

Hon. Mr. Cadman.

## BANKRUPTCY ACT 1892 AMENDMENT.

### ANALYSIS.

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| <p>Title.<br/>Preamble.<br/>1. Short Title.<br/>2. Interpretation.</p> <p style="text-align: center;">PART I.<br/>DEEDS OF ASSIGNMENT.</p> <p>3. Every deed of assignment void unless—(1) It is in favour of at least two trustees who are creditors and execute; (2) Claims under £5 and all wages claims paid in full; (3) Registered under "The Chattels Transfer Act, 1889"; (4) Advertised, and meeting of creditors called.</p> <p>4. Repeal.<br/>5. Stamp duty of £5.<br/>6. Not to be registered until executed by trustees and stamped.<br/>7. Deed to be dated when executed by debtor.<br/>8. For purposes of registration: (1) Deed deemed executed when executed by debtor; (2) Place of registration if no chattels in deed; (3) Requisites of affidavit.<br/>9. "The Chattels Transfer Act, 1889," modified.<br/>    (1.) <i>Public Examination of Debtor.</i><br/>10. Debtors to be publicly examined.<br/>11. Section 124 of principal Act incorporated. Proviso: Duty of trustees to act at expiration of three months. Penalty for neglect by trustees.<br/>12. If debtor fail to attend he is guilty of contempt.<br/>    (2.) <i>Offences and their Punishment.</i><br/>13. Offences by debtor.<br/>14. Sections 137 and 141 to 147 of principal Act incorporated.</p> | <p style="text-align: center;">(3.) <i>Trustees' Bank Account.</i></p> <p>15. Trustees to keep separate trust account with bank. Penalty for retaining moneys in hand.</p> <p style="text-align: center;">(4.) <i>Trustees' Accounts, Audit, and Surplus Moneys.</i></p> <p>16. Trustees' accounts and audit. Sections of principal Act incorporated.</p> <p style="text-align: center;">(5.) <i>General.</i></p> <p>17. Method of reading and construing incorporated sections of principal Act.<br/>18. Jurisdiction.</p> <p style="text-align: center;">PART II.<br/>MISCELLANEOUS.</p> <p>19. Deputy Assignee. Amendment of sections 28 and 55 of principal Act. Seal of Deputy Assignee.<br/>20. Examination of debtor when Assignee receiver.<br/>21. Amendment of section 55. Adjudication substituted for advertisement thereof.<br/>22. Amendment of section 62. Bankrupt not to change residence.<br/>23. Costs of petitioning debtor limited to costs not paid before bankruptcy.<br/>24. Discharge not to release bankrupt from any debts due to Crown. Repeal.<br/>25. Assignee may employ persons to assist.<br/>26. Fees. Former rules validated.<br/>27. Construction of terms of Act.</p> |
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### A BILL INTITULED

AN ACT to amend and extend the Law relating to Bankruptcy. Title.

WHEREAS private deeds of assignment are being increasingly resorted to by insolvent debtors for the purpose of avoiding the strict investigation into their conduct and affairs which "The Bankruptcy Act, 1892" is intended to secure: And whereas such deeds are in other respects repugnant to the policy of that Act, and it is therefore expedient to regulate their use: And whereas it is also expedient to remove certain ambiguities in that Act and otherwise amend it:

BE IT THEREFORE 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 1892 Amendment Act, 1894."
- Interpretation. 2. In this Act, if not inconsistent with the context,—  
 "Court" means the Court as defined in the principal Act :  
 "Debtor" means the person executing a deed of assignment as 5  
 next hereinafter mentioned :  
 "Deed of assignment" or "deed" means and includes every deed or other instrument executed by any person after the passing of this Act, and providing or purporting to provide in any way for the distribution of the whole or 10  
 any part of the property of such person amongst the whole or any of his creditors for the purpose of obtaining a release of the debts due by him to them; but it does not include—  
 (1.) Subsequent and supplementary deeds or instru- 15  
 ments executed by such person in favour of or at the request of the trustees for the purpose of effecting such distribution or giving effect to the arrangement contemplated by such deed of assignment;  
 (2.) Deeds of composition under Part IX. of the 20  
 principal Act :  
 "The principal Act" means "The Bankruptcy Act, 1892" :  
 "Trustees" means trustees under a deed of assignment.

## PART I.

## DEEDS OF ASSIGNMENT. 25

Every deed of assignment void unless :

3. Every deed of assignment is wholly void for all purposes and against all persons whomsoever in so far as regards the title to or the right of possession of the property comprised therein or intended to be distributed thereby, unless—

It is in favour of at least two trustees who are creditors and execute ;

(1.) It is expressed to be made in favour of at least two trustees, 30  
 all of whom are creditors of the debtor, and execute it as such trustees before acting under it ; and

Claims under £5 and all wages claims paid in full ;

(2.) It provides that every claim not exceeding five pounds, and also every claim for wages, whether exceeding five pounds or not, shall be paid in full ; and 35

Registered under "The Chattels Transfer Act, 1889" ;

(3.) It is duly registered as an instrument under "The Chattels Transfer Act, 1889" ; and

Advertised, and meeting of creditors called.

