

BANKRUPTCY LAW

(1) NATURE OF BANKRUPTCY

(i) Definition of Bankruptcy

Bankruptcy may be defined as the compulsory administration of a person's estate by the Court for the benefit of his creditors generally and bankruptcy law is that part of Statute Law and Rules of the Court relative to compulsory administration and where there is no provision expressly made by the Law or the Rules of the Court, the procedure and practice of the Supreme Court of Judicature of England where applicable is to be followed.

(ii) Objects of Bankruptcy

When a person is insolvent (i.e. unable to pay his debts as and when they fall due) either he or his creditors may petition for the Court to take over the administration of his estate and its distribution among creditors. This procedure is called bankruptcy and is governed by the Bankruptcy Act.

The Objects of bankruptcy are:

- (a) To secure fair and equal distribution of available property among creditors.
- (b) To free the debtor from his debts so that he can make a fresh start as soon as he is discharged by the Court.
- (c) To enquire into the reasons for his insolvency, and so to deter people from incurring debts they cannot pay.

(2) An Outline of Bankruptcy Procedure

- (a) The debtor must be subject to the law of bankruptcy i.e. of Jamaica.
- (b) He must have given presumptive evidence of insolvency i.e. committed what is technically termed an Act of Bankruptcy. It by no means follows that he is in fact insolvent though in a large majority of cases he is proved to be.
- (c) Proceedings must be commenced by the presentation of a petition to the proper Court, either by the debtor himself or by a creditor or creditors competent to do so. This petition asks that the

- (e) Immediately after the making of the provisional order, the debtor must undergo a preliminary examination by the Trustee in Bankruptcy and prepare a full Statement of his Affairs, containing a list of his Assets and Liabilities.
- (f) The first meeting of creditors which follows, gives an opportunity to creditors to question the debtor on his Statement of Affairs. Here the question of accepting or refusing a scheme of arrangement or composition may come before the meeting.
- (g) The debtor is not a "bankrupt" until the court makes an order of adjudication. This order vests the property of the debtor in the Trustee in Bankruptcy.
- (h) The debtor must next undergo a Public Examination, and be questioned on all matters with a view to the disclosure of the manner in which he managed his affairs and the full circumstances and causes of his bankruptcy.
- (i) With the aid of the bankrupt, where necessary all his property is realized and (subject to certain priorities) dividends are paid to the creditors whose proofs of debts have been admitted by the Trustee.
- (j) Finally comes the "order of discharge" which restores his civil status to the bankrupt now freed of all debts provable in the bankruptcy, and freed also from many civil disabilities which attached to him as a bankrupt.

(3) WHO IS A DEBTOR?

A person against whom a bankruptcy petition is presented must be a debtor within the statutory meaning of the term. By Section 2 the expression "a debtor" unless the context otherwise implies, includes any person, whether a Commonwealth citizen or not, who at any time when any act of bankruptcy was done or suffered by him:

- (a) was personally present in Jamaica or
- (b) ordinarily resided or had a place of residence in Jamaica or
- (c) was carrying on business in Jamaica, personally or by means of an agent or manager, or
- (d) was a member of a firm or partnership which carried on business

traders and non-traders equally. A bankruptcy petition cannot, however, be presented against every debtor.

(4) SPECIAL CLASSES OF DEBTOR

- (a) Companies Corporate or registered under the Companies Act
 These are outside the scope of the Bankruptcy Act: Section 26.
 Registered companies may be compulsorily wound-up if they are insolvent, and the procedure is somewhat similar to the bankruptcy of an individual, e.g. proceedings are commenced by a petition to the Court, which with the aid of the Trustee in Bankruptcy supervises the windings up.
- (b) Partnerships
 Partnerships whether general or limited are subject to the provisions of the Bankruptcy Act - Section 25.
- (c) Deceased Persons
 If a debtor by or against whom a bankruptcy petition has been presented or against whom a provisional order has been made dies, the proceedings in the matter shall be continued as if he was alive - Bankruptcy Act Section 32.
 Also quite apart from this provision of the Act a petition may be presented to the Court for the administration of the estate of a deceased debtor according to the bankruptcy laws - Section 70.
- (d) Bankruptcies
 An undischarged bankrupt may be made bankrupt again before his discharge. The Bankruptcy Act does not prevent an undischarged bankrupt creating valid debts and since he may therefore commit an Act of Bankruptcy it is permissible to institute subsequent bankruptcy proceedings before his discharge from the prior bankruptcy.

