

New Zealand.



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1927, No. 41.

AN ACT to amend the Bankruptcy Act, 1908.

Title.

[11th November, 1927.]

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

1. (1) This Act may be cited as the Bankruptcy Amendment Act, 1927, and shall be read together with and deemed part of the Bankruptcy Act, 1908 (hereinafter referred to as the principal Act).

Short Title and commencement.

(2) This Act shall come into force on the first day of January, nineteen hundred and twenty-eight.

2. (1) Section twenty-six of the principal Act is hereby amended by repealing paragraph (f), and substituting the following paragraph:—

Bankruptcy notices.

“(f) If a creditor has obtained a final judgment or final order against him for any amount, and, execution thereon not having been stayed, has served on him in New Zealand, or, by leave of the Court, elsewhere, a bankruptcy notice under this Act, and he does not within seven days after service of the notice in case the service is effected in New

4 & 5 Geo. V,
c. 59, s. 1 (1) (g)

Zealand, and in case the service is effected elsewhere then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he has a counterclaim, set-off, or cross-demand which equals or exceeds the amount of the judgment debt or sum ordered to be paid, and which he could not set up in the action in which the judgment was obtained, or the proceedings in which the order was obtained."

4 & 5 Geo. V,
c. 59, s. 2

(2) A bankruptcy notice under the principal Act as amended by the last preceding subsection shall be in the prescribed form, and shall require the debtor to pay the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order, or to secure or compound for it to the satisfaction of the creditor or the Court, and shall state the consequences of non-compliance with the notice, and shall be served in the prescribed manner :

Provided that a bankruptcy notice—

(a) May specify an agent to act on behalf of the creditor in respect of any payment or other thing required by the notice to be made to, or done to the satisfaction of, the creditor :

(b) Shall not be invalidated by reason only that the sum specified in the notice as the amount due exceeds the amount actually due, unless the debtor within the time allowed for payment gives notice to the creditor that he disputes the validity of the notice on the ground of such misstatement ; but if the debtor does not give such notice he shall be deemed to have complied with the bankruptcy notice if within the time allowed he takes such steps as would have constituted a compliance with the notice had the actual amount due been correctly specified therein.

Cf. *ibid.*, s. 125 (2)

(3) Where a final judgment or final order for any amount has been obtained against a married woman, whether or not expressed to be payable out of her separate property, that judgment or order shall be available for bankruptcy proceedings against her by a bankruptcy notice as though she were personally bound to pay the judgment debt or sum ordered to be paid.

(4) For the purposes of this section any person who is for the time being entitled to enforce a final judgment or final order shall be deemed to be a creditor who has obtained a final judgment or final order.

Section 27 of
principal Act (as
to place where
petitions may be
filed) amended.

3. Section twenty-seven of the principal Act is hereby amended by omitting from paragraph (d) the words "wherein the debtor has resided for three months, or for the longest time under three months," and substituting the words "within which the petitioning creditor resides or carries on business."

Extending
Assignee's powers
of sale by private
contract in respect
of bankrupt's
property.

Cf. *ibid.*, s. 55 (1)

4. In addition to the powers conferred on the Assignee by section sixty-three of the principal Act to sell by private contract the Assignee may, if authorized so to do by the supervisor or supervisors (if any), or, if no supervisor has been appointed, if authorized so to do by a resolution of the creditors, sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book-debts due or growing due to the bankrupt) by private contract in accordance with the terms of the authority conferred as aforesaid

by the supervisor or supervisors, or by the creditors, as the case may be.

5. Section seventy-nine of the principal Act is hereby amended by inserting, after the words "with a view to giving that creditor" in subsection one, the words "or any surety or guarantor for the debt due to that creditor."

Section 79 of principal Act (as to fraudulent preference) amended.

Cf. 4 and 5 Geo. V, c. 59, s. 44

6. (1) Subsection one of section eighty-four of the principal Act is hereby amended as follows:—

Extension of Official Assignee's right to disclaim onerous property.

