compositions or schemes of arrangement when they are not opposed;*
5. *To make interim orders in any case of urgency;*
6. *To make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers;*
7. *To hear and determine any unopposed or ex parte application;*
8. *To summon and examine any person known or suspected to have in his possession effects of the debtor or to be indebted to him, or capable of giving information respecting the debtor, his dealings or property,*

*(3) The registrars in bankruptcy of the High Court shall also have powers to grant orders of discharge and certificates of removal of disqualifications, and to approve compositions and schemes of arrangement.*

*(4) A registrar shall not have power to commit for contempt of Court”[[126]](#footnote-126).*

The registrars also retained jurisdiction over matters pending under the 1869 Act[[127]](#footnote-127). The effect was that they began to deal increasingly with many routine matters of law:

*“Generally, a registrar, unless a matter be specially reserved to the Judge, or difficulty exists, should deal with it, and not adjourn it for the decision of the Judge. But the Judge has power, either specially or by general direction, to adjourn a matter from the registrar to himself”[[128]](#footnote-128)*

Exercising powers given to him by the Act and under the Bankruptcy Rules 1883 “and...all other General Rules, Orders and Powers enabling him in that behalf”, Cave J gave the following directions regarding what the registrars could and could not do[[129]](#footnote-129):

*“1. On and after the 1st day of January 1884, until further order the Registrars in Bankruptcy of the High Court shall hear and determine the following matters and applications which by the said Rules are directed to be heard and determined in open Court, that is to say,*

1. *The public examination of debtors;*
2. *Applications to approve a composition or scheme of arrangement;*
3. *Applications for orders of discharge or certificates of removal of disqualifications.*

*2. On and after the 1st day of January 1884, until further order the Registrars in Bankruptcy of the High Court shall hear and determine all matters and applications which by virtue of the Rules may be heard and determined in Chambers, except the following matters, that is to say:-*

1. *Applications by a creditor for leave to commence any action or other legal proceeding under sect. 9;*
2. *Deciding on the validity of an objection by the Board of Trade to the appointment of a trustee under sect. 21;*
3. *Applications by a trustee for leave to disclaim a lease under sect. 55[[130]](#footnote-130);*
4. *Applications for an order rescinding any contract made with the bankrupt under sect. 55;*
5. *Opposed applications for a vesting order under sect. 55;*
6. *Special cases stated for the opinion of the High Court under sect. 97;*
7. *Applications to transfer actions under sect. 102(4);*
8. *Applications by the Board of Trade under sect. 102(5);*
9. *Applications by [a] trustee for leave to commence an action in the names of the trustee and the bankrupt’s partner under sect. 113;*
10. *Applications for the approval or for the amendment of issues of fact, to be tried by a jury under r. 84;*
11. *Applications for direction as to the trial of issues of fact under r. 86, and*
12. *Applications for directions as to the trial of actions brought by a trustee under r. 91.*

*3. Any matter or application which a registrar has jurisdiction to hear and determine under the above-mentioned Act and the General Rules made in pursuance thereof and this Order or any of them, except judgment debtors’ summonses under s. 5 of the Debtors Act 1869, shall be adjourned to be heard before the judge:*

1. *If all the contending parties require the matter or application to be so adjourned;*
2. *If any of the contending parties, or, in the case of an ex parte motion, if the applicant requires the matter or application to be so adjourned and the registrar is of opinion that it involves a question of difficulty on the ground of novelty or otherwise.*

*4. Where the matter or application is adjourned to be heard by the judge, the registrar shall certify to the judge whether the matter or application is adjourned at the request of all or of some and which of the parties, and in the latter case the registrar shall also state shortly the question of difficulty involved.*

*5. Where any matter or application is so adjourned by a registrar sitting in open Court, it shall be adjourned to be heard by the judge in open Court. Where any matter or application is so adjourned by a registrar sitting in Chambers it shall, if any of the contending parties, or, in the case of an ex parte motion, if the applicant so requires, be adjourned to be heard by the judge in open Court, but otherwise it shall be adjourned to be heard by the judge in chambers”.*

**The role of the bankruptcy registrars in winding-up**

Until the early nineteenth century corporate enterprise was the exception rather than the rule, and incorporation had to be obtained by royal charter or by an Act of Parliament[[131]](#footnote-131). From 1830 onwards, however, steps were taken to make company formation easier. Legislation passed in 1834 and 1837 relaxed earlier requirements and allowed the Board of Trade to confer limited liability. That process culminated in 1844 in the passing of the Joint Stock Companies Act and the Joint Stock Companies Winding-Up Act[[132]](#footnote-132). A further Act of 1856 allowed incorporation with limited liability. Yet further legislation resulted in the first general Companies Act of 1862 which determined the procedure for winding up companies[[133]](#footnote-133). Before then companies had had to be wound up by being declared bankrupt or under the general Chancery jurisdiction.

There is little material on the role (if any) of the registrars in this early period of winding-up. However, in 1892 Alfred Emden was appointed as first registrar for companies winding up[[134]](#footnote-134). Emden was an expert on the subject, the author of *The Practice in Winding Up Companies*, which had first appeared in 1883. Although this represented a major shift to working in a new jurisdiction, the winding-up function of the registrar was again administrative rather than substantive. As Emden said:

*“The [winding-up] work is done under the direct superintendence of the Registrar and his staff, the Official Receiver, and the Board of Trade”[[135]](#footnote-135).*

Even as late as the mid-1950s the work was clerical: appointing the time and place at which a winding up petition would be heard and satisfying himself that the petition had been advertised and that the papers were in order for the hearing[[136]](#footnote-136). In due course, however, the registrars’ companies jurisdiction developed so as to include dealing with routine insolvency and Companies Act applications and preparing cases for trial before the judges of the Chancery Division. Presumably the jurisdiction was given by delegation, but when and by whom remains obscure[[137]](#footnote-137).

**The registrars in the twentieth century**

The Bankruptcy Act 1914 made no difference to the jurisdiction of the registrars, although it was firmly established by then that the work of the registrars was judicial in so far as the legislation and the practice of the courts afforded them jurisdiction, as is evidenced by reports of judgments delivered at the time[[138]](#footnote-138). Section 102 of the Act simply reproduced the provisions contained in section 99 of the 1883 Act. The registrars thus continued to do judicial work in bankruptcy, albeit work that was confined to dealing with routine cases, and similar corporate and corporate insolvency work under the Companies Court banner[[139]](#footnote-139). This remained the case after bankruptcy work in the High Court was reassigned from the Queen’s Bench to the Chancery Division in 1921[[140]](#footnote-140).

The registrars’ hours of work were specifically set out in the Bankruptcy Rules 1915, r.125: “The office of the senior bankruptcy Registrar of the High Court shall be kept open daily throughout the year, from ten till four o’clock, except on Sunday, Christmas Day and the next following working day, Good Friday, Easter eve, Monday and Tuesday in Easter week, Whit Monday, the first Monday in August, or any other day appointed for a public fast of thanksgiving…except also on Saturdays, when the office may be closed at one o’clock”[[141]](#footnote-141).

The twentieth century saw a major overhaul of both individual and corporate insolvency law. A review of the existing law was commissioned by the Labour government in 1977 and undertaken by a committee under the chairmanship of [Kenneth Cork](https://en.wikipedia.org/wiki/Kenneth_Cork), a leading insolvency practitioner at the time. The committee’s report[[142]](#footnote-142) was followed by a White Paper in 1984[[143]](#footnote-143). These resulted in the passing of the Insolvency Act 1986.

Cork’s committee made a number of points about the nature of insolvency work, the need for specialisation and the desirability of keeping personal and corporate insolvency in line with one another:

*“The exercise [of the insolvency jurisdiction] must almost invariably be concerned with commercial matters and frequently with the analysis of business accounts, culminating in the making, by the court itself, of decisions or judgments of an essentially commercial nature. Its philosophical orientation in this respect is akin to that of the Commercial Court of the Queen’s Bench Division.”*

*“Insolvency law is frequently complex and technical and may require the analysis of transactions displaying elements of commercial sharp practice and dishonesty. It is almost always concerned with the breakdown of commercial contracts and with accountancy problems and often requires important decisions to be taken.”*

*“[T]he exercise of the newly-conferred discretions can only receive acceptance if there is consistency shown in their exercise. It is therefore desirable to concentrate insolvency court business, so far as practicable, for hearing before the minimum number of judicial officers consistent with its effective and expeditious discharge…”*

*“The harmonisation of corporate and personal insolvency will, we are convinced be more effective if the same judicial officer deals with both types of administration. We therefore recommend that whoever is appointed to hear insolvency matters should deal with all types of insolvency”.[[144]](#footnote-144)*

The Insolvency Act 1986 did not fulfil all of Cork’s aspirations. However, it brought about a major change in relation to jurisdiction in both individual and corporate insolvency. Oddly, the change was made not in the primary legislation but in the Insolvency Rules 1986. The power of the registrars in insolvency remained statutory, but rule 13 now provided:

# ***“13.2 “The court”; “the registrar”***

*(1)     Anything to be done under or by virtue of the Act or the Rules by, to or before the court may be done by, to or before a judge, district judge or the registrar.*

*(2)     The registrar or district judge may authorise any act of a formal or administrative character which is not by statute his responsibility to be carried out by the chief clerk or any other officer of the court acting on his behalf, in accordance with directions given by the Lord Chancellor.*

*(3A)     “The registrar” means—*

*(a)     a Registrar in Bankruptcy of the High Court, or*

*(b)     where the proceedings are in the District Registry of Birmingham, Bristol, Caernarfon, Cardiff, Leeds, Liverpool, Manchester, Mold, Newcastle-upon-Tyne or Preston, a district judge attached to the District Registry in question.”*

The effect of the change was, at least in theory, to give the registrars complete power to hear and determine all applications in bankruptcy, company winding-up and in relation to the various new insolvency regimes introduced under the 1986 Act[[145]](#footnote-145). With effect from January 1987 a registrar took the winding up list in place of a High Court judge. In practice, however, as far as corporate insolvency was concerned, the role of the registrar remained dealing in general with routine applications and giving directions for more substantial matters which would be adjourned to a Chancery judge for trial. The registrar dealing with companies work also acted as clerk to the Restrictive Practices Court but had only limited jurisdiction to deal with applications in that Court in chambers. (His other functions were mainly administrative, forming only a small part of his work.)