(5) THE ACTS OF BANKRUPTCY

Insolvency is the present inability to meet one's debts as they fall due, and of itself is not adequate grounds for bankruptcy proceedings. With few exceptions, bankruptcy proceedings may only be commenced upon proof that the debtor has committed an Act of Bankruptcy. Proof of insolvency is not proof of an Act of Bankruptcy, although insolvency may be one of the essential factors in proving certain acts of bankruptcy e.g. fraudulent preference.

It should be noted that the act does not require proof of commission of an Act of Bankruptcy where (a) the debtor makes his own petition or (b) where an administration order is applied for against the estate of a deceased debtor under the Bankruptcy Act - Section 70.

Summary of the Acts of Bankruptcy

The acts which will be considered as being Acts of Bankruptcy are enumerated by Section 19 and are as follows:

- (a) If in Jamaica or elsewhere, the debtor makes a conveyance or

his property to a Trustee or Trustees for the

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- (c) If with intent to defeat or delay his creditors, the debtor departs out of Jamaica; or being ^{out} of Jamaica remains abroad; or departs from his dwellinghouse/otherwise absents himself; or begins to keep house.
- (d) If the debtor has by any act declared himself unable to pay his debts or
- (e) presents a Bankruptcy petition against himself.
- (f) If execution against the debtor has been levied, by seizure and sale of goods under process of any court or enforced by delivery of his goods.
- (g) If a creditor presenting a petition has served on the debtor a Writ in an action in the Supreme Court, or a Summons in the Resident Magistrate's Court wherein the creditor claims a liquidated sum of not less than \$40, and has served on the debtor in Jamaica a Bankruptcy Notice in prescribed form, and if the debtor does not within seven (7) days of service pay the amount due to the creditor, or secure, on compound for the same to the satisfaction of the creditor, providing no bankruptcy petition may be presented on this act of bankruptcy unless the creditor has obtained a final judgment ^{on} order within three (3) months from the service of the Writ of Summons.
- (h) If a creditor has obtained a final judgment ^{an} order against him for a sum of not less than \$40 and execution against him not having been stayed, has served on him in Jamaica, a Bankruptcy Notice in prescribed form, and he does not within seven (7) days of service comply with the requirements of the Notice.
- (i) If a creditor presenting a petition, having a demand against a debtor of not less than \$40 upon a negotiable security for money upon which the debtor was primarily liable, and upon which payment was at least 14 days overdue, and the creditor has served a Bankruptcy Notice in prescribed form on the debtor and he does not within seven (7) days of service comply with the requirements of the Notice.
- (j) If in Jamaica or elsewhere, the debtor makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would be void as a fraudulent preference if he were adjudged bankrupt.
- (k) If the debtor has, in the Gazette or in a daily paper circulated in Kingston given notice of his intention to convey, assign, or ~~transfer~~ transfer his stock-in-trade, debts, or things in action relating to his business to any other person, and the petitioning creditor having a demand against him for a liquidated sum of not less than \$40 has served on him a Bankruptcy Notice in prescribed form and (7) days comply with the requirements