Cf. *ibid.*, s. 54 (1) (4)

(a) By omitting the words "within three months after the date of adjudication," and substituting the words "within twelve months after the date of adjudication, or such extended period as may be allowed by the Court":

(b) By repealing the proviso, and substituting the following proviso,—

"Provided that where any such property has not come to the knowledge of the Assignee within one month after adjudication, he may disclaim such property at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court."

(2) Subsection four of the said section eighty-four is hereby amended by inserting, after the words "for a period of one month after the receipt of the application," the words "or such extended period as may be allowed by the Court"; and also by inserting, after the words "within the said period," the words "or extended period."

7. Section ninety-two of the principal Act is hereby amended by adding the following subsection:—

Prohibiting publication of report of examination before Assignee.

"(7) Save with the consent of the Court, on the application of the Assignee and subject to such conditions as the Court may prescribe, it shall not be lawful for any person to publish a report of any examination held before such Assignee under subsection one hereof, or of any matter arising in the course of such examination, and every person who, in breach of this subsection, publishes any such report shall be liable on summary conviction to a fine of one hundred pounds."

8. Subsection four of section ninety-five of the principal Act is hereby amended by inserting, after the words "The Assignee shall cause," the words "to be kept"; and by omitting the words "to be drawn up and fairly entered in a book kept for that purpose."

Minutes of creditors' meetings may be kept on loose-leaf system.

9. (1) Section one hundred and twenty of the principal Act is hereby amended by omitting from paragraph (c) the words "six months actually due and payable by the bankrupt at the date of adjudication," and substituting the words "three months actually due and payable by the bankrupt at the date of adjudication in respect of a period terminating not later than the said date."

Limiting landlord's preferential claim for rent in cases of bankruptcy.

(2) When any rent or other payment falls due at stated periods, the person entitled to the rent or payment may prove for a proportionate part thereof as if the rent or payment grew due from day to day.

Cf. *ibid.*, Second Schedule, Rule 20

10. The order of priority prescribed by section one hundred and twenty of the principal Act as between rent and wages is hereby reversed, and the said section is hereby accordingly amended by omitting from paragraph (c) the word "Thirdly," and substituting the word "Fourthly"; and by omitting from paragraph (d) the word "Fourthly," and substituting the word "Thirdly."

Varying order of priority as between rent and wages in administration of bankrupt's assets.

Bankrupt may select furniture, &c., up to value of £50.

Protection of persons accepting assignment of moneys payable to dairy-farmer in respect of sales of milk.

11. Section one hundred and twenty-one of the principal Act is hereby amended by omitting the words "twenty-five pounds" wherever they occur, and in each case substituting the words "fifty pounds."

12. (1) In this section, unless inconsistent with the context,—

"Dairy-farmer" means a person whose business wholly or partly is the production and supply, by himself or his agents, of milk :

"Milk" includes cream :

"Purchaser" means any person to whom a dairy-farmer sells or supplies milk.

(2) A contract in writing by a dairy-farmer by the terms whereof a person who makes or has made advances to a dairy-farmer becomes assignee of or is otherwise entitled to receive moneys which are then or thereafter become payable to the dairy-farmer by a purchaser, or any part of such moneys, is valid in law.

(3) Notice in writing to the purchaser of such contract shall be effectual to charge in the hands of the purchaser the moneys which the dairy-farmer is entitled to receive from the purchaser at the time of the service of such notice, and also all other moneys which may thereafter from time to time become payable by the purchaser in respect of milk purchased or acquired by him from the dairy-farmer.

(4) Such charge shall operate immediately upon receipt by the purchaser of the milk in respect whereof such moneys become payable, and shall further operate for the benefit of the person entitled under the contract to the extent provided by the contract, and the purchaser shall pay such moneys only to the person who under the terms of the contract is entitled to receive the same or to his duly authorized agent.

(5) No such contract shall be liable to be impeached or set aside under any provisions of the principal Act relating to preference, except only (so far as such provisions are applicable) to the extent of advances made to the dairy-farmer before the making of the contract.

