

1894-5.

Legislative Council.

BANKRUPTCY ACTS AMENDMENT BILL.

(Amendments to be proposed in Committee of the Whole by  
THE HONORABLE THE ATTORNEY-GENERAL.)

- Page 1, clause 1, line 5. *Insert after* "Act" "shall come into operation on the twenty-second day of July, one thousand eight hundred and ninety-five, and"
- Page 1, clause 1, marginal note. *Insert before* "Short title" "Com-  
"mencement and"
- Page 1, clause 1, line 6. *Omit* "1894" *insert* "1895"
- Page 1, clause 1, line 9. *Omit* "1894" *insert* "1895"
- Page 2, clause 2, lines 17 to 20. *Omit* the whole subclause
- Page 2, clause 2, lines 35 to 37. *Omit* the whole subclause
- Page 3, clause 3, line 17. *Insert* at end of line "and enacting in place  
"thereof the following clause—"

When for any cause appearing to the Registrar the said Registrar shall be of opinion that a claimant who has not proved his debt may eventually be able to establish the same it shall be lawful for the said Registrar to allow such claim to be entered for the purpose of voting, and to give such time as he may think fit for establishing the same, and the Official Assignee shall make provision for the same in any account and plan of distribution filed prior to the expiration of such time: Provided that any vote given by the claimant may be declared invalid in the event of the claim not being established within the time allowed, but subject to such terms as the Judge or Registrar may think fit.

Admission of claim  
for purpose of voting.  
[5 Vic. No. 17, s.  
43.]

- Page 3, clause 6, line 36, marginal note. *Insert before* "Person"  
"Bankruptcy Notice:"
- Page 3, clause 6. *Insert* at end of clause two new subclauses (2)  
and (3)—

(2) Any final judgment obtained against a married woman shall be deemed to be a final judgment within the meaning of section four subsection (1) (g) of the Principal Act, and a bankruptcy notice in the form prescribed by the Fifth Schedule to the said Act may issue and be served upon her in respect thereof as if judgment had been obtained against her as a *feme sole*, and the fact that no execution can issue at law on such judgment shall not prevent the non-compliance with such notice being deemed an act of bankruptcy under the said subsection: Provided that nothing herein contained shall be construed to render a married woman liable to be made bankrupt except in respect of her separate estate, and upon evidence that she is possessed of separate estate, or to alter or repeal anything contained in the Married Women's Property Act, 1893.

Final judgment  
against a married  
woman to be a final  
judgment within  
section four  
subsection (1) (g) of  
the Principal Act.

(3) Any decree or order which is in its terms or effect final shall be deemed to be a final judgment within the meaning of section four subsection (1) (g) of the Principal Act.

Any final decree or  
order to be a final  
judgment.

- Page 3, clause 7, line 44, marginal note. *Insert before* "all" "After-  
"acquired property:"



Page 3, clause 7, line 46. *Omit* "his bankruptcy" *insert* in their place "the sequestration of his estate"

Page 3, clause 7, line 51. *Add* marginal note "Sequestration of estate of undischarged bankrupt"

Page 3. After clause 10 *insert* the two following clauses, to stand as clauses 11 and 12—

Discharge of bankrupt on conditions.

11. The judge may, as one of the conditions of granting an order of discharge under section thirty-seven of the Principal Act, require the bankrupt to consent to judgment being entered against him by the official assignee for any balance or part of any balance of the debts provable under the bankruptcy which is not satisfied at the date of the discharge: Provided that in no case shall execution be issued without leave of the judge on a judgment consented to by the bankrupt under the provisions of this section.

Suspension and conditions concurrent.

12. The powers of suspending and of attaching conditions to a bankrupt's discharge may be exercised concurrently.

Page 4, clause 13, line 40. *Omit* all the words after "repealed" to the end of the clause

Pages 4 and 5, clause 15. *Omit* the whole clause.

Page 5, clause 16. *Omit* the whole clause.

Page 5, clause 17, lines 14 to 19. *Omit* the whole clause *insert* in its place the following new clauses—

Repeal of s. 56 of Principal Act.

17. Section fifty-six of the Principal Act is hereby repealed, and it is enacted in lieu thereof as follows:—

Preferences.  
[C f. 5 Vic. No. 17 s. 8.]

(1) Every alienation, transfer, gift, surrender, delivery, mortgage, or pledge of any estate or property, real or personal, every warrant of attorney or judicial proceeding made, taken, or suffered by a person being at the time insolvent, or in contemplation of surrendering his estate under this Act, or knowing that proceedings for placing the same under sequestration have been commenced, or within sixty days before the sequestration thereof, and whether fraudulent or not, having the effect in any such case of preferring any then existing creditor to another, shall be absolutely void.

