



ANALYSIS

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1956, No. 60

An Act to amend the Bankruptcy Act 1908

[25 October 1956]

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

1. Short Title and commencement—(1) This Act may be cited as the Bankruptcy Amendment Act 1956, and shall be read together with and deemed part of the Bankruptcy Act 1908 (hereinafter referred to as the principal Act).

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

2. Fraudulent preference—(1) Section seventy-nine of the principal Act is hereby amended by omitting from subsection one the words “three months”, and substituting the words “six months”.

(2) This section shall not apply to anything made or done before the commencement of this Act.

3. Liabilities and rights of certain fraudulently preferred persons—The principal Act is hereby amended by inserting, after section seventy-nine, the following section:

“79A. (1) Where, in the case of any debtor, anything made or done after the commencement of this section is void under section seventy-nine of this Act as a fraudulent preference of a person interested in property mortgaged or charged to secure the debtor’s debt, then (without prejudice to any rights or liabilities arising apart from this provision) the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt to the extent of the charge on the property or the value of his interest, whichever is the less.

“(2) The value of the said person’s interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the charge for the debtor’s debt was then subject.

“(3) On any application made to the Court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the bankruptcy, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of an action for the recovery of the sum paid. This subsection shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments.”

4. Restriction of rights of creditor as to execution or attachment—(1) Section eighty of the principal Act is hereby amended by adding to subsection one the following proviso:

“Provided that—

- “(a) A person who purchases in good faith under a sale by the Sheriff any goods of a debtor on which an execution has been levied shall in all cases acquire a good title to them against the Official Assignee; and
- “(b) The rights conferred by this subsection on the Official Assignee may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.”

(2) Section eighty of the principal Act is hereby further amended by omitting from subsection two the words “completed by sale”, and substituting the words “completed by seizure”.

5. Duties of Sheriff as to goods taken in execution—The principal Act is hereby amended by repealing section eighty-one, and substituting the following section:

“81. (1) Subject to the provisions of subsection three of this section, where any goods of a debtor are taken in execution and, before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy, notice is served on the Sheriff that the debtor has been adjudicated a bankrupt, the Sheriff shall, on being so required, deliver the goods and any money seized or received in part satisfaction of the execution to the Official Assignee, but the costs of the execution shall be a first charge on the goods or money so delivered, and the Official Assignee may sell the goods or a sufficient part thereof for the purpose of satisfying that charge.

“(2) Subject to the provisions of subsection three of this section, where, under an execution in respect of a judgment for a sum exceeding twenty pounds, the goods of a debtor are sold or money is paid in order to avoid a sale, the Sheriff shall deduct the costs of the execution from the proceeds of the sale or the money paid and retain the balance for fourteen days, and, if within that time notice is served on him of a bankruptcy petition having been presented by or against the debtor, and the debtor is adjudged a bankrupt thereon or on any other petition of which the Sheriff has notice, the Sheriff shall pay the balance to the Official Assignee, who shall be entitled to retain it as against the execution creditor.

“(3) The rights conferred by this section on the Official Assignee may be set aside by the Court in favour of the creditor to such extent and subject to such terms as the Court thinks fit.”

6. Validity of certain payments to bankrupt and assignees—The principal Act is hereby amended by inserting, after section eighty-two, the following section:

“82A. A payment of money or delivery of property to a person subsequently adjudged bankrupt, or to a person claiming by assignment from him, shall, notwithstanding anything in this Act, be a good discharge to the person paying the money or delivering the property, if the payment or delivery is made before the actual date of the adjudication and without notice of the presentation of a bankruptcy petition and is either pursuant to the ordinary course of business or otherwise in good faith.”

7. Dealings with undischarged bankrupt—The principal Act is hereby amended by inserting, after section eighty-two A, the following section:

“82B. (1) All transactions by a bankrupt with any person dealing with him in good faith and for value, in respect of property, whether real or personal, acquired by the bankrupt after the adjudication, shall, if completed before any intervention by the Official Assignee, be valid against the Official Assignee, and any estate or interest in any such property which by virtue of this Act is vested in the Official Assignee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction.

“(2) Subsection one of this section shall apply to transactions with respect to real property completed before the first day of January, nineteen hundred and fifty-seven, in any case where there has not been any intervention by the Official Assignee before that date.

