

[AS REPORTED FROM SELECT COMMITTEE.]

A BILL INTITULED

AN ACT to amend "The Bankruptcy Act 1867." Title.

WHEREAS it is expedient that "The Bankruptcy Act 1867" should be amended Preamble.

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

1 The Short Title of this Act shall be "The Bankruptcy Act Amendment Act 1868." Short Title.

2. This Act shall be read as part of "The Bankruptcy Act 1867" which said Act is hereinafter referred to as "the said Act." Act to be read as part of "Bankruptcy Act, 1867."

10 3. It shall be lawful for the Judge or Judges of each judicial district of the Supreme Court to appoint from time to time by general order any *Gazette* or newspaper published within his or their judicial district to be a *Gazette* for the purposes of the said Act and either for the whole of the judicial district or for any part or parts thereof Judges to appoint *Gazettes* for purposes of Act.

15 and publication in such *Gazette* or newspaper is referred to in the said Act as "gazetting."

4. Upon the abolition or suspension of sittings of any District Court in which proceedings are being taken in any case of bankruptcy all proceedings in such case of bankruptcy shall be deemed to be transferred to the Supreme Court for the judicial district within which such District Court was acting and all future proceedings in every such case shall be carried on as if the petition for adjudication had been presented to the Judge of the Supreme Court for the said judicial district. On abolition &c. of District Courts cases to be transferred to Supreme Court.

20 transferred to the Supreme Court for the judicial district within which such District Court was acting and all future proceedings in every such case shall be carried on as if the petition for adjudication had been presented to the Judge of the Supreme Court for the said judicial district.

25 5. The fifty-second section of the said Act is hereby repealed and the following substituted in lieu thereof—Until the expiration of ten days after the notice has been gazetted exclusive of the day of such gazetting the debtor shall not be deemed to have committed Declaration out of bankruptcy in certain cases.

an act of bankruptcy by filing the declaration but if within five days after the expiration of that period of ten days proceedings to obtain adjudication against him are taken by a creditor or if proceedings are not so taken by a creditor then if within three days after the expiration of that period of five days such proceedings are taken by the debtor then and in either of those cases but not otherwise the debtor shall be deemed to have committed an act of bankruptcy. 5

Non-attendance of creditors at meeting to elect trustee &c. Registrar to act.

6. If a sufficient number of creditors of any bankrupt do not attend at the meeting appointed by the order of adjudication it shall be lawful for the Registrar or for the person appointed by him under section ninety-five of the said Act to adjourn such meeting for seven days notice of which adjournment shall be gazetted and if a sufficient number of creditors do not attend at such adjourned meeting the provisional trustee shall then be deemed to be invested with all the powers conferred on trustees and supervisors by the said Act and shall perform all the duties required of them by the said Act and the Court shall forthwith after the said adjourned meeting appoint a day for the bankrupt to pass his last examination in manner required by section one hundred and eleven of the said Act. 10 15

Court may appoint a trustee to act in lieu of provisional trustee in such cases.

7. Upon the application of the provisional trustee in any case in which he shall become trustee by reason of the non-attendance of creditors at the meetings appointed for the election of trustee the Court may appoint any other person to be nominated in that behalf by the provisional trustee to be trustee in lieu of the provisional trustee and the trustee so to be appointed shall immediately after his appointment have all the like powers and perform all the like duties as are by this Act or by the said Act conferred or imposed upon the trustee and supervisors. 20 25

Such appointments as trustee to be gazetted.

8. Whenever the Registrar or any other person nominated by him as aforesaid shall become trustee notice thereof shall forthwith be gazetted and the production of the *Gazette* shall be conclusive evidence of such trusteeship. 30

Creditor may apply for vesting the estate of debtor in provisional trustee.

9. After the gazetting of a declaration of insolvency any creditor may forthwith apply to the Court for an order that the estate of the debtor be forthwith vested in the provisional trustee. 35

Notice of such application to be given to debtor.

10. Notice of the intention to make such application shall be given to the debtor not less than one clear day before making the same.

Court may make vesting order of estate in the provisional trustee.

11. The Court may upon such application make an order for vesting the estate in the provisional trustee unless good cause to the contrary shall be shown by the debtor or unless the debtor shall give security to the satisfaction of the Court for the due protection of the estate pending the order of adjudication. 40

Effect of such vesting order.

12. Whenever any *interim* vesting order shall be made as aforesaid the effect of such order shall be to vest absolutely in the provisional trustee all the real and personal estate of the debtor whether legal or equitable until the election of a trustee by the creditors or until the provisional trustee or any person to be nominated by him as aforesaid shall become or be appointed trustee as aforesaid and every such vesting order shall be sufficient authority and it shall be the duty of the provisional trustee after the making thereof to seize and if necessary to remove the property of the debtor and for that purpose if necessary to break open any house warehouse shop door trunk or chest of the debtor where the debtor or any of his property is or is supposed to be. 45 50 55

Rates a prior claim.

13. Where at the date of the order of adjudication the bankrupt was indebted in any sum payable for rates leviable under the provisions of any Act or Ordinance for the time being in force the trustee on proof thereof by the collector or other person authorized by law to collect and receive the same shall pay so much as is due not exceeding 60

the rates due and payable for the then current period and such collector or other person may prove as an ordinary creditor for any sum so due beyond that amount.

5 **14.** Notwithstanding anything in the said Act contained or implied to the contrary any judgment debt in respect of which the bankrupt shall before the making of the order of discharge have been arrested or be detained under any final process shall be a debt provable under the bankruptcy.

Discharge of bankrupt from custody and judgment debt provable.

10 **15.** All actions to recover claims in the nature of unliquidated damages arising out of the breach before the order of discharge of any contract or promise made by the bankrupt and in respect of which no proof shall have been tendered under the bankruptcy in manner prescribed by section one hundred and eighty-eight of the said Act shall be commenced within six calendar months after the date of the order of discharge and not afterwards.

Actions for unliquidated damages to be brought within six months.

15 **16.** Section two hundred and four of the Act shall be read as if the following words that is to say "made in the presence of a magistrate or a solicitor of the Supreme Court" had been inserted after the word "declaration" in the said section.

Mode of proof.

20 **17.** On the application of any bankrupt detained in custody upon final process after the order of adjudication and after notice of such application to the detaining creditor or creditors the Court may discharge him from such custody unless good cause be shown for continuing the detention and after such discharge the debt in respect of which the bankrupt shall have been detained shall be a debt proveable under the bankruptcy.

Court may discharge bankrupt detained upon final process.

25 **18.** After the making of any order of adjudication any bankrupt detained in custody upon mesne process issued prior to such order of adjudication shall be discharged from custody unless the Court shall upon the application of the detaining creditor and upon due cause shown within three days next after making the order of adjudication otherwise direct.

Bankrupt detained upon mesne process to be discharged.

30 **19.** In all cases where the creditors shall fail to elect a trustee the Court may make such provision out of the estate for the remuneration of the trustee acting in lieu of such elected trustee and for the payment of all costs charges and expenses to be incurred in connection with the estate as it shall deem fit.

Remuneration of acting trustee.

35 **20.** The provisional trustee and trustee shall furnish to the Accountant in Bankruptcy such accounts and such information in reference to estates under their charge as the said Accountant may from time to time demand or require.

Trustee to furnish accounts &c.