A more dramatic jurisdictional change resulted from the coming into force of the Company Directors Disqualification Act 1986. Disqualification proceedings were commenced in the Companies Court and initially heard by a registrar, who would give directions and adjourn for trial, usually before a judge. Trial before a registrar was, however, possible: it was provided for by rule 7 of the Insolvency Companies (Disqualification of Unfit Directors) Proceedings Rules 1987[[146]](#footnote-146). The volume of cases rapidly grew, as a result of which all but the most significant cases were gradually devolved to be heard by the registrars[[147]](#footnote-147) and an expanded pool of deputies appointed largely with a view to their hearing the growing number of cases[[148]](#footnote-148).

This resulted in an entrenchment of the growing divide between the bankruptcy and company work undertaken by the registrars, with four registrars hearing almost exclusively the bankruptcy lists, one dealing with company insolvency,[[149]](#footnote-149) and one taking almost all the disqualification cases[[150]](#footnote-150). This arrangement changed in 2001 following the appointment of Mr Registrar James as chief registrar when it was felt that each registrar should take all lists in rotation to keep general levels of skill at the appropriate level[[151]](#footnote-151). At the same time, under James’s leadership, the registrars began to take on corporate insolvency trial work as well as the equivalent work in bankruptcy which they had been doing for some time[[152]](#footnote-152). James was one of a number of solicitors who was appointed around this time, largely as a result of encouragement from Mr Registrar Scott who believed that the office should not be monopolised by the bar. Scott persuaded a number of solicitors to apply to become deputy, and later, full time registrars. He also made an enormous contribution to the standing of bankruptcy law and the registrars’ court with the quality of his judgments, thereby laying the foundations for James’s later reforms.

The jurisdiction of the registrars was determined not only by legislation but by practice directions. *The Practice Direction – Insolvency Proceedings* of 29 July 2014 made the following provisions as to jurisdiction:

*“3.1 As a general rule all petitions and applications (except those listed in paragraphs 3.2 and 3.3 below) should be listed for initial hearing before a Registrar[[153]](#footnote-153) in accordance with rule 7.6A(2) and (3). 3.2 The following applications relating to insolvent companies should always be listed before a Judge:*

*(1) applications for committal for contempt;*

*(2) applications for an administration order;*

*(3) applications for an injunction pursuant to the Court’s inherent jurisdiction (e.g. to restrain the presentation or advertisement of a winding up petition) or pursuant to section 37 of the Senior Courts Act 1981 or section 38 of the County Courts Act 1984 but - 6 - not applications for any order to be made pursuant to the Act or the Rules;*

*(4) applications for the appointment of a provisional liquidator;*

*(5) interim applications and applications for directions or case management after any proceedings have been referred or adjourned to the Judge (except where liberty to apply to the Registrar has been given).*

*3.3 The following applications relating to insolvent individuals should always be listed before a Judge:*

*(1) applications for committal for contempt;*

*(2) applications for an injunction pursuant to the Court’s inherent jurisdiction (e.g. to restrain the presentation of a bankruptcy petition) or pursuant to section 37 of the Senior Courts Act 1981 or section 38 of the County Courts Act 1984 but not applications for any order to be made pursuant to the Act or the Rules;*

*(3) interim applications and applications for directions or case management after any proceedings have been referred or adjourned to the Judge (except where liberty to apply to the Registrar has been given).*

*3.4 When deciding whether to hear proceedings or to refer or adjourn them to the Judge, the Registrar should have regard to the following factors:*

*(1) the complexity of the proceedings;*

*(2) whether the proceedings raise new or controversial points of law;*

*(3) the likely date and length of the hearing;*

*(4) public interest in the proceedings*[[154]](#footnote-154)*”.*

It was shortly after the 1986 reforms that the title of registrar in the county courts was abolished by the Courts and Legal Services Act 1990,[[155]](#footnote-155) and the registrars of those courts were renamed district judges in recognition of what had long ago become a real judicial job. Anecdotal evidence suggests that the bankruptcy registrars were also consulted about a change to their title but rejected the offer on the bases that (a) their existing title was well understood by insolvency court users and (b) they wished to distinguish themselves from the judges of the county courts and retain a title that was particular to the High Court[[156]](#footnote-156). An undated “Note by Professor Hollond”, apparently prepared for a lecture he gave as reader to the Council of Legal Education in the 1950s or 1960s[[157]](#footnote-157) and dealing with the history of bankruptcy jurisdiction contains the following comments on the position and title:

*“Officers of various types are called Registrars. Their functions and status differ widely.*

*Registrars of the Chancery Division are purely administrative officers. They attend the judges of the Chancery Division (and the Court of Appeal when hearing appeals from the Chy Divn), and they draw up the orders made by the court.*

*District Registrars of the High Court, and Registrars of the County Courts are mainly administrative officers, but exercise some judicial functions.*

*The office of a Registrar in Bankruptcy is a much more important one. It is a high judicial office”.*

 The Insolvency Act made no provision for the appointment of a chief registrar. The appointment of a chief was governed by the Supreme Court Act 1981, section 89(3)(d) of which provided for the Lord Chancellor to appoint “one of the registrars in bankruptcy of the High Court as Chief Bankruptcy Registrar”, thus limiting the appointment to one of the existing pool of registrars[[158]](#footnote-158).

Chief Registrar James’s change to the registrars’ listing practice, such that all registrars did both bankruptcy and company work rapidly paid dividends. All the registrars gained greater experience in all types of insolvency and Companies Act cases, and user confidence grew so that increasingly longer trials of all kinds began to be listed before the registrars rather than the judges. At the same time the volume of Companies Act cases increased (capital reductions, schemes of arrangement and later cross-border mergers[[159]](#footnote-159)). A further factor contributing to the registrars’ greater judicial profile was the start of specialist personal insolvency law reports in the form of the *Bankruptcy and Personal Insolvency Reports* which began in 1996 and which began to report registrars’ judgments alongside those of the senior judiciary.

**Recent developments**

In 2006 a decision was taken to move the Chancery Division, the Commercial Court and the Technology and Construction Court from the Royal Courts of Justice in the Strand to new

accommodation in a purpose-built building to be called The Rolls Building[[160]](#footnote-160). Some members of the Commercial Court, realising that insolvency and individual bankruptcy cases made up a significant part of the work of the Chancery Division, protested that that work did not fit in with the business law emphasis of the work to be dealt with at the new building[[161]](#footnote-161). A period of discord ensued between the Commercial Court judges and those of the Chancery Division[[162]](#footnote-162). The then Lord Chief Justice, Lord Phillips, invited Lord Keene to undertake a review to consider occupancy of the new building which culminated in an announcement by Lord Phillips in July 2008:

*“****Final agreement reached on the occupancy of the Rolls Building***

*I am very pleased to be able to confirm that the Review I commissioned earlier this year, under the leadership of Lord Justice Keene, to consider the options for the occupancy of the Rolls Building has been satisfactorily concluded.*

*The entire 5th floor of the Rolls Building will be acquired as a joint venture between the Royal Courts of Justice (RCJ) and the Tribunal Service (TS). This agreement, which has the full support of the Judicial Executive Board and has been ratified by Peter Handcock, MOJ Director General, Access to Justice, enables the 5th floor space to be divided equally between the two organisations.*

*Together with the agreed reduction in the number of Bankruptcy Registrars[[163]](#footnote-163) to be accommodated in the Rolls Building, through the proposed redesignation of personal bankruptcy work to the County Court jurisdiction, this will overcome the accommodation pressures identified at the outset of the review and will enable the project to proceed to the detailed planning stages.*

*The Rolls Building will therefore bring together the Chancery Division, Commercial Court, the Technology and Construction Court and the Administrative Appeals Chamber (AAC) of the Upper Tribunal. The AAC will accommodate 20 Social Security and Child Support Commissioners, 8 lawyers and 20 administrative staff. No hearings or public attendance will ensue from their occupancy. Their presence will not therefore have any impact on the stated aspiration for the Rolls Building to operate as a venue for dealing with high value, complex, business related matters[[164]](#footnote-164).*

*I am very pleased that we have reached this stage in the project and that such a suitable solution has been found.”*

Lord Phillips’s announcement was made without prior notice to the registrars or, it seems, to the then Chancellor, Sir Andrew Morritt, and was a cause of great resentment, not least because of that discourtesy but also because it was rapidly recognised that a court of only four registrars would be inadequate to deal with the increasing case load, even allowing for the transfer of “low value” bankruptcy work to Central London County Court. The subsequent decision to increase the number of registrars from the proposed four to five demonstrated that Phillips’s “final agreement” was some way from being so. What was agreed in the end was that “low value” bankruptcy petitions would in future be dealt with at Central London County Court which would engage two to three specialist district judges to do the work in the Thomas More Building of the Royal Courts of Justice pending the move to that site of the remainder of Central London County Court. From 6 April 2011 creditors’ petitions involving a debt of less than £50,000 and debtors’ petitions involving indebtedness of less than £100,000 had to be presented in Central London County Court rather than the High Court[[165]](#footnote-165). Thus, seven to eight judicial officers[[166]](#footnote-166) sitting in two courts just a few streets away from one another began to do the work which six registrars had previously conducted from one site[[167]](#footnote-167).

