

## New Zealand.



### ANALYSIS.

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### 1884, No. 29.

Title.

AN ACT to amend "The Bankruptcy Act, 1883."

[8th November, 1884.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. The Short Title of this Act is "The Bankruptcy Act 1883 Amendment Act, 1884."

Section 117 of Bankruptcy Act, 1883, repealed.

2. Section one hundred and seventeen of "The Bankruptcy Act, 1883" (hereinafter termed "the said Act"), is hereby repealed.

Proof where bankrupt is a member of a firm.

3. Where the bankrupt is at the date of filing his petition, or, in the case of a creditor's petition, at the date of the order of adjudication, liable in respect of distinct contracts as member of two or more distinct firms, or as a sole contractor and also as a member of a firm, the fact that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors,

shall not prevent proof in respect of such contracts against the properties respectively liable upon such contracts.

4. Any separate creditor of any bankrupt shall be at liberty to prove his debt under any adjudication of bankruptcy made against such bankrupt jointly with any other person or persons; and under every such adjudication distinct accounts shall be kept by the Assignee of the joint estate and also of the separate estate or estates of each bankrupt, and the separate estate shall be applied in the first place in satisfaction of the debts of the separate creditors; and in case there shall be a surplus of the separate estate such surplus shall be carried to the account of the joint estate; and in case there shall be a surplus of the joint estate such surplus shall be carried to the account of the separate estate of each bankrupt in the proportion to the right and interest of each bankrupt in the joint estate; and the cost of taking such accounts shall be paid out of the joint and separate estates respectively as the Court or a Judge shall direct.

Proof where joint and separate estates are being administered.

5. The Clerk of every local Court of Bankruptcy shall have and may exercise the like powers as are by the said Act conferred upon a Registrar.

Powers of Clerks of local Courts of Bankruptcy.

6. Subsection three of section forty-one of the said Act is hereby amended by the addition of the following words after the word "process"—namely, "or in case there shall be no property of the debtor of which possession can be taken that a return of *nulla bona* has been made to any writ of execution so issued."

Subsection 3 of section 41 of "The Bankruptcy Act, 1883," amended.

7. The following subsection shall henceforth be read as added to section forty-one of the said Act after the word "annulled," viz. :—

Addition to what shall be deemed acts of bankruptcy

(4.) "Or that a writ of sale directed against any land of the debtor, or any interest therein, has been delivered to a sheriff, bailiff, or sheriff's officer, and such land or interest has been advertised as for sale under such process for a period of twenty-one days."

8. Section forty-nine of the said Act shall henceforth be read and construed as if the words following were added thereto at the end of the said section—namely, "And thereupon all property of the debtor shall vest in, and shall be dealt with by, the Official Assignee."

Section 49 of "The Bankruptcy Act, 1883," amended.

9. Subsection one of section sixty-six of the said Act shall henceforth be read as if the following words were added thereto at the end of the said subsection—namely,

Power to appoint a successor to supervisor on death, &c.

"In the event of the death, resignation, incapacity to act, or removal of any supervisor pending such administration, the creditors may at any such general meeting of creditors, or at any adjournment thereof, by resolution, appoint some fit person qualified as aforesaid to be a supervisor in the place of the supervisor so dying, resigning, becoming incapable to act, or removing as aforesaid."

10. If at any time or from time to time prior to the date of the order of discharge, it appears to the satisfaction of the Court that there is good cause to believe that after a reasonable allowance for the maintenance of the debtor and his family and the payment of debts, claims, and demands not provable under the bankruptcy, the debtor is able to pay any sum towards the discharge of debts, claims, or demands provable under the bankruptcy and not fully paid there-

Procedure for obtaining possession of after-acquired property.

under, the Court may, if it thinks fit, issue a summons requiring him to appear and be examined respecting his ability to make such payment.

Where the debtor is in New Zealand the summons shall be served personally, unless in any case the Court thinks fit to direct that service in some other manner shall be good service.

Where the debtor is not in New Zealand the Court, on evidence satisfying it what service will be effectual to give the debtor knowledge of the summons, may order service to be made by such means and in such manner as it thinks fit.

If the service of the summons is not effected, and the Court is satisfied that the debtor is keeping out of the way to avoid service thereof or of other process, it may order that a notice or notices be inserted in a newspaper or newspapers published or usually circulated at the place where is the debtor's usual or last known place of abode or business in New Zealand, requiring him to appear on a day thereby appointed, being not less than fourteen days after publication of the first of such notices.

On the appearance of the debtor he may be examined on oath or otherwise by the Court respecting his ability to make such payment and for the discovery of property applicable in that behalf, and shall at such examination or otherwise produce such books and documents in his possession or power relating to property so applicable, or alleged to be so applicable, as the Court directs.

The Court may, if it thinks fit, adjourn the hearing of the summons from time to time, and require from the debtor such security for his appearance at the adjourned hearing as the Court thinks fit.

