

Bankruptcy (Amendment) Act, 1926.

[16 & 17 GEO. 5. CH. 7.]

ARRANGEMENT OF SECTIONS.

A.D. 1926.

Section.

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CHAPTER 7.

An Act to amend the Bankruptcy Act, 1914. A.D. 1926.
[16th June 1926.] —

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1.—(1) So much of subsection (2) of section twenty-six of the Bankruptcy Act, 1914 (hereinafter referred to as the "principal Act"), as requires the Court to refuse the discharge of a bankrupt in all cases where he has committed a felony or misdemeanour connected with his bankruptcy unless for special reasons the Court otherwise determines, and so much of the said subsection as requires the Court, where on proof of any of the facts mentioned in subsection (3) of the said section the Court suspends the discharge of a bankrupt, to do so for a period of not less than two years, shall cease to have effect, and in the said subsection (2)—

Amend-
ments
of 4 & 5
Geo. 5.
c. 59. s. 26.

(a) there shall be substituted for the words from the beginning of the first proviso down to the word "either" the words following, that is to say:—

" Provided that where the bankrupt has
" committed any misdemeanour under this
" Act, or any enactment repealed by this
" Act, or any other misdemeanour connected
" with his bankruptcy or any felony con-
" nected with his bankruptcy, or where in

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“ any case any of the facts hereinafter
“ mentioned are proved, the Court shall
“ either—”; and

(b) there shall be substituted for paragraph (ii) of the said first proviso the following paragraph, that is to say:—

“ (ii) suspend the discharge for such period
“ as the Court thinks proper; or ”

(2) There shall be substituted for paragraph (h) of subsection (3) of the said section twenty-six of the principal Act the following paragraph, that is to say:—

“ (h) That the bankrupt has brought on or
“ contributed to his bankruptcy by incurring
“ unjustifiable expense in bringing any frivolous
“ or vexatious action; ”

Explanation
of 4 & 5
Geo. 5. c. 59.
s. 33.

2. For the removal of doubts it is hereby declared that the priority given by section thirty-three of the principal Act to the wages or salary of any clerk or servant in respect of services rendered to a bankrupt during four months before the date of the receiving order, not exceeding fifty pounds, applies to any such wages or salary as aforesaid whether or not earned wholly or in part by way of commission.

Amendment
of 4 & 5
Geo. 5. c. 59.
s. 39.

3. For section thirty-nine of the principal Act (which relates to second or subsequent bankruptcies) there shall be substituted the following section, that is to say:—

“ (1) Where a second or subsequent receiving
“ order is made against a bankrupt, or where an
“ order is made for the administration in bank-
“ ruptcy of the estate of a deceased bankrupt, then
“ for the purposes of any proceedings consequent
“ upon any such order, the trustee in the last
“ preceding bankruptcy shall be deemed to be a
“ creditor in respect of any unsatisfied balance of
“ the debts provable against the property of the
“ bankrupt in that bankruptcy.

“ (2) In the event of a second or subsequent
“ receiving order made against a bankrupt being
“ followed by an order adjudging him bankrupt,
“ or in the event of an order being made for the

“ administration in bankruptcy of the estate of A.D. 1926.
“ a deceased bankrupt, any property acquired —
“ by him since he was last adjudged bankrupt,
“ which at the date when the subsequent petition
“ was presented had not been distributed amongst
“ the creditors in such last preceding bankruptcy,
“ shall (subject to any disposition thereof made
“ by the official receiver or trustee in that bank-
“ ruptcy, without knowledge of the presentation
“ of the subsequent petition, and subject to the
“ provisions of section forty-seven of this Act)
“ vest in the trustee in the subsequent bank-
“ ruptcy or administration in bankruptcy as the
“ case may be.

“ (3) Where the trustee in any bankruptcy
“ receives notice of a subsequent petition in
“ bankruptcy against the bankrupt or after his
“ decease of a petition for the administration
“ of his estate in bankruptcy, the trustee shall
“ hold any property then in his possession which
“ has been acquired by the bankrupt since he
“ was adjudged bankrupt until the subsequent
“ petition has been disposed of, and, if on the
“ subsequent petition an order of adjudication or
“ an order for the administration of the estate
“ in bankruptcy is made, he shall transfer all
“ such property or the proceeds thereof (after
“ deducting his costs and expenses) to the trustee
“ in the subsequent bankruptcy or administration
“ in bankruptcy, as the case may be.”

4. Where any money or property of a bankrupt has, on or after the date of the receiving order but before notice thereof has been gazetted 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 the principal Act void as against the trustee in the bankruptcy, 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 receiving order, any right of recovery which the trustee 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

Recovery of
property
transferred
without
knowledge
of receiving
order.

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A.D. 1926. trustee to recover in respect of the money or property or
— of some part thereof from the person to whom it was
paid or transferred.

Amend-
ments of
4 & 5 Geo. 5.
c. 59. s. 154.

5.—(1) Section one hundred and fifty-four of the principal Act (which provides among other things that any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made, shall be guilty of a misdemeanour if he commits any of the acts or omissions mentioned in paragraphs (4), (5), (9), (10), (11) and (12), of the said section within six months next before the presentation of the bankruptcy petition by or against him, or if he commits any of the acts mentioned in paragraphs (13), (14) and (15) of the said section within six months next before the presentation of the bankruptcy petition by or against him, or, in the case of a receiving order made under section one hundred and seven of the principal Act, before the date of the order), shall have effect as if in the said paragraphs (4), (5), (9), (10), (11), (12), (13), (14) and (15) thereof, the words “twelve months” were substituted for the words “six months” wherever those words occur.