Phillips’s reform of judicial attire brought about by *Practice Direction (Court Dress) (No. 5)* and amendment no. 20 to the *Consolidated Criminal Practice Direction (Court Dress)* of 2007 also affected the registrars.[[168]](#footnote-168) Up until 2008 in open court bankruptcy registrars wore the gown and waistcoat of senior counsel with bands and a barrister’s working wig or bench wig. Insolvency and companies court judges[[169]](#footnote-169) now wear the same robes as masters of the Chancery or Queen’s Bench Division, district judges of the Principal Registry of the Family Division, and costs judges, namely the new civil robe introduced on 1 October 2008, with pink tabs at the neck and no wig[[170]](#footnote-170).

On 11 January 2013 Sir Terence Etherton, a former judge of the Chancery Division and Court of Appeal, was appointed as Chancellor following the retirement the previous year of Sir Andrew Morritt. One of Etherton’s first acts was to commission Mr Justice Briggs[[171]](#footnote-171), himself then a judge of the Chancery Division, to report on the conduct of the division’s business and suggest reforms. The result was Lord Justice[[172]](#footnote-172) Briggs’s *Chancery Modernisation Review: Final report*[[173]](#footnote-173) published in December 2013, chapter 11 of which dealt with the company and insolvency work of the division. Briggs recognised that,

*“[T]he Registrars currently provide a national centre of excellence. They are the only judges in the country who work full time in insolvency and company matters. They are recognised as experts, and cases are transferred to the High Court with that in mind. Their judgments are regularly reported in specialist series of insolvency reports”[[174]](#footnote-174);*

and concluded that

*“The Bankruptcy and Companies Courts in the Rolls Building are recognised and sought after as both a national and international centre of excellence. That status should be preserved and enhanced, as a guiding principle”[[175]](#footnote-175).*

He also recommended, “When resources permit, the appointment of a sixth Registrar”[[176]](#footnote-176).

As part of the implementation of the *Chancery Modernisation Review*, steps were taken not to appoint a sixth registrar but to devolve further work to what had by then become the County Court at Central London[[177]](#footnote-177). The following guidelines were agreed[[178]](#footnote-178):

*“1. All winding up petitions must be issued and listed for initial hearing in the Royal Courts of Justice sitting in the Rolls Building.*

*2. All bankruptcy petitions must be listed and allocated in accordance with rule 6.9A Insolvency Rules 1986.*

*3. Save as provided above, all High Court proceedings which are to be listed before a registrar in accordance with the Practice Direction - Insolvency Proceedings will continue to be issued and listed in the Royal Courts of Justice sitting in the Rolls Building. In each case consideration will be given by a registrar at an appropriate stage to whether the proceedings should remain in the High Court or be transferred to the County Court sitting in Central London.*

*4 When deciding whether proceedings which have been issued in the High Court should be transferred to the County Court sitting in Central London, the registrar should have regard to the following factors:*

1. *the complexity of the proceedings;*
2. *whether the proceedings raise new or controversial points of law;*
3. *the likely date and length of the hearing;*
4. *public interest in the proceedings;*
5. *(where it is ascertainable) the amount in issue in the proceedings.*

*5. As a general rule, and subject to 4 (a) – (d) above, where the amount in issue in the proceedings is £100,000 or less, the proceedings should be transferred to the County Court sitting in Central London.*

*6. Subject to paragraph 4 (a) – (e), the following will be transferred to be heard in the County Court sitting in Central London:*

1. *private examinations ordered to take place under ss. 236 or 366 Insolvency Act 1986 (but not necessarily the application for the private examination);*
2. *applications to extend the term of office of an administrator (para. 76 Sch. B1 Insolvency Act 1986);*
3. *applications for permission to distribute the prescribed part (para. 65(3) Sch. B1 Insolvency Act 1986);*
4. *applications to disqualify a director and applications for a bankruptcy restrictions order where it appears likely that an order will be made for a period not exceeding five years.*

*7. With effect from 6 April 2015 the following proceedings will be issued and heard in the County Court sitting in Central London:*

1. *applications for the restoration of a company to the register (s. 1029 ff. Companies Act 2006);*
2. *applications to extend the period allowed for the delivery of particulars relating to a charge (s. 859F Companies Act 2006);*
3. *applications to rectify the register by reason of omission or mis-statement in any statement or notice delivered to the registrar of companies (s. 859M Companies Act 2006) or to replace an instrument or debenture delivered to the registrar of companies (s. 859N Companies Act 2006)”[[179]](#footnote-179).*

The jurisdiction of the registrars was thus curtailed in some respects but in a way that ultimately bolstered their reputation by concentrating their efforts on “high value” cases and the increasing volume of trial work they were taking on in order to relieve the pressure on the Chancery Division judges. Another factor in the rehabilitation of the reputation of the registrars was probably the changing balance between the bankruptcy and company insolvency case load: the greater the proportion of company cases the registrars did, the more their work attracted positive comment[[180]](#footnote-180). After the low point in their status brought about by the initial Rolls Building fiasco the registrars’ reputation was gradually restored and even grew.

Thus, just under 200 years after the creation of bankruptcy registrars, much of the work they now did (arguably most of it) became corporate rather than personal insolvency, and a great deal of it consisted of trial work that would otherwise have been undertaken by judges of the Chancery Division; and whilst the reputation of their courts was arguably at a high point, the role of the registrars, sandwiched as it was uneasily between the county court on the one hand and the Chancery judges on the other, and increasingly divorced from its bankruptcy origins, was in danger of becoming less well defined. Further developments, however, began to favour the registrars and the status of their courts.

The first followed a consultation in 2016 on methods of relieving the pressure on the Court of Appeal[[181]](#footnote-181). The solution to the problem ultimately took the form of devolving some appeals which had thitherto been heard by the Court of Appeal to High Court judges. This in turn led to a proposal that certain insolvency appeals, which up until then had been heard by High Court judges of the Chancery Division, should be heard by the registrars[[182]](#footnote-182). In December 2017 a new Practice Direction 52A on appeals provided for a decision of a district judge in non-insolvency proceedings brought under the Companies Acts or in corporate insolvency to go to either a High Court judge or a registrar. The necessary legislative changes were easily made in relation to corporate insolvency proceedings because the route of appeal was determined by the Insolvency Rules[[183]](#footnote-183). No immediate change could be effected as regards appeals in individual insolvency because a change to primary legislation would be required[[184]](#footnote-184). New rule 12.59(2) Insolvency (England & Wales) Rules 2016[[185]](#footnote-185) sets out where appeals now lie. In summary:

1. *where the initial decision was made by a district judge at a hearing centre listed in schedule 10, the appeal lies to a High Court judge sitting in the District Registry, or to a registrar in bankruptcy of the High Court;*
2. *the appeal will go to a High Court judge where the initial decision was made by a circuit judge sitting in the County Court; a master; a registrar in bankruptcy or a district judge at a District Registry;*
3. *where the initial decision was made by a High Court judge or a registrar in bankruptcy of the High Court, the appeal will be made to the Court of Appeal.*

Schedule 10 restricts the appeals to registrars to those from district judges on the South-Eastern circuit[[186]](#footnote-186).

At about the same time, it was also agreed that the registrars should take on more trials of unfair prejudice petitions[[187]](#footnote-187) to relieve the burden on the Chancery judges.

In October 2017 a new Chancellor of the Chancery Division, Sir Geoffrey Vos[[188]](#footnote-188), launched the Business and Property Courts. The Chancery Division was not formally abolished; rather, the new courts were “created as a single umbrella for specialist jurisdictions across England and Wales” so as to form “the largest specialist centre for financial, business and property litigation in the world”[[189]](#footnote-189). They were to operate through 10 lists, including an insolvency and companies list dealing with companies cases, personal and corporate insolvency and directors’ disqualification proceedings. The old designation, the High Court sitting in Bankruptcy, and the mythical Companies Court disappeared, but the position of the registrars in the new courts was thus firmly consolidated.

In 2018 the registrars were also re-designated: the title of registrar was abolished and replaced with effect from 26 February 2018 by a new title, insolvency and companies court judge[[190]](#footnote-190).  Consequential amendments to existing legislation were also made. The explanatory memorandum accompanying the statutory instrument explained that the purpose of the name change was to introduce judicial titles which better reflected the work registrars in bankruptcy now did, to provide “clarity to court users” and to bring the titles of these judicial offices in line with the name of the courts in which the judges sat.

The increase in the jurisdiction of the registrars/insolvency and companies court judges coincided with an increase in the jurisdiction of High Court judges (including those sitting in the Chancery Division) and in growing recruitment pressure at High Court judge level as a result of deteriorating pay, pension and working conditions[[191]](#footnote-191). The need to recruit more registrars/judges following two retirements in 2017 was taken as an opportunity to restore the number of office-holders to six on the basis that there would inevitably be work which they could take from the Chancery judges (notably more unfair prejudice petition trials, for example). The result was that three new appointments were made in December 2018.

**Conclusion**

We commenced our historical exposition of the office of Bankruptcy Registrar by visiting the genesis of the bankruptcy jurisdiction. After so doing we traced the early development of the commissioners in bankruptcy and other office-holders and demonstrated how these office-holders operated within the bankruptcy jurisdiction from its origin in 1542 up the introduction of bankruptcy registrars in 1821 and how the commissioners shared a number of characteristics with the modern trustee in bankruptcy, as well as modern bankruptcy registrars.