(2) For the purpose of this section the word insolvent means the inability of a person to pay his debts as they become due from his own moneys.

(3) 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.

Repeal of s. 57 of Principal Act and part of s. 2 of Bankruptcy Act Amendment Act, 1888.

18. Section fifty-seven of the Principal Act and section two of the Bankruptcy Act Amendment Act, 1888 (in so far as it amends section fifty-seven of the Principal Act), are hereby repealed, and it is enacted in lieu thereof as follows:—

Protection of *bona fide* transactions, payments, advances, &c., without notice.

[Chamberlain's Act s. 49 and 25 Vic. No. 8.]

Subject to the provisions of the Principal Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements, and subject to the provisions of the Principal Act and of this Act with respect to the avoidance of certain preferences except as hereinafter provided, nothing in the Principal Act or this Act shall invalidate in the case of a bankruptcy—

- (a) Any payment by the bankrupt to any of his creditors for or on account of any just debt due at the time of payment.
- (b) Any such 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.
- (e) Any transaction to the extent of any present advance *bona fide* made by any existing creditor.

Provided



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 sequestration order; 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. And provided that the burden of proving that the above conditions have been complied with shall be upon the person who relies upon their having been complied with.

“Payment” shall for the purposes of this section include the drawing, making, or indorsing of a bill of exchange, cheque, or promissory note. Interpretation of  
“Payment.”

Page 6, clause 21, line 2. *Omit* “under any contract or agreement”

Page 6, clause 21, line 3. *Omit* “on oath” *insert* “in his affidavit of  
“proof”

Page 6, clause 21, line 3. *Omit* “as aforesaid”

Page 6, clause 21, line 6. *Omit* “then due upon” *insert* “of”

Page 6, clause 21, line 6. *Insert after* “lent” “and due at the time  
“of lodging his proof”

Page 6, clause 21, line 7. *Insert after* “interest” “upon such  
“balance”

Page 6, clause 21, line 9. *Insert after* “amount” “of principal  
“and interest”

Page 6, clause 21, line 9. *Omit* “said contract or agreement” *insert*  
“terms upon which the said money was lent”

Page 6, clause 21, line 10. *Omit* “as aforesaid”

Page 7, clause 30, line 25, marginal note. *Omit* the whole marginal  
note and *insert* in its place the following: “Bankrupt liable  
“to arrest if he removes out of the jurisdiction before account  
“and plan is confirmed.”

Page 7, clause 30. *Omit* the whole clause and *insert* the following  
clause:—

31. If a bankrupt removes out of the jurisdiction of the court before the confirmation of the account and plan of distribution in his estate, except with the consent of three-fourths in number and value of the proved creditors in his estate or by the leave of the Judge, the Judge may, on the information of the official assignee or trustee, or of any creditor, by warrant addressed to the sheriff or any constable or prescribed officer of the court, cause such bankrupt to be arrested, and to be safely kept as prescribed until such time as the Judge may order.

Page 7, clause 31, lines 34 to 41. *Omit* the whole clause *insert* the following clause:—

31. Whenever any person shall at any time at or after the commencement of this Act have been imprisoned—

- (a) in execution of a judgment for defamation or libel obtained under the Act eleventh Victoria number thirteen for a period of twelve months; or
- (b) in virtue of any order made under the Matrimonial Causes Act or any Act amending the same for a period of twelve months for non-payment of a sum due in respect of alimony or maintenance, or for a period of six months for non-payment of costs; or

(c)



(c) In any other case for debt for a period of three months. And has not presented a bankruptcy petition against himself, it shall be lawful for the Attorney-General to present a petition against such person, and a sequestration order may thereupon be made, and shall have effect in all respects as if made upon the petition of such person himself.

Page 7. *After* clause 31 *insert* new clause 32—

Appeal to be by way  
of rehearing.

32. (I) Appeals from any order, decision, or ruling of the Judge in Bankruptcy shall be by way of rehearing, anything in the Principal Act to the contrary notwithstanding, and shall be subject to such terms and conditions as may be prescribed, and subject thereto according to the practice for the time being in force with reference to appeals in the equitable jurisdiction of the Supreme Court.

All orders to be  
subject to review.

(II) The Court or Judge or Registrar may review, rescind, or vary any order made in the bankruptcy jurisdiction by it or him respectively.

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