(4.) Within seven days after its execution by the debtor, the trustees, by advertisement appearing in some newspaper published or circulating in the neighbourhood, notify 40  
 the fact of such execution, and call a meeting of creditors to be held at some convenient time and place to be named in such advertisement.

Repeal.

4. Portion of section two of "The Chattels Transfer Act, 1889," to wit, the words "(b.) Assignments for the benefit of the creditors of 45  
 the person making the same," is hereby repealed ; and every deed of assignment, whether comprising chattels or not, is hereby declared to be an instrument under and within the meaning of that Act.

Stamp duty of £5.

5. Every deed of assignment is liable to a stamp duty of five 50  
 pounds, and "The Stamp Act, 1882," is hereby amended accordingly.

6. No deed of assignment is registerable, or shall be registered as aforesaid, unless and until it has been duly executed by the trustees named therein, and the aforesaid stamp duty has been duly paid thereon.

Not to be registered until executed by trustees and stamped.

5 7. Every deed of assignment shall be dated as of the day on which it is executed by the debtor.

Deed to be dated when executed by debtor.

8. For the purpose of the registration as aforesaid of a deed of assignment—

For purposes registration :

10 (1.) The deed is to be deemed to be executed on the day on which it is executed by the debtor ;

Deed deemed executed when executed by debtor  
Place of registration if no chattels in deed ;

(2.) If the deed do not comprise chattels, the place of registration is the Registrar's office nearest to the place where the debtor has longest resided or carried on business during the three months next preceding the date on which he executed the deed ;

15 (3.) The affidavit prescribed by "The Chattels Transfer Act, 1889," shall duly verify the execution of the deed by the debtor as grantor, and by the trustees as grantees, but need not verify the execution thereof by the other creditors ;

Requisites of affidavit.

20 9. The provisions of "The Chattels Transfer Act, 1889," are hereby modified in so far as is necessary in order to give effect to this Act.

"The Chattels Transfer Act, 1889," modified.

(1.) *Public Examination of Debtor.*

25 10. Every debtor shall submit to a public examination before the Court in like manner as if he were a bankrupt.

Debtors to be publicly examined.

11. For all the purposes of such examination, section one hundred and twenty-four of the principal Act is hereby incorporated with this Act, and shall be read and construed as hereinafter mentioned :

Section 124 of principal Act incorporated.

30 Provided that if the debtor be not publicly examined within three months next after the date of the deed of assignment, the trustees shall, at the expiration of such period of three months, forthwith do all the acts prescribed by that section to be done by the Assignee ; and if they fail or neglect so to do they are severally liable on summary conviction to a penalty of not less than *ten* pounds nor more than *fifty* pounds.

Proviso :

Duty of trustees to act at expiration of three months.

35 12. If the debtor, without good cause shown, fails or neglects to submit himself to such public examination when duly notified so to do, such failure or neglect is a contempt of Court, and the Judge of the Court (whether applied to in that behalf by the trustees or not), shall make such order in the premises as he may think proper for the purpose of punishing such contempt and compelling the debtor to submit himself to such examination.

Penalty for neglect by trustees.

If debtor fail to attend he is guilty of contempt.

(2.) *Offences and their Punishment.*

45 13. Every debtor who commits any of the offences specified in section one hundred and thirty-seven of the principal Act, and therein referred to as misdemeanours, is liable on conviction thereof to imprisonment, with or without hard labour, for any term not exceeding *two* years, in like manner as if he were a bankrupt.

Offences by debtor.

Sections 137 and  
141 to 147 of  
principal Act  
incorporated.

14. For the purpose of dealing with offences committed by debtors, the said section one hundred and thirty-seven, as also sections one hundred and forty-one to one hundred and forty-seven, both inclusive, of the principal Act, are hereby incorporated with this Act, and shall be read and construed in manner hereinafter mentioned. 5

(3.) *Trustees' Bank Account.*

Trustees to keep  
separate trust  
account with bank.

15. (1.) The trustees shall, day by day, except on public or bank holidays, pay all moneys received by them during the day in respect of the trust estate into a separate and distinct trust account in their own names, as "Trustees of the assigned estate of \_\_\_\_\_," with the same bank as that with which for the time being the Official Assignee keeps his official account. 10

(2.) All moneys required for the purposes of the trust estate shall be withdrawn from such trust account by cheques signed by all the trustees. 15

Penalty for  
retaining moneys  
in hand.

(3.) If any such trustee at any time, without good cause shown, retains in his hands any moneys contrary to the provisions of this section, he is liable, on summary conviction, to a penalty not exceeding *twenty* per centum upon the amount so retained.

(4.) *Trustees' Accounts, Audit, and Surplus Moneys.* 20

Trustees' accounts  
and audit.