This paper has shown that the role of bankruptcy registrar, now Insolvency and companies court judge, has slowly developed from its early nineteenth century introduction as an administrative office to a fully-fledged judicial role with a domestic and international reputation for excellence. Through our examination of both the “administrative” phase and the “judicial” phase of the bankruptcy registrars’ development we have demonstrated that the office has contributed to the continued development of both bankruptcy and company law more broadly.

We have also demonstrated how the “judicial” phase was consolidated in the late twentieth/early twenty-first century as the work of the bankruptcy registrars has become established as judicial in nature in both the bankruptcy and company spheres and how their judgments have come to attain judicial stature, both before and after the return of the bankruptcy jurisdiction to the Chancery Division in 1921.

Finally, we have demonstrated how the Cork Committee inspired reforms engendered in the Insolvency Act 1986, particularly as regards directors’ disqualification, and the transfer from a High Court judge of the winding up list to the bankruptcy registrars began a process that completed the arc of development of their insolvency jurisdiction from being merely “administrative” to truly “judicial”.

As we approach the bicentenary of the introduction of bankruptcy registrars it can be said with some confidence that the freshly renamed office of insolvency and companies court judge indeed accurately reflects the level and standard of judicial work undertaken by office-holders in that role.

**Table One: Registrars in Bankruptcy of the High Court**[[192]](#footnote-192)

|  |  |  |
| --- | --- | --- |
| **Name** | **Date of appointment** | **Date of retirement** |
| Edward Hobson Vitruvius Lawes[[193]](#footnote-193) | 1832 | 1849[[194]](#footnote-194) |
| William Barber  | 1832[[195]](#footnote-195) | 1843 |
| William Scrope Ayrton | 1843 |  |
| John Vizard |  |  |
| William Hazlitt[[196]](#footnote-196)  | 1854[[197]](#footnote-197) | 1891 |
| James Rigg Brougham | 1848[[198]](#footnote-198) | 1917 |
| Hon John Campbell | 1852[[199]](#footnote-199) |  |
| William Frederick Higgins  | 1858 |  |
| Hon. William Cecil Spring-Rice | 1866 | 1880 |
| William Vizard[[200]](#footnote-200) | 1851 | 1876 |
| Henry Philip Roche  | 1861 | 1875 |
| C. H. Keene  | 1864 | 1869 |
| William Powell Murray[[201]](#footnote-201)  | 1863 |  |
| Philip Henry Pepys[[202]](#footnote-202) | 1864 | 30 January 1886 |
| J. F. Miller  | 1870[[203]](#footnote-203) | 1871 |
| Harry Stanley Giffard | 1 October 1885[[204]](#footnote-204) | 12 October 1912[[205]](#footnote-205) |
| Finlay Knight  | 30 January 1886 |  |
| John Edmund Linklater | 27 June 1887 | 11 January 1917[[206]](#footnote-206) |
| Sir Herbert James Hope[[207]](#footnote-207)  | 30 March 1891 | 3 January 1926[[208]](#footnote-208) |
| Alfred Charles Richard Emden | 8 April 1892[[209]](#footnote-209) | 1894 |
| Henry John Hood  | 17 February 1894[[210]](#footnote-210) |  |
| Edward William Donoghue Manson | 14 November 1912 | 20 November 1919 |
| Sir Frank Mellor  | 17 January 1917[[211]](#footnote-211) | 13 March1936[[212]](#footnote-212) |
| Paul Mortimor Francke | 13 October 1919 | 21 November 1929[[213]](#footnote-213) |
| Sir Arthur Stiebel  | 13 February 1920[[214]](#footnote-214) | 15 April 1947 |
| Ward Coldridge KC  | 4 January 1926 | 3 April 1926[[215]](#footnote-215) |
| Sir Marshall Denham Warmington | 24 April 1926 | 2 August 1935 |
| Oscar Kean  | 7 October 1935[[216]](#footnote-216) | 6 October 1949 |
| Cyril John Parton | 16 March 1936[[217]](#footnote-217) | 22 November 1953[[218]](#footnote-218) |
| James Thomas Pither Wilson CBE | 1947[[219]](#footnote-219) | 21 March1957[[220]](#footnote-220) |
| Thomas Cunliffe  | 7 October 1949[[221]](#footnote-221) | 7 May 1966 |
| John Francis Bowyer CB  | 17 December 1953[[222]](#footnote-222) | 1966 |
| Maurice Augustus Fitzhardinge Berkeley CB  | 1 April 1957[[223]](#footnote-223) | 1975 |
| George Mark Parbury CB  | 1965[[224]](#footnote-224) | 1980 |
| Richard Hunt  | 1966[[225]](#footnote-225) | 1984 |
| Albert James Wheaton  | 29 March 1976 | 16 September 1981 |
| Geoffrey Frederick Dearbergh[[226]](#footnote-226) | 1 April 1975 | 3 July 1979 |
| Mr Penny & Mr Page | 28 September 1978[[227]](#footnote-227) |  |
| John Bradburn | 31 December 1979[[228]](#footnote-228) | 1988 |
| Timothy Littleton Dewhurst MC | 6 January 1981[[229]](#footnote-229) | 5 January 1993 |
| Geoffrey Leonard Pimm[[230]](#footnote-230)  | 1 October 1981 | 1996 |
| David Gidley Scott  | 23 July 1984 | 22 July 1996 |
| Martin Christopher Burton Buckley | 1988[[231]](#footnote-231) | 31 July 2001 |
| William Seymour James[[232]](#footnote-232)  | 2 September 1991 | 1 August 2003 |
| John Andrew Simmonds  | 1 February1993 | 31 January 2011 |
| Peter John Selwyn Rawson  | 31 January 1994 | 3 February 2008[[233]](#footnote-233) |
| Stephen Baister  | 4 November 1996[[234]](#footnote-234) | 1 August 2017 |
| Geoffrey Wilfred Jaques | 6 April 1998 | 2 May 2011 |
| Christine Margaret Derrett  | 20 May 2002 | 1 November 2017 |
| Peter Sydney Aubin Nicholls  | 15 December 2003 | 1 May 2014 |
| Sally Anne Barber  | 6 April 2008 | In post |
| Clive Hugh Jones  | 25 January 2012 | In post |
| Nicholas Norman Briggs | 2 February 2015 | In post |
| Sebastian Hugh Runton Prentis | 17 December 2018 | In post |
| Mark Robert Mullen | 17 December 2018 | In post |
| Catherine Francesca Rosalind Burton | 18 December 2018 | In post |