General Comments on the Acts of Bankruptcy(a) Conveyance to Trustee

It appears that under Act of Bankruptcy No. 1 - Conveyance to Trustee for benefit of creditors generally, the conveyance or assignment must be the sort of transfer necessary to divest the debtor of his interest in the property and to vest it in the Trustee e.g. a formal conveyance of land, an assignment of shares or a mere delivery of chattels etc. so that a mere declaration of trust by the debtor or an agreement to deal with his property as directed by the creditors is not within the section re Spackman (1890). However, if the property is leasehold, such a declaration of trust may be within the section - the real aim being to avoid subjecting the Trustee to liability on onerous covenants in the lease re Hughes (1893). The conveyance must be for creditors generally i.e. for all the creditors and not for certain ones or a particular class, such as trade creditors only - re Phillips, ex parte Barton (1900). An Act of Bankruptcy can under this clause be committed abroad, e.g. where a conveyance or assignment intended to operate in Jamaica is executed abroad. It is significant to note that such a conveyance or assignment is an act of bankruptcy apart from any intent to defeat or delay creditors and may be contrasted with acts of bankruptcy Nos. 2, 3 and 10.

(b) Fraudulent Conveyance; Gift, delivery or transfer

Act of Bankruptcy No. 2 - Fraudulent Conveyance or transfer is different from Act of Bankruptcy No. 1 in the following ways:

- (i) That any transfer suffices, not merely a formal conveyance or assignment;
- (ii) It need not be of all of the debtor's property i.e. any part suffices;
- (iii) It need not be in favour of creditors generally and so it could be in favour of one creditor only or of a person who is not a creditor;
- (iv) It must be fraudulent

For the purposes of the Bankruptcy Act, fraudulent appears to mean either (i) made with intent to defeat or delay creditors or (ii) intended to give any creditor an advantage he would not enjoy in a distribution of assets in bankruptcy. Thus any transfer intended to pay some creditor in a manner not countenanced by the Act is "fraudulent" for this purpose and an "intent to deceive" is not necessarily implied. Thus under this Act of bankruptcy, the assignment of the whole or a part of the debtor's property for the benefit of one creditor or several, to the exclusion of the others has the necessary consequence of defrauding the excluded creditors and is an act of bankruptcy. But this will not apply to a sale or mortgage

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creditors' rights are simply transferred/consideration received by the debtor for his conveyance and such conveyance is not necessarily an Act of Bankruptcy. But if "fraudulent" intent is proved then the transfer is an Act of Bankruptcy (though a bona fide purchase for value is protected by the Bankruptcy Act).

But if the execution of a Bill of Sale over substantially the whole of the grantor's property as security for a pre-existing debt and further advances is not to be an act of bankruptcy, there must be a bona fide agreement by the grantor to make further advances (Ex parte Winder (1875); re Davies (1921)).

Forbearance to seize under an execution on a Bill of Sale will not prevent a subsequent bill of sale over the whole of the debtor's property merely to secure an antecedent debt from being an act of bankruptcy.

(c) Keeping House

Act of Bankruptcy No. 3 - Departure or absence of Debtor. The intention to defeat creditors will generally be presumed when the acts of the debtor must necessarily result in his creditors being defeated or delayed re Finney ex parte Goater (1874). On the other hand if the intent can be affirmatively proved the fact that no creditor was actually delayed is immaterial Williams V. Munn (1809). If, however, a foreigner departs out of Jamaica for the purpose of returning to his own country, the intent to defeat or delay must be affirmatively proved and will not be presumed.

The evidence of beginning to keep house is generally that a debtor has given orders that he is to be deceived to creditors; but he is entitled to refuse to see creditors at unreasonable hours, and in such cases there is no Act of Bankruptcy. In Richardson V. Pratt (1885) it was decided that if an intention to delay creditors is proved, the debtor has committed an Act of Bankruptcy even though delay was sought merely to gain time for the purpose of paying creditors.

Act of Bankruptcy No. 4 - The debtor has by any act declared himself unable to meet his debt. This act of bankruptcy must communicate to the creditor that the debtor is unable to meet his debts and may include a breach of contract to pay a liquidated sum, a declaration of his inability to pay debts (not filed as a petition in the appropriate Court) or a notice suspending the payment of debts.

Act of Bankruptcy No. 5 - Debtor's own petition of declaration of inability to pay own debts. This act of bankruptcy requires no explanation and in order to constitute an act of bankruptcy must be filed with the appropriate court.