(2) The said section one hundred and fifty-four shall have effect as though the following subsections were inserted therein, that is to say:—

“(2) Any person guilty of a misdemeanour in
“ the cases mentioned respectively in paragraphs
“ (13), (14) and (15) of the last foregoing sub-
“ section shall be liable on conviction on indict-
“ ment to penal servitude for any term not
“ exceeding five years, or, on summary conviction
“ to imprisonment for a term not exceeding
“ twelve months.

“(3) Where any person pawns, pledges or
“ disposes of any property in circumstances which
“ amount to a misdemeanour under paragraph (15)
“ of subsection (1) of this section, every person
“ who takes in pawn or pledge or otherwise
“ receives the property knowing it to be pawned,
“ pledged or disposed of in such circumstances
“ as aforesaid shall be guilty of a misdemeanour,
“ and on conviction thereof liable to be punished
“ in the same way as if he had received the
“ property knowing it to have been obtained in
“ circumstances amounting to a misdemeanour.”

6. For the removal of doubts it is hereby declared that if any person who has been adjudged bankrupt, or in respect of whose estate a receiving order has been made, has with intent to defraud his creditors or any of them caused or connived at the levying of any execution against his property he shall for the purposes of paragraph (b) of section one hundred and fifty-six of the principal Act be deemed to have made a transfer of or charge on his property, and shall accordingly be guilty of a misdemeanour.

A.D. 1926.
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Explanation
of 4 & 5
Geo. 5. c. 59.
s. 156.

7. As from the expiration of a period of two years after the commencement of this Act, section one hundred and fifty-eight of the principal Act (which relates to the failure of bankrupts to keep proper accounts) shall have effect as if—

Amend-
ments of
4 & 5 Geo. 5.
c. 59. s. 158.

(a) there were substituted for subsection (1) thereof the following subsection, that is to say :—

“(1) Any person who has been adjudged bankrupt or in respect of whose estate a receiving order has been made shall be guilty of a misdemeanour, if, having been engaged in any trade or business during any period in the two years immediately preceding the date of the presentation of the bankruptcy petition, he has not kept proper books of account throughout that period and throughout any further period in which he was so engaged between the date of the presentation of the petition and the date of the receiving order, or has not preserved all books of account so kept :

“ Provided that a person who has not kept or has not preserved such books of account shall not be convicted of an offence under this section—

“(a) if his unsecured liabilities at the date of the receiving order did not exceed, in the case of a person who has not on any previous occasion been adjudged bankrupt or made a composition or arrangement with his creditors five hundred

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“ pounds, or in any other case one hundred
“ pounds; or
“ (b) if he proves that in the circum-
“ stances in which he traded or carried
“ on business the omission was honest and
“ excusable.”

; and

(b) there were substituted for subsection (3) thereof
the following subsection, that is to say :—

“ (3) For the purposes of this section, a
“ person shall be deemed not to have kept
“ proper books of account if he has not kept
“ such books or accounts as are necessary to
“ exhibit or explain his transactions and
“ financial position in his trade or business,
“ including a book or books containing entries
“ from day to day in sufficient detail of all
“ cash received and cash paid, and, where the
“ trade or business has involved dealings in
“ goods, statements of annual stocktakings,
“ and (except in the case of goods sold by
“ way of retail trade to the actual consumer)
“ accounts of all goods sold and purchased
“ showing the buyers and sellers thereof
“ in sufficient detail to enable the goods
“ and the buyers and sellers thereof to be
“ identified.”

Amendment
of 4 & 5
Geo. 5. c. 59.
s. 161.

8. It shall not in any case be obligatory on the
court to make an order under section one hundred and
sixty-one of the principal Act (which requires the court
in the circumstances therein mentioned to order the
prosecution of a debtor), unless it appears to the court
that the circumstances are such as to render a prosecution
desirable; and accordingly the said section shall have
effect as if there were therein inserted after the word
“ convicted ” the words “ and that the circumstances are
“ such as to render a prosecution desirable,” and the
proviso to the said section is hereby repealed.

Repeal of
4 & 5 Geo. 5.
c. 59. s. 163.

9. Section one hundred and sixty-three of the
principal Act (which empowers a court to commit for
trial any person whom the court has ground to believe to
have committed a statutory misdemeanour in cases of
bankruptcy) is hereby repealed.

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10. Section one hundred and sixty-four of the principal Act (which in subsection (1) thereof provides, among other things, that a person guilty of an offence declared to be a felony or misdemeanour under that Act in respect of which no special penalty is imposed by that Act shall be liable on summary conviction to imprisonment for a term not exceeding six months) shall have effect as if in the said subsection (1) thereof the words "twelve months" were substituted for the words "six months."

A.D. 1926.

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Amend-
ment of
4 & 5 Geo. 5.
c. 59. s. 164.

11. Rule 5 of the Second Schedule to the principal Act (which requires the affidavit proving a debt to state whether or not the creditor is a secured creditor) shall have effect as if there were inserted at the end thereof the following provision, that is to say:—

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of 4 & 5
Geo. 5. c. 59.
Sched. 2.

" and if it is found at any time that the affidavit
" made by or on behalf of a secured creditor
" has omitted to state that he is a secured
" creditor, the secured creditor shall surrender
" his security to the official receiver or trustee
" for the general benefit of the creditors unless
" the Court on application is satisfied that the
" omission has arisen from inadvertence, and
" in that case the Court may allow the affidavit
" to be amended upon such terms as to the
" repayment of any dividends or otherwise as
" the Court may consider to be just."

12.—(1) This Act may be cited as the Bankruptcy (Amendment) Act, 1926, and this Act and the principal Act may be cited together as the Bankruptcy Acts, 1914 and 1926.

Short title,
citation and
construc-
tion.

(2) Except where the context otherwise requires, references in this Act to the principal Act shall be construed as references to that Act as amended by this Act, and this Act shall be construed as one with the principal Act.

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