1. ♦ Consultant, Moon Beaver, director Manolete Partners plc, mediator, Three Stone Buildings; president of the Chartered Institute of Credit Management; formerly chief bankruptcy registrar (2004-2017), bankruptcy registrar (1996-2004), High Court of Justice. [↑](#footnote-ref-1)
2. ♣ Senior Lecturer in Law, School of Law and Social Justice, University of Liverpool and Academic Associate, Exchange Chambers. Email: j.tribe@liverpool.ac.uk. [↑](#footnote-ref-2)
3. Whilst occasional reference is made to registrars outside London, this article concentrates on the role of the bankruptcy registrars of the High Court who most recently have operated from the Royal Courts of Justice and latterly the Business & Property Courts in the Rolls Building. [↑](#footnote-ref-3)
4. Edmund Heward, *Masters in Ordinary* (London, 1991). [↑](#footnote-ref-4)
5. P.W.J. Bartrip, “County Court and Superior Court Registrars 1820-1875: The Making of a Judicial Official” in G.R. Rubin and David Sugarman, *Law, Economy and Society: Essays in the History of English Law 1750-1914* (Abingdon, 1984) page 349. [↑](#footnote-ref-5)
6. P.W.J. Bartrip, “County Court and Superior Court Registrars 1820-1875: The Making of a Judicial Official” in G.R. Rubin and David Sugarman, *Law, Economy and Society: Essays in the History of English Law 1750-1914* (Abingdon, 1984) pages 350-351. [↑](#footnote-ref-6)
7. It is beyond the scope of this short article to embark on even a brief account of the history and development of bankruptcy law in England. For accounts of that histroy see I.P.H. Duffy, “English Bankrupts 1571-1861”*, American Journal of Legal History* 24 (1980) pages 283-305, I. Treiman, *A History of the English Law of Bankruptcy* (University of Oxford unpublished DPhil thesis, 1927 and V. Markham Lester, *Victorian Insolvency* (Oxford, 1995). A shorter account by David Graham QC is to be found in *Muir Hunter on Personal Insolvency* (London, 2018). [↑](#footnote-ref-7)
8. 34 & 35 Hen. VIII c. 4 (1543). [↑](#footnote-ref-8)
9. Section 1 of the 1543 Act. [↑](#footnote-ref-9)
10. Section 33 of the 1543 Act. [↑](#footnote-ref-10)
11. Louis Edward Levinthal, “The Early History of English Bankruptcy”, *University of Pennsylvania Law Review* Vol 67 No 1 January 1919 page 15. [↑](#footnote-ref-11)
12. 13 Eliz. I c. 7 (1571). [↑](#footnote-ref-12)
13. “A central feature of early bankruptcy arrangements was the appointment of commissions, a device that was crucial to Tudor notions of administration”: W.J. Jones, *The Foundations of English Bankruptcy: Statutes and Commissions in the Early Modern Period* (American Philosophical Society, 1979) page 8. [↑](#footnote-ref-13)
14. On Commissions see further Basil Montagu & Francis Gregg. *A Digest of the Bankrupt Laws as altered by the New Statutes* (London, 1827) Vol.1, pages 47-123. [↑](#footnote-ref-14)
15. W.J. Jones, *The Foundations of English Bankruptcy: Statutes and Commissions in the Early Modern Period* (American Philosophical Society, 1979) page 27. Jones names some of the early clerks. [↑](#footnote-ref-15)
16. W.J. Jones, *The Foundations of English Bankruptcy: Statutes and Commissions in the Early Modern Period* (American Philosophical Society, 1979) page 28. [↑](#footnote-ref-16)
17. 21 Jac c. 19. [↑](#footnote-ref-17)
18. 1 Jac c. 15. [↑](#footnote-ref-18)
19. Such at least is the generally held view. Professor Charles J. Tabb, however, has described the powers of the commissioners as “somewhat akin to a combination of today’s trustee and bankruptcy judge” (in “A Brief History of Bankruptcy Law”, *American Bankruptcy Institute Law Review* 3, 1995). [↑](#footnote-ref-19)
20. W.J. Jones, *The Foundations of English Bankruptcy: Statutes and Commissions in the Early Modern Period* (American Philosophical Society, 1979) page 10. [↑](#footnote-ref-20)
21. W.J. Jones, *The Foundations of English Bankruptcy: Statutes and Commissions in the Early Modern Period* (American Philosophical Society, 1979) page 34. [↑](#footnote-ref-21)
22. W.J. Jones, *The Foundations of English Bankruptcy: Statutes and Commissions in the Early Modern Period* (American Philosophical Society, 1979) page 20. [↑](#footnote-ref-22)
23. W.J. Jones, *The Foundations of English Bankruptcy: Statutes and Commissions in the Early Modern Period* (American Philosophical Society, 1979) page 41. [↑](#footnote-ref-23)
24. The origins of many modern insolvency practices can readily be discerned in such powers. [↑](#footnote-ref-24)
25. W.J. Jones, *The Foundations of English Bankruptcy: Statutes and Commissions in the Early Modern Period* (American Philosophical Society, 1979) page 49. [↑](#footnote-ref-25)
26. W.S. Holdsworth, *A History of English Law* Vol 1 page 443; 10 & 11 Vict c 102. [↑](#footnote-ref-26)
27. Louis Edward Levinthal, “The Early History of English Bankruptcy”, *University of Pennsylvania Law Review* Vol 67 No 1 January 1919 page 18. [↑](#footnote-ref-27)
28. 4 & 5 Anne c 4 and 6 Anne 22. [↑](#footnote-ref-28)
29. See, generally, on the legislation of this time Anne M. Carlos, *Conformity and the Certificate of Discharge: Bankruptcy in early eighteenth century England* (August 2010). [↑](#footnote-ref-29)
30. The second Anne Act modified this provision such that the consent of four fifths of creditors in number and value was required. [↑](#footnote-ref-30)
31. On the other hand, misfeasance in the bankruptcy could result in capital punishment. [↑](#footnote-ref-31)
32. Louis Edward Levinthal, “The Early History of English Bankruptcy”, *University of Pennsylvania Law Review* Vol 67 No 1 January 1919 page 19. [↑](#footnote-ref-32)
33. See, *Commissioners of Bankrupts c. 1720-1831 A provisional list compiled by J. C. Sainty* (Institute of Histrocial Research, April 2004) from which the information that follows is derived. See also C.P. Cooper, *A Brief Account of the Court of Commissioners of Bankupt* (London, 1828). [↑](#footnote-ref-33)
34. The debtor would only hear about this later, usually following advertisement in the *London Gazette* or on being informed by one of the commissioners. [↑](#footnote-ref-34)
35. Ian P.H. Duffy, *Bankruptcy and Insolvency in London During the Industrial Revolution* page 17. [↑](#footnote-ref-35)
36. Ian P.H. Duffy, *Bankruptcy and Insolvency in London During the Industrial Revolution* p 34. One notable example of this type of behaviour comes from the great law reforming Lord Chancellor, Lord Westbury, who amongst other things reformed insolvency law when he piloted the Bankruptcy and Insolvency Bill through the House of Commons after he became Attorney-General in 1856. One biographer has noted that one of Lord Westbury’s sons, Richard Westbury, who was himself a bankruptcy registrar, purportedly influenced his father on the appointment of new bankruptcy registrars. Indeed, this has led some to suggest that this activity, particularly in relation to the Leeds registrarship in bankruptcy, was one of the reasons for his early resignation. See further: R. Cocks, *Bethell, Richard, first Baron Westbury (1800–1873), lord chancellor.* Oxford Dictionary of National Biography. [↑](#footnote-ref-36)
37. *Reform of the Bankruptcy Court*, by a Commissioner of Bankrupts (1829) p 7, cited by Duffy, *loc cit*. [↑](#footnote-ref-37)
38. Ian P H Duffy, *Bankruptcy and Insolvency in London During the Industrial Revolution* pp 34 & 35. [↑](#footnote-ref-38)
39. Stephen C. Hicks and Clay Ramsay, “Law, Order and the Bankruptcy Commissions of Early Nineteenth Century England”, *The Legal History Review* 55/1987 pages 123-149 at page 131. [↑](#footnote-ref-39)
40. *Davies’s Laws relating to Bankrupts* cited in Edward Christian, *The Origin, Progress, and Present Practice of the Bankrupt Law both in England and in Ireland* (London, 1812) page 342. [↑](#footnote-ref-40)
41. Ibid. [↑](#footnote-ref-41)
42. Ibid. [↑](#footnote-ref-42)
43. *Reports from Commissioners (6) session 1 February – 2 July* Vol 8 (1816). [↑](#footnote-ref-43)
44. Page 129. [↑](#footnote-ref-44)
45. Or at least the fees associated with the office were. (It attracted a salary of £400 per annum (page 121)). [↑](#footnote-ref-45)
46. *Reports from Commissioners (6) session 1 February – 2 July* Vol 8 (1816) p 126. [↑](#footnote-ref-46)
47. Page 130. The text says that the office goes back to 5 Geo II c. 30. [↑](#footnote-ref-47)
48. 5 Geo II c 30. [↑](#footnote-ref-48)
49. 5 Geo I c 24 section 30. [↑](#footnote-ref-49)
50. Edward Christian, *The Origin, Progress, and Present Practice of the Bankrupt Law both in England and in Ireland* (London, 1812) page 342. Christian goes on to note that the officers in the bankrupt office at the time of writing were the secretary of bankrupts, the clerk of inrolments, and the patentee and his deputy “appointed in consequence of the first bankruptcy statute, the 13 Eliz c. 7”. [↑](#footnote-ref-50)
51. See the entry on the clerk of the inrolments in *Hand-Book to the Public Records* (London, 2013). [↑](#footnote-ref-51)
52. For an interesting discussion of bankruptcy registrars during what might be called their 19th century administrative phase see George Y. Robson. *A Treatise on the Law of Bankruptcy containing a full exposition of the principles and practice of the law…*7th Ed. (London, 1894) pages 44-47 . [↑](#footnote-ref-52)
53. 1 & 2 Geo. IV c. 115. [↑](#footnote-ref-53)
54. J.F. Archbold, *The Law and Practice in Bankruptcy* (London, 1827) page 2. [↑](#footnote-ref-54)
55. The court, designed by Charles Fowler, opened in Basinghall Street on 15 December 1821. [↑](#footnote-ref-55)
56. Section 12 of the 1821 Act. [↑](#footnote-ref-56)
57. Section 13 of the 1821 Act. [↑](#footnote-ref-57)
58. Section 14 of the 1821 Act. [↑](#footnote-ref-58)