Act of Bankruptcy No. 6 - Sale or seizure of goods in execution requires no explanation.

Act of Bankruptcy No. 7, 8 & 9 - Non-compliance with Bankruptcy

therein exceeds the amount actually due unless the debtor, within the time allowed for payment, gives notice to the creditor disputing the Bankruptcy Notice on this ground. Alternatively, the debtor may pay or compound in respect of the sum actually due and thereby he will be deemed to have duly complied with the Bankruptcy Notice.

Act of Bankruptcy No. 10 - Fraudulent preference, to constitute a fraudulent preference, it is essential that:

- (i) the person making it be insolvent at the time and,
- (ii) his main dominant or operative motive in making it a desire to prefer the particular creditor(s) or a surety for the creditor(s).

Intention to prefer need not be proved to be the sole motive of the debtor re Bird, ex parte Hill (1883) but in the absence of evidence of such an intent an act which in fact gives a preference will not be a fraudulent preference and an Act of Bankruptcy re M.I.G. Trust Ltd. (1933).

A payment which is not made voluntarily cannot be a fraudulent preference. If, therefore, a payment is made as a result of pressure on the part of a creditor there is no fraudulent preference or an Act of Bankruptcy committed by him. Therefore, when the transfer or payment or charge is made under some real or supposed legal obligation, or to escape a consequence of wrong-doing, or to stave off an inconvenient and effective pressure, the motive to prefer may be and usually is, negatived. A payment made in the ordinary course of business is not a voluntary payment re Eaton, ex parte Viney (1897) nor is one made to avoid the consequences of a breach of trust or to revive a statute barred debt.

Acts of Bankruptcy Nos. 11 and 12 - are fairly straight forward.

No acts of bankruptcy need be proved before an insolvent debtor's estate is administered by the Court in the following cases:

- (a) Where a debtor presents a petition against himself alleging his inability to pay his debts, the act itself is an Act of Bankruptcy - Section 20.
- (b) Where a deceased person's estate is administered in bankruptcy under the provisions of Section 70.

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FROM THE PETITION TO THE ABSOLUTE ORDER

Anyone may petition who would be entitled to sue in his own name for the recovery of the debt, and in particular, the following may be petitioning creditors:

- (a) A company, by a properly authorised officer
- (b) A Receiver, if he can sue in his own name for the debt
- (c) An infant

he may apply to the R.M. Court to be declared a Bankrupt and must also file along with the petition an Affidavit of his belief that the whole of his estate is below the value of \$400. It appears that the lodging of such petition by a debtor is itself an Act of Bankruptcy; without the previous filing of any declaration of inability to pay debts.

The creditor presenting a petition against a debtor must show:

- (a) That a debt owing to him by the debtor amounts to \$40 or more. Two or more creditors may join in the petition, and they must show that ^{the} aggregate amount owing to them amounts to more than \$40 - Section 19.
- (b) That the debt is a liquidated sum payable immediately or growing due at law or in equity and must not be a secured debt unless the petitioner states in his petition that he will be ready to give up his security for the benefit of the other creditors should a provisional order be made, or gives an estimate of the value of the security and petitions only for the amount of the debt in excess of the value.
- (c) That the Act of Bankruptcy on which the petition is grounded was committed by the debtor within six (6) months before the presentation of the petition.

The petitioning creditor's debt must have been in existence when the Act of Bankruptcy was committed re Hayward (1871). But the debt need not be due to the petitioning creditor at the time when the Act of Bankruptcy was committed; the debt may have been assigned to him after that date.

A mere unliquidated unascertained liability upon a contract existing at the time of an Act of Bankruptcy is not a good petitioning debt. Thus, a claim for unliquidated damages is not a debt until judgment is obtained - R.V. Hopkins & Ferguson (1896). And where judgment has been obtained but costs remain to be assessed when the Act of Bankruptcy is committed, the creditor cannot petition since the debt was still not a liquidated sum re a debtor (No. 20 of 1953); ex parte the debtor vs. Scott and another (1954).