If, on the hearing of the summons, the Court is satisfied that the debtor is able to make such payment, the Court may make an order to the effect that within a time therein specified the debtor do pay into Court such a sum as will produce for the benefit of the creditors under the bankruptcy such a dividend as the Court thinks fit, but so that any debtor be not required under this Part of this Act to pay more than ten shillings in the pound on the amount of the debts, claims, and demands provable under the bankruptcy, inclusive of any dividend paid thereunder, and of the payments from time to time made under this Part of this Act.

If, on or before the day specified in the order for payment, the debtor pays into Court the sum therein specified, the Court shall discharge the former order as far as the circumstances require.

If, on or before the day specified, the debtor does not pay into Court the sum specified, the Court may order that any property of the debtor shall be sold or disposed of for the benefit of the creditors.

All money paid into Court by the debtor in pursuance of any such order, and the net proceeds of any sale and disposition by order of the Court, shall be applied by the Official Assignee in or towards the payment rateably of debts, claims, and demands provable under the bankruptcy and not fully paid thereunder, subject to a reasonable allowance for the maintenance of the debtor and his family, and to the payment in full of debts, claims, and demands not so provable or payable.

The Court may make such order respecting the costs, or the charges and expenses of any person in relation to a summons under this part of this Act, and the mode of recovering them respectively, as seems just.

11. Notwithstanding anything in the said Act contained, a Registrar or Clerk of any local Court of Bankruptcy may during any vacation, or during the illness or absence from the district of a Judge of the Court, exercise all the jurisdiction, power, and authority conferred upon the Court by section ninety-three of the said Act.

Registrar or Clerk to act during illness of Judge for purposes of section 93 of Act of 1883.

12. Subsection two of section sixty-three, section one hundred and forty-one, section one hundred and forty-seven, subsection one of section one hundred and forty-nine, and section one hundred and seventy-nine of the said Act shall henceforth be respectively read as if the words "who are not resident in the district" were omitted therefrom.

Sections 63, 141, 147, 149, and 179 of "The Bankruptcy Act, 1883," amended.

13. Where by the said Act, the rules made thereunder, or by this Act, it is provided that notice or a copy of any proceeding shall be given to the creditors of a bankrupt, such notice may, in the absence of special provision to the contrary, be sent by post-card, notwithstanding that such creditors may be resident in the town or district where the bankruptcy proceedings are being carried on.

Notices. Post-cards.

14. Sections eighty-five and eighty-six of the said Act are hereby repealed.

Sections 85 and 86 of "The Bankruptcy Act, 1883," repealed.

15. Where any part of the property of the bankrupt consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the assignee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but, subject to the provisions of this section, may, by writing signed by him, at any time within one month after the date of filing the debtor's petition, or one month after the date of the order of adjudication on a creditor's petition, as the case may be, disclaim the property.

Substituted provision therefor.

Provided that where any such property shall not have come to the knowledge of the assignee within one month after either of the dates aforesaid, he may disclaim such property at any time within one month after he first became aware thereof: Provided further that the liability of the bankrupt in respect thereof shall absolutely cease from the date of his bankruptcy.

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

The Court may, on the application of any person who is, as against the assignee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the

contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

The Court may, on application by any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose; and the Court may, on such application as aforesaid, make such orders with respect to fixtures, tenants, improvements, and other matters arising out of the tenancy of any property disclaimed as the Court thinks just.

Provided always, that where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-lessee or as mortgagee by demise except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the lease in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there shall be no person claiming under the bankrupt who is willing to accept an order upon such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any lessor-reversioner or other person with whom the bankrupt had originally contracted, or any person claiming under him, or in any person liable either personally or in a representative character, and either alone or jointly with the bankrupt to perform the lessee's covenants in such lease, freed and discharged from all estates, incumbrances, and interests created therein by the bankrupt.

Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

16. Section one hundred and twenty-one of the said Act shall henceforth be read as if the following proviso were added thereto—namely:—

Provided always that the preferential claim of any landlord or person hereby conferred in respect of one half year's rent shall be limited and apply only to the rent of premises in which there are goods liable, but for the bankruptcy, to distress for rent, and he shall not be entitled to more than the value of the goods distrainable as a preferential claim but may prove for the rent due.

17. Subject to the provisions of section one hundred and twenty-one of the said Act, no distress for rent levied on the property of a

Section 121 of  
"The Bankruptcy  
Act, 1883,"  
amended.

Landlords' pre-  
ferential claim to  
rent limited.

Limitation of power  
of distress for rent  
after petition filed,

bankrupt, after the filing of a debtor's petition shall be available, and unless by leave of the Court no such distress shall be available after the filing of a creditor's petition.

18. Section one hundred and thirty-seven of the said Act is hereby amended as follows:—

Section 137 of "The Bankruptcy Act, 1883," amended.

Subsections one, two, and three of the said section shall henceforth be read as if the words "at the date of the order of adjudication" were omitted from each of the said subsections, and the following words respectively substituted in lieu thereof, namely: "at the date of or within sixty days immediately preceding the filing of a debtor's petition, or the filing of a creditor's petition on which an order of adjudication is made."