59. Section 15 of the 1821 Act. [↑](#footnote-ref-59)
60. Section 16 of the 1812 Act. [↑](#footnote-ref-60)
61. An early form of what we now call practice directions. [↑](#footnote-ref-61)
62. 11[elsewhere 12] January 1832. [↑](#footnote-ref-62)
63. *The Law Journal Comprising Reports of Cases in the Courts of Chancery, King’s Bench, and Common Pleas, from 1822-1858* Vol 10. [↑](#footnote-ref-63)
64. Edward Deacon, *The Law and Practice of Bankruptcy as Altered by the New Act (6. Geo. 4. c. 16)* (London, 1827). [↑](#footnote-ref-64)
65. 1 Ves. & B. 500. [↑](#footnote-ref-65)
66. Deacon notes: “The reason assigned by the registrar in this case is bad, though the rule of practice was correct; for it has been sufficiently shown that the bankruptcy of a party is in equity no abatement of the suit. [↑](#footnote-ref-66)
67. 1 & 2 Will. IV c. 34 [↑](#footnote-ref-67)
68. For a contemporaneous account of the 1831 reforms by William Gibson, Registrar of the Court of Bankruptcy for the Newcastle District, see William Sidney Gibson, *A Letter to the Lord Chancellor, with Comments on the existing regulations, and suggestions for their improvement* (London, 1848). [↑](#footnote-ref-68)
69. Of 12 January 1832 (1 Dea. & C. App. xxiii). [↑](#footnote-ref-69)
70. E.E. Deacon and J. De Gex, *The Law and Practice of Bankruptcy* Vol. I (London, 1848) page 121. [↑](#footnote-ref-70)
71. See *The Legal Observer or Journal of Jurisprudence* Vol. VIII May-October 1834 pages 268-267. [↑](#footnote-ref-71)
72. 1 & 2 Will. IV c. 56 section 9. An account of the establishment of the new court in bankruptcy in *The Legal Observer* Vol III of 5 November 1831 refers to the court’s being made up of three puisne judges, six commissioners ans a single registrar. [↑](#footnote-ref-72)
73. J.F. Archbold, John Flather, *The Law and Practice in Bankruptcy* (1840 ?) [↑](#footnote-ref-73)
74. *The Oxford History of the Laws of England* Vol XI (Oxford, 2010) page 1147. [↑](#footnote-ref-74)
75. Judy Shine, *The History of Vizards* (Cambridge, 1993). Shine records William Vizard’s having served as secretary of bankrupts twice: 1835-1841 and 1846-1852. Vizard was appointed as a registrar in 1852. [↑](#footnote-ref-75)
76. General Rules and Orders in Bankruptcy, 12 January 1832; E.E. Deacon and J. De Gex, *The Law and Practice of Bankruptcy* Vol. I (London, 1848) pages 181-183 and Vol. II, Appendix, rule XV, P.W.J. Bartrip, “County Court and Superior Court Registrars 1820-1875: The Making of a Judicial Official” in G.R. Rubin and David Sugarman, *Law, Economy and Society: Essays in the History of English Law 1750-1914* (Abingdon, 1984) page 352. [↑](#footnote-ref-76)
77. 6 Geo. IV c. 16 [↑](#footnote-ref-77)
78. Section 95. [↑](#footnote-ref-78)
79. 1 & 2 Wm. IV c. 34 or was it c. 36? [↑](#footnote-ref-79)
80. V. Markham Lester, *Victorian Insolvency* (Oxford, 1995) pages 80-83. [↑](#footnote-ref-80)
81. V. Markham Lester, *Victorian Insolvency* (Oxford, 1995) page 83. [↑](#footnote-ref-81)
82. 5 & 6 Vict. c. 122. [↑](#footnote-ref-82)
83. The implication is that the office of deputy registrar was originally a full-time appointment. Now it denotes a part-time, fee-paid judge. [↑](#footnote-ref-83)
84. Bankruptcy Amendment Act 1842, 5 & 6 Vict. C. 122 sections 54 & 73. [↑](#footnote-ref-84)
85. E.E. Deacon and J. De Gex, *The Law and Practice of Bankruptcy* (London, 1848) page 181. [↑](#footnote-ref-85)
86. Section 74 of the 1842 Act. [↑](#footnote-ref-86)
87. E.E. Deacon and J. De Gex, *The Law and Practice of Bankruptcy* (London, 1848) page 182. [↑](#footnote-ref-87)
88. Sections 53 & 61 of the 1842 Act. [↑](#footnote-ref-88)
89. 7 & 8 Vict c. 96. [↑](#footnote-ref-89)
90. “Chief” to distinguish them from deputies. [↑](#footnote-ref-90)
91. Further evidence that the post of deputy was a permanent position. [↑](#footnote-ref-91)
92. Section 51. [↑](#footnote-ref-92)
93. Edward E. Deacon, *The Law and Practıce of Bankruptcy* (London, 1848). See chapter VIII §3 pages 181-184. [↑](#footnote-ref-93)
94. 12 & 13 Vıct. c. 106 section 27. [↑](#footnote-ref-94)
95. W.D. Griffith and C.A. Holmes, *The Law and Practice of Bankruptcy* Vol. I (London, 1867) page 17. [↑](#footnote-ref-95)
96. For an early account of the county courts as a small debt court, but not including their bankruptcy jurisdiction, and the role of the county court registrar “whose duties correspond to those of a master in the High Court” (page 376) see Samuel Rosenbaum. *Studies in English Civil Procedure, III: The County Courts* University of Pennsylvania Law Review and American Law Register, Vol.64, No.4, pages 357-380. Rosenbaum does note, “In all the county courts the registrar has extensive powers in bankruptcy matters (ft. practically those of an American referee in bankruptcy under the Federal Act) which are handled exclusively by the county courts in all places outside London.” (page 378). See also Patrick Polden. *A History of the County Court, 1846-1971* (Cambridge, 1999). [↑](#footnote-ref-96)
97. P.W.J. Bartrip, “County Court and Superior Court Registrars 1820-1875: The Making of a Judicial Official” in G.R. Rubin and David Sugarman, *Law, Economy and Society: Essays in the History of English Law 1750-1914* (Abingdon, 1984) page 353. [↑](#footnote-ref-97)
98. 15 & 16 Vict. c. 77. [↑](#footnote-ref-98)
99. For a description of the role of secretary of bankrupts see the account of J. Pensam who held office 1815-1827 in *The Legal Observer* Vol 5 of 3 November 1832. The work consisted of attending on the Lord Chancellor, procuring signatures on documents and record keeping of various kinds, from which it is clear that the work was largely clerical. [↑](#footnote-ref-99)
100. *Hansard* HC Deb 15 February 1850 Vol. 108 cc 882-5. The last remaining task of the secretary had been to receive certain fees, but that task was redundant as a result of the abolition of fees from the *fiat* by earlier legislation. [↑](#footnote-ref-100)
101. *Hansard*, *loc. cit.* [↑](#footnote-ref-101)
102. Section 2 provides specifically for the appointment of an existing registrar, John Campbell, to the office of chief registrar. [↑](#footnote-ref-102)
103. 17 & 18 Vict c. 119 section 3 [↑](#footnote-ref-103)
104. Sections 4-8. [↑](#footnote-ref-104)
105. Section 8. [↑](#footnote-ref-105)
106. 24 & 25 Vict. c. 134. [↑](#footnote-ref-106)
107. P.W.J. Bartrip, “County Court and Superior Court Registrars 1820-1875: The Making of a Judicial Official” in G.R. Rubin and David Sugarman, *Law, Economy and Society: Essays in the History of English Law 1750-1914* (Abingdon, 1984) page 372. [↑](#footnote-ref-107)
108. See, for example, the report of a dividend meeting held in the bankruptcy of Sir W.C. Anstruther presided over by Mr Registrar Pepys and reported in *The Times*, 7 November 1866. [↑](#footnote-ref-108)
109. 32 & 33 Vict c. 71. [↑](#footnote-ref-109)
110. This included William Hazlitt who was a London bankruptcy registrar and son of the author of the same name. Young Hazlitt had taken up his post in November 1854. See M. Lesser, *Hazlitt, William (1811–1893), editor and translator*. Oxford Dictionary of National Biography. Hazlitt was himself an accomplished author: in the bankruptcy sphere together with H. P. Roche he wrote books on the Bankruptcy and Debtors’ Acts of 1861 and 1869. [↑](#footnote-ref-110)
111. Section 130. For a discussion of the life of a Newcastle District Court in Bankruptcy registrar see F. Watt, *Gibson, William Sidney (1814–1871), writer.* Oxford Dictionary of National Biography. For biographical details of a Manchester District Court in Bankruptcy registrar see E. Carlyle, *Harris, George (1809–1890), author* Oxford Dictionary of National Biography. [↑](#footnote-ref-111)
112. This remains more or less the position today. [↑](#footnote-ref-112)
113. Section 61. [↑](#footnote-ref-113)
114. The commissioner appointed was James Bacon who was shortly thereafter to be made a Vice-Chancellor, holding both offices concurrently until 1883. His appointment to those offices necessarily throws some doubt on the contention that the commissioners’ office was not, at least to some extent, judicial in nature by this time. See further J. Rigg, *Bacon, Sir James (1798–1895), judge*. Oxford Dictionary of National Biography. [↑](#footnote-ref-114)
115. Section 62. [↑](#footnote-ref-115)
116. Section 64. [↑](#footnote-ref-116)
117. Section 67 of the Act and rr. 2,3 and 4. See Edward T. Baldwin, *A Concise Treatise upon the Law of Bankruptcy* 2nd edition (London, 1881). [↑](#footnote-ref-117)
118. Section 84 gave the registrar power to adjourn such meetings. [↑](#footnote-ref-118)
119. Sections 115; 125(10). [↑](#footnote-ref-119)
120. Newspaper reports referring to them in this way abound in the nineteenth century. For an example see *The Times*, 2 May 1879 reporting the hearing of a case *In re Bernard Field* heard by Mr Registrar Brougham. The registrars were still called “your honour” by the official receiver in the public examinations court in the 1990s, a practice that gradually died out. [↑](#footnote-ref-120)
121. Edward T. Baldwin, *A Treatise upon the Law of Bankruptcy and Bills of Sale* 6th edition (London, 1890). [↑](#footnote-ref-121)
122. 46 & 47 Vict. C 52. For a general account of this statute see *Current Political Questions, 1883. 2. The Bankruptcy Bill.* Conservative Central Offices, Westminster, March, 1883, and at page 4 for a discussion of judicial staff where it is noted: “The powers and jurisdictions to be exercised by registrars, speaking roughly, are to be confined to urgent applications and in uncontested matters (clause.91)” . See also: HHJ Chalmers & E. Hough. *The Bankruptcy Acts, 1883 to 1890…a commentary thereon*. 3rd Ed (London, 1891).