A Statute barred debt is not a good petitioning debt. The Creditor's petition must be verified by affidavit and by Section 33 need not be served on the debtor. However, the provisional order when made must be served in the prescribed manner i.e. either by delivery of a sealed copy to the debtor, or (an order for substitute service having been obtained) in the manner prescribed by such order. At the hearing, the court must have proof of the petitioning creditor's debt, the service of the provisional order and the commission of the Act of Bankruptcy. If not satisfied on any of these matters, the court may dismiss the petition and even if satisfied; on all of them,

to the Creditor three (3) days before the date fixed for the hearing. Failure to send or file this Notice, however, will not prevent the debtor attending the hearing and opposing.

By Section 23 where it is necessary to protect the estate at any time after the presentation of the petition and before the absolute order is made, the court may appoint the Trustee to be the interim Receiver or Manager of the debtor's property or business and direct him to take immediate possession of the whole or any part thereon. Application for the appointment of a Receiver or Manager may be made by a creditor or the debtor and where the petition is dismissed, the Court may make such order as it thinks fit for any damages or claim resulting from the appointment.

Where two or more petitions exist against the same debtor the court may consolidate the proceedings - Section 28, also by Section 31 where a petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor owes more than \$40.

By Section 32 where the debtor dies after the petition has been presented, the proceedings continue, unless the court otherwise orders, as if he were alive.

The court has power to stay proceedings under any bankruptcy petition, as it thinks just either altogether or for a limited time - Section 29.

Confirmation of the Provisional Order

If at the hearing, the court is satisfied as to all matters which the creditor must prove, it may confirm the order for the protection of the estate.

The absolute order when made, deprives all creditors, whose debts are provable in bankruptcy of any remedy or action therefor unless with the court's leave, and on such terms as the court may impose - Section 29. It is, however, provided that a secured creditor may realise or otherwise deal with his security in the same manner as if there was no order.

On the making of the provisional order against a debtor, his property immediately passes to and vests in the Trustee without any conveyance or assignment and if the Provisional Order is confirmed or under a deed of arrangement to be realized, administered and distributed for the benefit of the creditors. The Trustee is, however, under a duty to protect and retain such property in such state and condition so as to return same to the debtor if the provisional order is revoked - Section 42.

PROCEEDINGS AFTER THE PROVISIONAL ORDER

If the provisional order is not revoked, the Court shall make an order, to be served on the debtor, requiring him within 8 days from the date of service, or such other time as may be stated in

assets, debts, liabilities; the names, residences of his creditors, and securities they hold, and dates when these were given together with a general statement of the profits, losses and expenses of any business in which he may have been engaged during the twelve months preceeding the presentation of the petition, and any other information prescribed or required - Bankruptcy Act Sections 32,20. On the application of any creditor, the court may adjudge bankrupt a debtor, who without reasonable excuse, fails to comply with the statutory requirements and order such bankruptcy to be gazetted - Section 38.

CREDITORS' MEETINGS

An absolute order may or may not follow a provisional order. It depends on whether the debtor offers and the creditors and the Court approves a composition. A general meeting of Creditors (First meeting of Creditors) must be held to consider whether a proposal for composition or scheme of arrangement shall be accepted, or the debtor's adjudged bankrupt. The meeting must be attended by the debtor on a day appointed by the Court, the Registrar giving 10 days' notice thereof in the Gazette.

Most of the decisions arrived at by a meeting of creditors require an ordinary resolution, passed by a majority in value of creditors present personally or by proxy and voting - Section 48.

So in order to avoid bankruptcy the debtor may seek to persuade his creditors to accept a scheme for arrangement of his affairs. Here the debtor proposes an alternative to bankruptcy in the form of a composition or scheme of arrangement which will be governed by the Bankruptcy Act - Section 52 and will require approval by the Court.

Proceedings under an order for a Deed of Arrangement

Under Section 49 the Trustee is required to report to the Court whether or not a meeting of creditors is held and the nature of the resolutions come to (if any). If no meeting is held, or no resolution come to or if the resolution be that adjudication of bankruptcy be made or that the Court is shown that there is no reasonably probability of the confirmation of the deed of arrangement the Court must make an absolute order for bankruptcy against the debtor.