19. Section one hundred and seventy-one of the said Act shall henceforth be read as if the words "final examination," appearing in the second line of the said section, were omitted therefrom, and the words "public examination" substituted in lieu thereof.

Section 171 of "The Bankruptcy Act, 1883," amended.

20. Section two hundred and twenty-nine of the said Act shall henceforth be read as if the following words were omitted therefrom, namely, "and such other fees shall be paid in respect of other matters under this Act as general rules from time to time direct;" and the following shall be read as substituted in lieu thereof, namely: "and such other fees and percentages shall be payable in lieu thereof or in addition thereto, or in respect of other matters under this Act, as general rules from time to time direct."

Section 229 of "The Bankruptcy Act, 1883," amended.

21. From and after the coming into operation of this Act, it shall not be necessary to make any order of adjudication on a debtor's petition, but the filing of such a petition shall *ipso facto* have the like effect and the like consequences shall ensue as if an order of adjudication under the said Act upon such a petition had been duly made; and the said Act and the rules made thereunder shall be read and construed accordingly.

No order of adjudication necessary on debtor's petition to have like effect as if order made.

22. In all cases in which orders of adjudication shall have been made under section forty-nine of the said Act, the property of the debtor shall from the date of such order be deemed to have been vested in the official assignee.

Vesting of property under orders of adjudication made under section 49 of "The Bankruptcy Act, 1883."

23. Every Auditor to whom accounts are referred by the Court under section one hundred and seventy-eight of the said Act shall be an Auditor who has been previously appointed by the Governor under section one hundred and seventy-four of the said Act.

Auditor nominated by Court to be appointed by the Governor.

24. It shall not be necessary for creditors to appoint more than one supervisor under the said Act.

One supervisor only necessary.

25. The Official Assignee may appear in Court and examine the bankrupt in any bankruptcy proceedings.

Official Assignee may appear in Court and examine bankrupt.

26. Sections seventy-eight and seventy-nine of the said Act are hereby repealed.

Sections 78 and 79 of "The Bankruptcy Act, 1883," repealed. Giving creditor preference fraudulent as against Official Assignee.

27. (1.) Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money, in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same is adjudged

bankrupt within three months after the date of making, taking paying, or suffering the same, be deemed fraudulent and void as against the Official Assignee.

(2.) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Certain payments,  
&c., not invalidated.

**28.** Subject to the provisions of the said Act and of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, conveyances, dispositions, and other transactions, nothing in the said Act or in this Act shall invalidate, in the case of a bankruptcy,—

- (a.) Any payment by the bankrupt to any of his creditors ;
- (b.) Any payment or delivery to the bankrupt ;
- (c.) Any conveyance or assignment by the bankrupt for valuable consideration ;
- (d.) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration :

Provided that both the following conditions are complied with, namely:—

- (1.) The payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the filing of the debtor's petition, or the filing of a creditors' petition, on which an order of adjudication is made, as the case may be ; and
- (2.) The person (other than the debtor) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

Proceedings in  
bankruptcy com-  
menced prior to  
20th May, 1884, in  
Auckland District  
Court holden at  
Hamilton or Thames,  
and not concluded,  
may be completed  
in local Court of  
Bankruptcy.

**29.** Whereas by Proclamation bearing date the twentieth day of May, one thousand eight hundred and eighty-four, a portion of the district within which the Auckland District Court exercised jurisdiction was severed from such district, and, by a Proclamation dated as of the day aforesaid, the portion of the district so severed was constituted a new district under the name of the District Court of Waikato and Thames : And whereas, prior to such alteration and constitution as aforesaid, certain bankruptcy proceedings which had been commenced under the provisions of "The Debtors and Creditors Act, 1876," and "The Bankruptcy Act, 1883," were pending in the Auckland District Court holden at Hamilton and Thames respectively : And whereas certain orders were made for the transference of such proceedings to the Supreme Court at Auckland, but, by reason of the alteration in the district aforesaid, doubts have been entertained whether any transfer of any such proceedings could legally be made, and no proceedings have been taken upon such orders, and it is desirable to make provision for such cases :

Be it therefore enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

In all cases where, prior to the twentieth day of May, one thousand eight hundred and eighty-four, proceedings in bankruptcy had been commenced either under "The Debtors and Creditors Act, 1876," or "The Bankruptcy Act, 1883," in the Auckland District Court holden at Hamilton or at Thames, and were not at the date aforesaid concluded, and have not since been concluded, such proceedings may be carried on and completed in the local Court of Bankruptcy now exercising jurisdiction at the respective places where such proceedings were initiated (hereinafter termed "the said Court"); and the said Court, and the Judge thereof, shall have and may exercise the like jurisdiction, and may make and enforce such orders, or alter or vary any orders already made in the premises in the same manner as such Court or Judge could do if such proceedings had been regularly initiated in the said Court, and that notwithstanding any transfer or alleged transfer of any such proceedings may have been made prior to the coming into operation of this Act.

**30.** The provisions of this Act shall come into force on the first day of December, one thousand eight hundred and eighty-four, with the exception of section twenty-nine, which shall come into force on the passing of this Act. Operation of Act.