 See generally on this and the development of bankruptcy law in the nineteenth century V. Markham Lester, *Victorian Insolvency: Bankruptcy, Imprisonment for Debt, and Company Winding-Up in Nineteenth-Century England* (Oxford, 1995). [↑](#footnote-ref-122)
123. See generally on this and the development of bankruptcy law in the nineteenth century V. Markham Lester, *Victorian Insolvency: Bankruptcy, Imprisonment for Debt, and Company Winding-Up in Nineteenth-Century England* (Oxford, 1995). [↑](#footnote-ref-123)
124. Sir Lewis William Cave (1832-1897) was appointed to the High Court bench in 1881 and served as Judge in Bankruptcy from 1884-1891. [↑](#footnote-ref-124)
125. J. Rigg, *Cave, Sir Lewis William (1832–1897), judge.* Oxford Dictionary of National Biography. [↑](#footnote-ref-125)
126. Subsection 5 provided for the Lord Chancellor to give the same powers to a county court registar. [↑](#footnote-ref-126)
127. *Ex parte Edwards, re Home,* 54 LJQB 447; 2 Morrell 203; *Ex parte Chandler, re Jones,* 49 LT 745, 1 Morrell 17; r. 354. [↑](#footnote-ref-127)
128. Edward T Baldwin, *A Treatise upon the Law of Bankruptcy and Bills of Sale* 6th edition (London, 1890) pages 14-15. [↑](#footnote-ref-128)
129. *Orders Issued by the Judge of the High Court Assigned for Bankruptcy Business under s. 94* (1 January 1884). [↑](#footnote-ref-129)
130. (c), (d) and (e) were added by Order of 25 March 1885. [↑](#footnote-ref-130)
131. See generally *The Oxford History of the Laws of England* Vol XII (Oxford 2010) p 613 ff. and James Taylor, *Creating Capitalism: Joint Stock Enterprise in British Politics and Culture, 1800-1870* (Cambridge, 2010). For a more popular account of the rise of the company see John Micklethwaite and Adrian Wooldridge, *The Company: A Short History of a Revolutionary Idea* (London 2003). [↑](#footnote-ref-131)
132. 7 & 8 Vict c. 110. [↑](#footnote-ref-132)
133. See *The Oxford History of the Laws of England* Vol XII (Oxford 2010) p 647 ff. for a detailed account of the law on winding-up at this time. [↑](#footnote-ref-133)
134. Emden was followed by Henry Hood in 1894, after which, it seems, there was always a registrar with administrative, but not judicial, responsibilities for company winding-up. This also appears to have been the beginning of a divide between bankruptcy registrars proper and bankruptcy registrars who eventually became known as company registrars and the insolvency work each category undertook. [↑](#footnote-ref-134)
135. *The Practice and Forms in Winding Up Companies and Reconstruction* 5th edn. (London, 1896) page 1. [↑](#footnote-ref-135)
136. See, for example, Ranking, Spicer & Pegler’s *The Rights and Duties of Liquidators, Trustees and Receivers* (1955) pages 90-91. [↑](#footnote-ref-136)
137. This remains the position. The first writer made a number of attempts during his period in office to ascertain the origins of the registrars’ Companies Act (and related) jurisdiction, and indeed the basis on which it continued, but was unsuccessful. It appears to have been lost in the mists of time. [↑](#footnote-ref-137)
138. Although in the press rather than in the law reports. For an example see the report of the judgment of Mr Registrar Hope in *Re Cox* reported in *The Times*, 19 June 1913. [↑](#footnote-ref-138)
139. What became known as the Companies Court was a legal fiction in that no such separate court ever existed. The label appears to have originated in the nineteenth century when the registrars began to take on Companies Act work with insolvency implications, notably capital reductions. The term “bankruptcy” was thought by company law practitioners to be unsuitable for this kind of work, hence the invention of a title that was in reality nothing more than a list. See the discussion in chapter 1 (“Origin and Jurisdiction of the Companies Court”) of Boyle & Marshall’s *Practice and Procedure of the Companies Court* (London & Hong Kong 1997). [↑](#footnote-ref-139)
140. On which date court records record that three bankruptcy registrars were in office, one of who was the chief registrar. [↑](#footnote-ref-140)
141. See V. R. Aronson & S. J. Campling, *Chalmers & Hough on The Bankruptcy Acts 1914 & 1926 and the Deeds of Arrangement Act 1914*  9th edn. (London, 1938) page 345. [↑](#footnote-ref-141)
142. *Report of the Review Committee, Insolvency Law and Practice*, (1982) Cmnd. 8558, generally referred to simply as the Cork Report. [↑](#footnote-ref-142)
143. *A Revised Framework for Insolvency Law,* (1984) Cmnd. 9175. [↑](#footnote-ref-143)
144. Paragraphs 972 and 994-996. [↑](#footnote-ref-144)
145. For example, administrations and voluntary arrangements. [↑](#footnote-ref-145)
146. SI 1987/2023. [↑](#footnote-ref-146)
147. As to the ctieria governing whether a case should be heard by the judge or the registrar see *Lewis v Secretary of State for Trade & Industry* [2001] BCLC 597. The criteria to be taken into account are broadly length and date of trial, complexity and public interest. [↑](#footnote-ref-147)
148. Disqualification cases could initially only be heard by a deputy registrar who was senior counsel; this was relaxed to enable deputies who were junior counsel to hear cases too. [↑](#footnote-ref-148)
149. And some work under the Companies Acts and related legislation, notably capital reductions and preliminary hearings relating to schemes of arrangement. [↑](#footnote-ref-149)
150. The divide became so entrenched that early editions of the *Chancery Guide* listed four registrars as bankruptcy registrars and two as “companies registrars” in spite of the fact that the office of companies registrar never existed. All registrars were appointed as registrars in bankruptcy of the High Court. [↑](#footnote-ref-150)
151. James envisaged the registrars’ court developing into precisely the kind of national, specialist insolvency court which Cork had recommended. It was not to be. Attempts in the late 1990s by the Insolvency Court Users’ Committee to restrict the number of provincial courts dealing with insolvency cases and to form a cadre or specialist district judges to sit in them failed: the Ministry of Justice was then of the view that a reduction in court centres with insolvency jurisdiction would restrict access to justice, a view that may now seem ironic in the light of the court closures which have taken place in recent years. [↑](#footnote-ref-151)
152. That position was formalised by a Practice Note issued by the Vice-Chancellor on 23 May 2005 which redefined the judge/registrar jurisdiction: *Practice Note on the Hearing of Insolvency Proceedings* 23 May 2005, [2005] BPIR 688. [↑](#footnote-ref-152)
153. The term “registrar” included a district judge save where the context provided otherwise: see paragraph 1.1(8) of the Practice Direction. [↑](#footnote-ref-153)
154. Cf Secretary of *State for Trade and Industry v Lewis* [2001] 2 BCLC 597, an unsuccessful appeal against a decision of Mr Registrar James to retain to himself a directors’ disqualification case in the face of opposition. [↑](#footnote-ref-154)
155. Section 74. Neuberger J’s decision reinforced the role of the registrars in hearing trials of such applications. James’s ultimate dismissal of the Secretary of State’s application did much to reassure court users as to the quality of the registrars’ judicial decision making. [↑](#footnote-ref-155)
156. An opinion expressed to the first writer by Chief Registrar Pimm at about the time of the former’s appointment. The only High Court registrars who adopted the title of district judge were the registrars of the Principal Registry of the Family Division. Chancery and Queen’s Bench masters retained their title of master. [↑](#footnote-ref-156)
157. Henry Arthur Hollond (1884-1974) was Rouse Ball Professor of English Law at Cambridge between 1943-1950. His paper most likely dates after his retirement. [↑](#footnote-ref-157)
158. The same section made similar provision in relation to the appointment of the senior masters of the Queen’s Bench and Chancery Divisions, the chief taxing master of the Supreme Court and the senior district judge of the Principal Registry of the Family Division. [↑](#footnote-ref-158)
159. After the coming into force of the Companies (Cross-Border Mergers) Regulations 2007. [↑](#footnote-ref-159)
160. “Plans for the biggest dedicated business court in the world were today unveiled by Her Majesty’s Courts Service. The high-spec building to be built on Fetter Lane near the Royal Courts of Justice will match and maintain the UK’s world-class reputation as the first choice for business law” (HMCTS press release, 14 December 2006). [↑](#footnote-ref-160)
161. Their fear appeared to be that the presence of debtors coming to court to present their own bankruptcy petitions would in some way trouble their commercial users, a curious concern given the louche reputation of some who litigate in the Commercial Court. [↑](#footnote-ref-161)
162. The discord was not only over this issue but was due in part to a rivalry that had been developing for some time between the two courts. The recent creation of the umbrella term, Business & Property Courts was, no doubt, an attempt to create greater unity. [↑](#footnote-ref-162)
163. From six to four. [↑](#footnote-ref-163)
164. The non-presence of individual debtors and the reference to the “stated aspiration for the Rolls Building” barely concealed the lobbying of the Commercial Court to keep “ordinary” individuals away from the new court building. [↑](#footnote-ref-164)
165. Insolvency (Amendment) Rules 2011 (SI 2011/785), London Insolvency District (Central London County Court) Order (SI 2011/761), rr. 6.9A & 6.40A Insolvency Rules 1986. The changes affected only petitions to be presented in the London Insolvency District. [↑](#footnote-ref-165)
166. One of the specialist district judges sat part time. [↑](#footnote-ref-166)
