

TRINIDAD AND TOBAGO.

No. 19—1931.

I ASSENT,

[L.S.]

A. C. HOLLIS,
Governor.

8th June, 1931.

AN ORDINANCE to amend the Bankruptcy Ordinance,
Cap. 52.

[8th June, 1931.]

BE it enacted by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof as follows:—

Short title.
Construction.

1. This Ordinance may be cited as the Bankruptcy (Amendment) Ordinance, 1931, and shall be read as one with the Bankruptcy Ordinance, Cap. 52, hereinafter called the Principal Ordinance.

Amendment
of s. 27 of
Cap. 52.
Discharge of
Bankrupt.

2.—(1) So much of sub-section (2) of section 27 of the Principal Ordinance 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 sub-section as requires the Court, where on proof of any of the facts

mentioned in sub-section (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 sub-section (2)

(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"Provided that where the bankrupt has committed any misdemeanour under this Ordinance, or any enactment repealed by this Ordinance, or any other misdemeanour connected with his bankruptcy, or any felony connected with his bankruptcy, or where in any case any of the facts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 sub-section (3) of the said section 27 of the Principal Ordinance 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."

3. For the removal of doubts it is hereby declared that the priority given by section 37 of the Principal Ordinance 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.

Explanation of s. 37 of Cap. 52. Preferential payment of wages or salary earned by way of commission.

4. For section 43 of the Principal Ordinance (which relates to second or subsequent bankruptcies) there shall be substituted the following section, that is to say:—

Amendment of s. 43 of Cap. 52.

(1) Where a second or subsequent receiving order is made against a bankrupt, or where an order

is made for the administration in bankruptcy 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 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 bankruptcy, without knowledge of the presentation of the subsequent petition, and subject to the provisions of section 51 of this Ordinance) vest in the trustee in the subsequent bankruptcy 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.

Recovery
of property
transferred
without
knowledge of
receiving order.

5. 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 Ordinance 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 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.

6.—(1) Section 136 of the Principal Ordinance (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 98 of the Principal Ordinance, 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.

Amendment
of s. 136 of
Cap. 52.
Bankruptcy
offences.

(2) The said section 136 shall have effect as though the following sub-sections 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 indictment to imprisonment with hard labour 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 sub-section (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.

Explanation
of s. 138 of
Cap. 52.
Causing or
conniving
at levy of
execution
to be deemed
transfer or
charge.

7. 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 138 of the Principal Ordinance be deemed to have made a transfer of or charge on his property, and shall accordingly be guilty of a misdemeanour.

Amendment
of s. 140 of
Cap. 52.
Failure to keep
proper books
of account.

8. As from the expiration of a period of two years after the commencement of this Ordinance, section 140 of the Principal Ordinance (which relates to the failure of bankrupts to keep proper accounts) shall have effect as if—

(a) there were substituted for sub-section (1) thereof the following sub-section, 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 two hundred and fifty pounds, or in any other case one hundred pounds; or

(b) if he proves that in the circumstances in which he traded or carried on business the omission was honest and excusable; and

(b) there were substituted for sub-section (3) thereof the following sub-section, 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.

9. It shall not in any case be obligatory on the Court to make an order under section 143 of the Principal Ordinance (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.

Amendment
of s. 143 of
Cap. 52.
Court to direct
prosecution,
if desirable.

Amendment
of s. 145 of
Cap. 52.
Penalty for
felony and
misdemeanour
where no
special
penalty.

10. Section 145 of the Principal Ordinance (which in sub-section (1) thereof provides, among other things, that a person guilty of an offence declared to be a felony or misdemeanour under that Ordinance in respect of which no special penalty is imposed by that Ordinance shall be liable on summary conviction to imprisonment for a term not exceeding six months) shall have effect as if in the said sub-section (1) thereof the words "twelve months" were substituted for the words "six months."

Amendment of
Schedule 2 to
Cap. 52.
Omission in
affidavit by
secured
creditor to
state that
creditor is
secured.

11. Rule 5 of the Second Schedule to the Principal Ordinance (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:—

"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."

Passed in Council this twenty-second day of May, in the year of Our Lord one thousand nine hundred and thirty-one.

J. O'CONNOR,
for Clerk of the Council.