“(3) For the purposes of subsection one of this section the receipt of any money, security, or negotiable instrument from, or by the order or direction of, a bankrupt by his banker, and any payment and any delivery of any security or negotiable instrument made to, or by the order or direction of, a bankrupt by his banker, shall be deemed to be a transaction by the bankrupt with that banker dealing with him for value.

“(4) Where a banker has ascertained that a person having an account with him is an undischarged bankrupt, then, unless the banker is satisfied that the account is on behalf of some other person, it shall be his duty forthwith to inform the Official Assignee of the existence of the account, and thereafter he shall not make any payments out of the account, except under an order of the Court or in accordance with instructions

from the Official Assignee, unless by the expiration of one month from the date of giving the information no instructions have been received from the Official Assignee.”

8. Recovery of property transferred without knowledge of bankruptcy—The principal Act is hereby amended by inserting, after section eighty-two B, the following section:

“82c. Where any money or property of a bankrupt has, on or after the date of the adjudication but before notice thereof has been advertised in the prescribed manner, been paid or transferred by a person having possession of it to some other person, and the payment or transfer is under the provisions of this Act void as against the Official Assignee, then, if the person by whom the payment or transfer was made proves that when it was made he had not had notice of the adjudication, any right of recovery which the Official Assignee may have against him in respect of the money or property shall not be enforced by any legal proceedings except where and in so far as the Court is satisfied that it is not reasonably practicable for the Official Assignee to recover in respect of the money or property or of some part thereof from the person to whom it was paid or transferred.”

9. Time for Official Assignee to decide whether to disclaim onerous property—Section eighty-four of the principal Act is hereby amended by omitting from subsection four the words “one month”, and substituting the words “twenty-eight days”.

10. Liability for rentcharge on bankrupt’s land after disclaimer—The principal Act is hereby amended by inserting, after section eighty-four, the following section:

“84A. (1) Where on a disclaimer under section eighty-four of this Act land vests subject to a rentcharge in the Crown or any other person, that shall not, subject to subsection two of this section, impose on the Crown or the said other person or its or his successors in title any personal liability in respect of the rentcharge.

“(2) This section shall not affect any liability in respect of sums accruing due after the Crown or the said other person, or some person claiming through or under the Crown or the said other person, has taken possession or control of the land or has entered into occupation thereof.

“(3) This section shall apply to land vesting and sums accruing due before, as well as after, the commencement of this section.”

11. Arrest of absconding debtor after service of bankruptcy notice—Section eighty-eight of the principal Act is hereby amended by inserting in subsection one, after the words “at any time”, the words “after the service on a debtor of a bankruptcy notice under this Act or”.

12. Priority of debts—(1) Section one hundred and twenty of the principal Act (as amended by section ten of the Bankruptcy Amendment Act 1927) is hereby further amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Thirdly, in payment of—

“(i) All wages or salary of any servant or worker, whether or not earned wholly or in part by way of commission, and whether payable for time or for piece work, in respect of services rendered to the bankrupt during four months next before the relevant date:

“(ii) All holiday pay becoming payable to any servant or worker (or in the case of his death to any other person in his right) on the termination of his employment before or by the effect of the adjudication:

“(iii) Unless the bankrupt has at the date of adjudication under such a contract of insurance as is mentioned in section nine of the Law Reform Act 1936 rights capable of being transferred to and vested in the worker, all amounts due in respect of any compensation or liability for compensation under the Workers’ Compensation Act 1922 accrued before the relevant date:

“(iv) All sums ordered by the Court to be paid out of the bankrupt’s estate to or for the use of any apprentice or articted clerk under section eighty-three of this Act:

“(v) All sums required by any other enactment to be included among the debts which are to be paid in the third priority in the distribution of the property of a bankrupt:

“Provided that the sum to which priority is to be given under subparagraphs (i) and (ii) of this paragraph shall not, in the case of any one claimant, exceed two hundred pounds:

“Provided also that the debts mentioned in this paragraph shall rank equally among themselves and be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions:”.