167. Much secondary legislation was needed to achieve this result which, predictably, gave rise to problems and inefficiencies, some of which persist to the present day, although many have been overcome. This was not the first time a hive off of bankruptcy work to the County Court caused problems. Problems arose following the 1869 reorganisation of the bankruptcy courts: see W.A.L. Raeburn. *An Anachronism in the Bankruptcy Rules* (1946) MLR, Vol. 9, No. 3 (October 1946), pages 274-279. [↑](#footnote-ref-167)
168. See Clare Dyer*. Civil court judges prepare to cast aside their wigs after 300 years*, The Guardian. 5 January 2007 [↑](#footnote-ref-168)
169. See below as to the change in title. [↑](#footnote-ref-169)
170. See https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judicial-roles/judges/high-ct-masters-registrars/ [↑](#footnote-ref-170)
171. Now Lord Briggs, a justice of the Supreme Court. [↑](#footnote-ref-171)
172. Briggs had in the meantime been elevated to the Court of Appeal. [↑](#footnote-ref-172)
173. Briggs had produced a *Provisional Report* in July 2013. [↑](#footnote-ref-173)
174. *Chancery Modernisation Review: Final report* para 11.19. [↑](#footnote-ref-174)
175. *Chancery Modernisation Review: Final report* para 16.70. [↑](#footnote-ref-175)
176. *Chancery Modernisation Review: Final report* para 16.71. Disappointingly, and inexplicably, Briggs insisted on retaining the resources qualification even after the first writer and users pointed out to him, after seeing a draft of his report, that there would be no resource implications if a registrar were appointed and a district judge vacancy left unfilled the next time a district judge retired. The matter of resources to administer the bankruptcy system has long been an issue: see, for example, *Official Receivers. Treasury agreement to proposal that Registrars of County Courts should be supplied with necessary printed forms required in administration of Bankruptcy Act.* National Archive, Ref: BT 37/2, 1885. The problem, of course, now affects all parts of the justice system. [↑](#footnote-ref-176)
177. With effect from 22 April 2014 s. 17 Crime and Courts Act 2014 amended the County Courts Act 1984 to create a single, national county court. [↑](#footnote-ref-177)
178. By the Chancellor after consultation with the Chancery Modernisation Implementation Committee (headed by Newey J, as he then was), the Central London County Court Liaison Committee and the Bankruptcy & Companies Court Users Committee. [↑](#footnote-ref-178)
179. *Note on listing and criteria for the transfer of work from the registrars to the County Court sitting at Central London*. The unsigned and undated document may be found at para 3E-22 of *Civil Procedure* (the *White Book*) 2015. It is likely to be one of a number of documents that were produced following the *Chancery Modernisation Review* that led to a valedictory “rant” from Professor I R Scott under the title *An Appeal for Orderly Publication* in *The White Book Service’s Civil Procedure News* Issue 7/2015 July 14, 2015. [↑](#footnote-ref-179)
180. To be fair, the number of high profile or legally complex bankruptcy cases was also decreasing and continues to do so; the opposite was true of corporate work. [↑](#footnote-ref-180)
181. See, for example, the Civil Procedure Rules Committee’s Consultation, *Appeals to the Court of Appeal: proposed amendments to Civil Procedure Rules and Practice Direction* (May 2016). [↑](#footnote-ref-181)
182. This suggestion, among others, was first made by Nicholas Briggs when he sat as a bar representative on the Bankruptcy and Companies Court Users Committee. Many of the suggestions he made in that capacity became a reality after his appointment as a registrar and, shortly afterwards, as chief registrar. [↑](#footnote-ref-182)
183. Rule 7.47(20 Insolvency Rules 1986, now rule 12.59(2) Insolvency (England & Wales) Rules 2016. [↑](#footnote-ref-183)
184. See s. 375(2) Insolvency Act 1986. [↑](#footnote-ref-184)
185. Replacing the Insolvency Rules 1986. [↑](#footnote-ref-185)
186. Leaving appeals in other circuits to be dealt with by judges as opposed to registrars. [↑](#footnote-ref-186)
187. See ss. 994-996 Companies Act 2006. [↑](#footnote-ref-187)
188. Vos was appointed following Etherton’s promotion to the office of Master of the Rolls. [↑](#footnote-ref-188)
189. *The Business and Property Courts Advisory Note* 13 October 2017. [↑](#footnote-ref-189)
190. See the Alteration of Judicial Titles (Registrar in Bankruptcy of the High Court) Order 2018.  [↑](#footnote-ref-190)
191. See, for example, “Crisis in judicial recruitment”, *Counsel*, April 2018; Recruitment crisis ‘a threat to judiciary’”,*The Tinmes*, 5 July 2018. [↑](#footnote-ref-191)
192. Compile from various sources. Full dates are given where available. Where exact calendar dates are not known the date of announcement of the relevant appointment has been used. Where no calendar date is available, the dates record the year of the first and last appearance of the registrar in *The Law Lists*. [↑](#footnote-ref-192)
193. Lawes appears to have been the first and only serjeant appointed to this office. He also appears to have been the first chief bankruptcy registrar, holding office as such jointly with William Barber. The *Law List 1831-1832* contains what seems to be the first listing for the New Bankruptcy Court, recording (below the commissioners) the two chief registrars and five deputies, Gregg, Bousfield, Richardson, Campbell and Vizard. [↑](#footnote-ref-193)
194. Parliamentary Papers House of Commons and Command Vol 41 1843 [↑](#footnote-ref-194)
195. Barber is listed alongside Lawes as chief registrar in the *Law List* 1849, but only for that year. [↑](#footnote-ref-195)
196. Son of William Hazlitt, the writer and painter. Together with H.P. Roche he wrote text books on bankruptcy and the Debtors Acts. [↑](#footnote-ref-196)
197. Appointed chief registrar 1871. Entries in the *Law List* for 1872-1879 record his office as “senior registrar”. [↑](#footnote-ref-197)
198. Appointed senior registrar 1891. Brougham had previously served as secretary in bankruptcy. His initial appointment was to the court in Liverpool. He served as a registrar for 69 years before retiring at the age of 91 (*The Times*, 17 October 1917). He conducted the bankruptcy of the popular novelist William Le Queux who was adjudged bankrupt on 22 August 1913. [↑](#footnote-ref-198)
199. Appointed chief registrar in 1852 by section 2 of the 1852 Act which abolished the office of secretary of bankrupts. Little information is available on Campbell, but he wrote *Bankruptcy and Insolvency Bill: answer of John Campbell, William Henry Whitehead, and John Fisher Miller, three of the Registrars of the Court of Bankruptcy, to the case of William Vizard the younger, also a Registrar of such Court* (1847). [↑](#footnote-ref-199)
200. Vizard was a long-standing deputy who sat as such between 1839-1860. [↑](#footnote-ref-200)
201. Murray dealt with the bankruptcy of the painter, Whistler [↑](#footnote-ref-201)
202. Removed by order on ground of infirmity 30 January 1886 [↑](#footnote-ref-202)
203. Miller appears only once in the *Law List* 1870. [↑](#footnote-ref-203)
204. *Hansard* Vol 303 records the appointment as being on 19 March 1886. [↑](#footnote-ref-204)
205. Died in office. [↑](#footnote-ref-205)
206. Died in office. [↑](#footnote-ref-206)
207. Hope conducted a number of hearings in the bankruptcy of Horatio Bottomley who was adjudicated bankrupt in 1922. [↑](#footnote-ref-207)
208. Hope’s valediction is reported in *The Times*, 13 January 1926. [↑](#footnote-ref-208)
209. Appointed first registrar for companies winding up 1892; appointed county court judge 1894. Author of *The Practice and Forms in Winding up Companies and Reconstruction*. In a letter to *The Times* published on 6 February 1895 Emden responded to criticisms voiced about the handling of the affairs of the New Zealand Loan & Mercantile Agency Company, remarking in passing that he was at the time “the Registrar in Companies Winding Up with the control over the whole of that office” [↑](#footnote-ref-209)
210. Hood succeeded Emden as registrar for companies winding up in 1894. [↑](#footnote-ref-210)
211. Appointed senior registrar 4 January 1926. [↑](#footnote-ref-211)
212. For an account of Mellor’s valediction see *The Times*, 14 March 1936. [↑](#footnote-ref-212)
213. Died in office. See *The Times*, 23 November 1929. [↑](#footnote-ref-213)
214. Appointed senior registrar 16 March 1936. Stiebel is also recorded as having acted as registrar in companies winding up. [↑](#footnote-ref-214)
215. Died after only three months in office: see *The Times*, 14 April 1926. [↑](#footnote-ref-215)
216. Appointed senior registrar 1947. [↑](#footnote-ref-216)
217. Appointed senior registrar 7 October 1949. [↑](#footnote-ref-217)
218. Died in office. [↑](#footnote-ref-218)
219. Appointed chief registrar126 November 1953. [↑](#footnote-ref-219)
220. *The Times*, 21 March 1957 records Wilson as having spent over 57 years in public service. [↑](#footnote-ref-220)
221. Appointed chief registrar 1965. [↑](#footnote-ref-221)
222. Appointed senior registrar 21 March 1957. The *London Gazette* of 1 January 1966 also records Bowyer as having served as registrar of the Restrictive Practices Court, Supreme Court of Judicature. [↑](#footnote-ref-222)
223. Appointed chief registrar 1966. [↑](#footnote-ref-223)
224. Appointed chief registrar 1 April 1975 [↑](#footnote-ref-224)
225. Appointed senior registrar 1980 [↑](#footnote-ref-225)
226. Also clerk of the Restrictive Practices Court. [↑](#footnote-ref-226)
227. Temporary appointments for one term. In reality these may be regarded as deputy appointments in the modern sense. [↑](#footnote-ref-227)
228. Appointed chief registrar 1984; clerk to Restrictive Practices Court 1980-1988 [↑](#footnote-ref-228)
229. Appointed chief registrar 1988 [↑](#footnote-ref-229)
230. Born 1926; died 25 November 2015. [↑](#footnote-ref-230)
231. Also clerk to the Restrictive Practices Court; appointed chief registrar 1997. [↑](#footnote-ref-231)
232. Appointed chief registrar 2001. [↑](#footnote-ref-232)
233. Died in office. [↑](#footnote-ref-233)
234. Appointed chief registrar 1 July 2004. [↑](#footnote-ref-234)