(6) Notice of an act of bankruptcy committed by the dairy-farmer shall not affect the validity of the contract or of any advances made thereafter to the dairy-farmer, or the right and security of the person who under the terms of the contract is entitled to receive moneys from the purchaser. The rights of the parties under the contract shall, unless earlier determined by agreement, continue until the actual date when an order adjudicating the dairy-farmer a bankrupt is made, and shall not be affected by any relation back of such order to an earlier date.

13. (1) In this section—

"Court" means the Supreme Court of New Zealand :

"Lease" includes an original or derivative underlease, a grant securing a rent by condition, and an agreement for a lease where the lessee has become entitled to have his lease granted :

"Lessee" includes an original or derivative underlessee, a grantee under any such grant as aforesaid, a person entitled under an agreement as aforesaid, and the executors, administrators, and assigns of a lessee ; and includes a mortgagee of a lease :

Provisional protection of leases against forfeiture on commission by tenant of act of bankruptcy.

“Lessor” includes an original or derivative underlessor, a grantor as aforesaid, a person bound to grant a lease under an agreement as aforesaid, and the executors, administrators, and assigns of a lessor :

“Underlease” includes an agreement for an underlease where the underlessee has become entitled to have his underlease granted :

“Underlessee” includes any person deriving title through or from an underlessee.

(2) A right of re-entry or forfeiture under any proviso or stipulation in a lease consequent on the bankruptcy of the lessee, or on the commission by the lessee of an act of bankruptcy, or on the making by the lessee of a composition with his creditors, shall be subject to the conditions defined in this section.

(3) Where a lessor is proceeding by action or otherwise to enforce such a right of re-entry or forfeiture the Assignee or any lessee or underlessee whose interests are affected by the intended re-entry or forfeiture may in the lessor's action (if any), or in any action brought by himself, or on motion, apply to the Court for relief, and the Court, having regard to all the circumstances of the case, may grant or refuse relief as it thinks fit ; and in case of relief may grant the same on such terms (if any) as to costs, expenses, damages, compensation, penalty, or otherwise as the Court in the circumstances of each case thinks fit.

(4) Where any such relief as aforesaid is granted the Court shall direct a minute or record thereof to be made on the lease or otherwise.

(5) This section applies although the proviso or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

(6) For the purposes of this section a lease limited to continue so long as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

(7) This section applies to leases made either before or after the coming into operation of this Act, and shall have effect notwithstanding any stipulation to the contrary.

(8) An application to the Court for relief under this section may be made at any time within three months after the lessor has re-entered or taken proceedings by action or otherwise to enforce the forfeiture, and relief may be granted notwithstanding that the lessor has taken possession of the land.

14. (1) The Minister of Justice shall in the month of April, nineteen hundred and twenty-eight, and in the same month in each year thereafter, cause to be compiled a list setting forth the name, occupation, and address of, and such other relevant particulars as he thinks proper with respect to, every person who has been adjudged bankrupt at any time since the thirty-first day of March, nineteen hundred and twenty-seven, and who on the thirty-first day of March of the year in which the list is compiled has not obtained an order of discharge, or whose order of discharge is suspended for a term not then expired or is subject to conditions not then fulfilled.

List of undischarged bankrupts to be gazetted annually.

(2) The Minister shall forthwith cause every such list to be published in the *Gazette*, and may from time to time cause to be published in like manner any amendment of the said list.

(3) It shall be the duty of every Assignee in whom, by virtue of the principal Act, is vested any property of a bankrupt to send to the bankrupt by registered letter, so as to reach him not later than the first day of March in any year, notice that unless in the meantime he obtains his discharge his name will be published in the next list of undischarged bankrupts.

(4) The provisions of section one hundred and fifty-four of the principal Act shall apply with respect to notices required to be given under this section.

(5) No action shall lie against the Crown or against the Minister of Justice or any Assignee or other person in respect of the publication of any matter pursuant to this section.