On the other hand the creditors having accepted by the necessary majority in number and three-fourths in value of all creditors who have proved, an application may be made by the creditors to the Court to approve the scheme and notice of every application to this effect must be served on the Trustee at least 8 clear days before the hearing of the application. The application must not be heard until after the Public examination of the debtor. The Court must

- (iii) Where proof of such facts is given as under the Act, compels the Court to refuse, suspend or attach conditions to the discharge of a bankrupt unless the scheme provides reasonable security for payment of not less than 50 cents in the dollar on all provable unsecured debts - Section 72.
- (iv) If the scheme does not provide for prior payment of debts which are preferential in bankruptcy - Section 139; or
- (v) Where there is not reasonable security for the payment of the composition.

In exercising its discretion to approve or refuse a scheme, the Court must be guided not merely by the interest of the creditors but also by the interest of commercial morality.

When the scheme is approved, by an order of the court it binds all the creditors in regard to debts provable in the bankruptcy. The order of the Court confirming the deed is conclusive as to its validity, in the absence of fraud. If the debtor fails to make payments due under the scheme approved, the creditor's remedy is to apply to the court to have the deed annulled moreover if:

- (a) default is made in payment of any instalment under the scheme or
- (b) it appears to the court that the scheme cannot proceed without injustice or undue delay to the creditors or
- (c) the court's approval was fraudulently obtained, the court may adjudge the debtor bankrupt and declare the deed void without prejudice to the validity of sales, dispositions or payments made or done thereunder - Section 60.

THE ABSOLUTE ORDER

This is the order which effectively makes the debtor bankrupt; he is not legally bankrupt until this moment. Upon adjudication, the property of the bankrupt becomes divisible among his creditors, and vests in the Trustee. Notice of the absolute order is to be gazetted and the court after making the absolute order sets a date for a public sitting for the purpose of a public examination of the debtor as to his conduct, dealings and property - Section 66:

- (a) Notice of the time appointed for the Examination is served on Debtor by the Trustee and notice is also given to the creditors.
- (b) The debtor must attend
- (c) Evidence may be tendered by the creditors, the Trustee or the debtor or any of them
- (d) The debtor is examined on oath and is bound to answer even incriminating questions. Notes of his answers will be signed by the debtor and may be used in evidence against him. The notes of his answers to questions may be inspected by the creditors at all reasonable times
- (e) The public examination may be adjourned from time to time by

Annulment or Revoking of Orders in Bankruptcy

An annulment of an absolute order or a revocation of the provisional order may be applied for at any time. The court may annul or revoke these orders where:

(a) In the opinion of the court the debtor ought not to have been adjudged bankrupt e.g. where he is an infant and the petitioner's debt was not enforceable against him re Davenport (1963) or

(b) Where it is proved that the debts have been paid in full or

(c) Where it approves a composition or scheme under Section 52.

Annulment of adjudication or revocation of the provisional order does not affect sales or dispositions of property, payments made or any act done by the Trustee or his agent(s) or by the court; they remain valid. The property of the debtor, on the making of the annulment or revocation order, vests in such person as the court may appoint; in default of any appointment, it reverts to the debtor (for all his estate or interest therein) on such terms or subject to such conditions, if any, as the court may declare - Section 175. By Section 176 a revocation further operates as a revocation of the appointment of the Trustee under the petition and revives the remedy of any creditor against the property or person of the debtor that was suspended or stayed by the order.

POSITION OF DEBTOR

It is the duty of the debtor to:

- (a) attend the first meeting of the creditors
- (b) to submit to such examination and give such information as the meeting may require
- (c) to give an inventory of property, a list of creditors and debtors, the particulars of debts due to or from them
- (d) to attend other meetings of creditors
- (e) to execute such deeds, conveyances etc. and to do all such acts and things in relation to his property and its distribution as may be reasonably required by the Trustee or the Court
- (f) if adjudicated bankrupt, to aid, to the utmost of his power in realizing his property and distributing the proceeds.