(2) The said section one hundred and twenty is hereby further amended by adding the following subsections as subsections two and three thereof:

“(2) Where any payment has been made—

“(a) To any servant or worker in the employment of a bankrupt, on account of wages or salary; or

“(b) To any such servant or worker or, in the case of his death, to any other person in his right, on account of holiday pay,—

out of money advanced by some person for that purpose, the person by whom the money was advanced shall in a bankruptcy have a right of priority in respect of the money so advanced and paid up to the amount by which the sum in respect of which the servant or worker would have been entitled to priority in the bankruptcy has been diminished by reason of the payment having been made.

“(3) For the purposes of paragraph (c) of subsection one of this section—

“(a) Any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the bankrupt during that period:

“(b) The expression ‘holiday pay’, in relation to any person, means all sums payable to him by the bankrupt under the Annual Holidays Act 1944, and includes all sums which by or under any other enactment or any award, agreement, or contract of service are payable to him by the bankrupt as holiday pay:

“(c) The expression ‘the relevant date’ means the date of the filing of the debtor’s petition or, as the case may be, the date of the filing of the creditor’s petition on which an order of adjudication is made.”

(3) Section ten of the Workers’ Compensation Amendment Act 1936 is hereby consequentially repealed.

(4) This section shall not apply where the relevant date as hereinbefore defined occurred before the commencement of this Act.

13. Application for discharge—Section one hundred and twenty-five of the principal Act is hereby amended by repealing subsection three, and substituting the following subsection:

“(3) At any time after the expiration of four months from the date of the adjudication of a bankrupt, the Assignee may, by notice in writing, require him to apply for his discharge, and in every such case the following provisions shall apply:

“(a) If the bankrupt fails for ten days thereafter to take all necessary steps for this purpose the Assignee may apply to the Judge to have the bankrupt committed for contempt of Court:

“(b) If it appears to the Assignee that the bankrupt is unable to pay the Court fees and outlay incidental to his application for discharge, the fees shall, on production of a certificate by the Assignee to that effect, be remitted, and the Assignee shall take all necessary steps to pay out of the estate all other outlay in respect of the application for the bankrupt’s discharge:

“(c) The Judge shall have power to make such order in the premises as he thinks proper.”

14. Repeal—Section one hundred and twenty-eight of the principal Act is hereby repealed.

15. Crime for undischarged bankrupt to leave New Zealand without consent—(1) Section one hundred and thirty-eight of the principal Act is hereby amended by inserting, after paragraph (u), the following paragraph:

“(uu) Quits New Zealand within three years after the date of the adjudication, and before he has ceased to be a bankrupt by reason of the granting of an absolute order of discharge or the taking effect of a suspended or conditional order of discharge or the making of an order of annulment, without having first obtained the consent of the Official Assignee, or attempts to quit New Zealand as aforesaid, or makes preparation for quitting New Zealand as aforesaid; or”

(2) Section one hundred and thirty-eight of the principal Act is hereby further amended by adding the following subsection as subsection two thereof:

“(2) For the purposes of paragraph (uu) of subsection one of this section the following provisions shall apply:

- “(a) Every application for the consent of the Official Assignee to the departure of a bankrupt from New Zealand shall be made in writing by the bankrupt or his solicitor and shall be verified by affidavit and contain particulars of the bankrupt’s proposed departure, including—
- “(i) His reasons for leaving New Zealand; and
 - “(ii) Whether he intends to return to New Zealand; and
 - “(iii) The approximate date of departure and, where applicable, the approximate date of return:
- “(b) The Official Assignee, having regard to the interests of the creditors, may in his discretion refuse any such application or grant it either unconditionally or upon or subject to such conditions as he thinks fit:
- “(c) Every decision of the Official Assignee under this subsection shall be subject to appeal to the Court under section sixty-six of this Act:
- “(d) An order of discharge granted subject to the bankrupt consenting to a judgment being entered against him shall not be deemed to take effect until the judgment is satisfied.”

16. Summary jurisdiction of Magistrates—The principal Act is hereby amended by repealing section one hundred and thirty-nine, and substituting the following section:

“139. Every crime under section one hundred and thirty-eight of this Act is hereby declared to be an offence that may be dealt with by a Magistrate’s Court presided over by a Magistrate under and subject to the provisions of the Summary Jurisdiction Act 1952, and the provisions of that Act shall apply accordingly.”