16. (1.) For the purpose of regulating trustees' accounts, the audit thereof, the release of trustees, and the disposal of surplus moneys, sections one hundred and forty-nine and one hundred and fifty, and subsections one, two, three, four, and six of section one hundred and fifty-one, of the principal Act, are hereby incorporated with this Act, and shall be read and construed in manner hereinafter mentioned. 25

Sections of  
principal Act  
incorporated.

(2.) Every trustee who fails or neglects to comply with any of the provisions of the aforesaid sections and subsections is liable on summary conviction to a penalty of *five* pounds, and to a further penalty of *one* pound for every day that such failure or neglect continues. 30

(3.) Subject to the provisions of the principal Act, the moneys referred to in subsection one of said section one hundred and fifty-one, and which the trustees are thereby directed to pay into the Public Trust Office, are to be deemed moneys owing by the trustees to Her Majesty, and may be recovered accordingly. 35

(5.) *General.*

Method of reading  
and construing  
incorporated  
sections of principal  
Act.

17. All the sections and subsections of the principal Act which are hereinbefore declared to be incorporated with this Act shall, for the purposes of this Act, be read and construed as if the trustees were "the Assignee"; the execution of a deed of assignment by the debtor were "an adjudication"; an order releasing the trustees from their administration of the estate were "an absolute order of discharge"; the debtor were "the bankrupt," or "a person adjudged bankrupt"; an offence were "a misdemeanour"; the date of the execution of a deed of assignment by the debtor were "the commencement of the bankruptcy"; the creditors of the debtor were "creditors in bankruptcy"; assignment were "bankruptcy"; the execution of a deed of assignment by the debtor were "the presentation of a bankruptcy petition"; and estate under deed of assignment were "estate in bankruptcy." 40 45 50

18. For the purpose of giving full effect to the provisions of this Act, the Court and the Judge or Magistrate thereof, as the case may be, have jurisdiction over debtors and trustees under this Act in like manner and to the same extent as over bankrupts and assignees under the principal Act; and all rules and regulations made under the principal Act shall be read and construed accordingly.

PART II.

MISCELLANEOUS.

19. For the purpose of clearing up any doubts as to the status and powers of Deputy Assignees, the principal Act is hereby amended as follows:—

(1.) In subsection one of section twenty-eight, by inserting after the words "the Official Assignee" the words "or, as the case may be, the Deputy Assignee."

(2.) In subsection one of section fifty-five, by inserting after the words "Official Assignee," wherever they occur in that subsection, the words "or Deputy Assignee, as the case may be."

(3.) The official seal of a Deputy Assignee is a fac-simile of the official seal of the Official Assignee whose deputy he is.

20. In all cases where the Assignee is appointed under section forty-six of the principal Act to be the receiver and manager of the estate of a person who is not adjudged bankrupt, or of any part thereof, the provisions of section ninety-two of the principal Act shall apply as fully to all intents and purposes as if such person were a bankrupt.

21. Section fifty-five of the principal Act is hereby amended by striking out the word "the" wherever it occurs next before the word "adjudication," and also the words "being advertised" wherever they occur next after the word "adjudication," throughout that section.

22. Section sixty-two of the principal Act, treating of the duties of a bankrupt, is hereby amended by the addition of the following:—

(7.) Shall, before changing his residence within the district, give notice thereof to the Assignee, and shall not leave the district without the previous consent in writing of the Assignee or the Court.

23. Paragraph (c) of section one hundred and twenty of the principal Act is hereby amended, as from the date of the passing of that Act, by the addition of the following words, "but not paid by him out of his estate previous to bankruptcy": But this shall not affect any payments heretofore lawfully made by the Assignee.

24. (1.) Section one hundred and thirty-two of the principal Act is hereby amended by striking out all the words in paragraph (d), and inserting in lieu thereof the following words: "Any debt due to the Crown or on a recognisance; and also any debt or penalty with which he stands charged at the suit of the Crown or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the Sheriff or other public officer on a bail-bond entered into for the appearance of any person prosecuted for any such offence, unless the Colonial Treasurer certify in writing his consent to the bankrupt being discharged therefrom."

Repeal.

(2.) Section one hundred and forty-eight of the principal Act is hereby repealed.

Assignee may employ persons to assist.

25. Subject to the provisions of the principal Act, the Assignee may, in the administration of a bankrupt's estate, employ persons to check accounts, collect book-debts, take stock, prepare tenders, or render other necessary services, and may pay to such persons reasonable remuneration out of the estate. 5

Fees.

26. Except where otherwise provided for, there shall be payable in respect of matters and proceedings under the principal Act and this Act such fees and percentages as general rules from time to time direct; and all rules heretofore made or purporting to be made under the principal Act in respect of fees or percentages are hereby declared to have been validly made. 10

Former rules validated.

Construction of terms of Act.

27. This Act shall be read and construed with the principal Act, and also with "The Chattels Transfer Act, 1889." 15