For wilfully failing to perform any of these duties or to give up any property divisible among his creditors which is under his control, he is liable, in addition to any other punishment for contempt of court. He is of course bound to submit his statement of affairs when a provisional order has been made, and failure to do so, within the required time renders him liable to be adjudged bankrupt - Sections 43, 44.

Where a bankrupt has obtained his discharge, he must still render any assistance in realising and distributing the property

provable in the bankruptcy. At any time after being adjudged bankrupt, the debtor may apply to the court for an order of discharge. The court will appoint a day for the hearing of the application, which takes place in open court, but the application cannot be heard before the public examination has been concluded and a report filed by the Trustee as to the state of the debtor's affairs and as to his conduct both before and during the bankruptcy - Sections 71,72.

The prescribed notice of the time and place appointed must be given in the prescribed manner.

At the hearing the court may hear the Trustee and any creditor, and may question the debtor. The Trustee and any creditor may oppose the application and may attend and show cause why it should be refused or postponed or made subject to conditions.

POWERS OF THE COURT

The court has certain duties and powers:

- (a) On the hearing, the court must consider the report of the Trustee, as to the bankrupt's conduct and affairs before and during his bankruptcy, and may either:
 - (i) grant an absolute order of discharge or
 - (ii) refuse it or
 - (iii) suspend it for a period of not less than two (2) years
 - (iv) make it conditional on payment of a certain sum, out of the property or income which may thereafter come to the bankrupt
- (b) In general the court may make any of these orders at its discretion but where the bankrupt has committed a criminal offence connected with his bankruptcy or on proof of any of the facts stated below must either:
 - (i) refuse the discharge or
 - (ii) suspend it for a period of not less than 2 years
 - (iii) suspend the discharge until a dividend of not less than 50 cents in the dollar has been paid to the creditor.
 - (iv) require the bankrupt as a condition of his discharge to consent to a judgment being entered against him by the Trustee for such sum as the court orders.

FACTS DISENTITLING THE DEBTOR FROM ABSOLUTE DISCHARGE

The facts referred to above are:

- (a) That the assets of the bankrupt are not equal to 50 cents in the dollar on the amount of his unsecured debts, unless due to circumstances for which he is not responsible.
- (b) The bankrupt has omitted, during the three (3) years preceeding the bankruptcy, to keep usual and proper books of account

- (e) His failure to account satisfactorily for loss of deficiency of assets.
- (f) The bankruptcy was brought on or helped by rash and hazardous speculations, or gambling or unjustifiable extravagance in living or culpable neglect of business.
- (g) Frivolous or vexatious defence to an action brought against him.
- (h) Incurring unjustifiable expense in bringing any frivolous or vexatious action, within three (3) months preceeding the date of the act of bankruptcy.
- (i) Having given an undue preference within 3 months preceeding the date of the act of bankruptcy.
- (j) Within 3 months preceeding the date of the act of bankruptcy has incurred liabilities with a view to making his asset equal to 50 cents in the dollar on the amount of his unsecured liabilities.
- (k) His previous bankruptcy or composition or arrangement with creditors.
- (l) Fraud or fraudulent breach of trust by the bankrupt.
- (m) His carrying on a trade by means of fictitious capital or by means of money raised at excessive rate of interest or under any plan or scheme involving the payment of excessive fines, interest, premiums, commissions or bonus.
- (n) Failure to deliver to the Trustee, all books, papers, documents or writing, in his custody or to disclose the name(s) of person(s) in whose custody they might be.
- (o) To wilfully fail to co-operate with the Trustee in the realization and distribution of his property.

UNDISCHARGED BANKRUPT OBTAINING CREDIT

If an undischarged bankrupt, obtains credit to the extent of \$40 or more without informing the creditor that he is an undischarged bankrupt, he is guilty of a misdemeanour punishable on conviction by imprisonment for a term of not more than 2 years with or without hard labour - Section 178.