

PART V

CREDITORS

Proof of Claims

Section 110(1)—“creditors shall prove claims”

The expression “as soon as may be” is rather indefinite, particularly as the new principle of the provision is that unless the creditor proves his debt “as soon as may be after the filing of the proposal . . . or after the bankruptcy he shall not be entitled to share in any distribution . . .” This is too drastic a penalty for a late filing, particularly when it is difficult to determine the last day for proof of debt. The expression “as soon as may be” is used in the present section 105(1) but it is not coupled with a penalty and the phrase does not seem to have received clear judicial definition.

Section 124—“mutual credits, debts or other dealings”

In the light of the expanded definition of “act of bankruptcy” in section 3 the last part of section 124 might interfere with a bank’s exercise of its right of set-off.

Section 125(7)—“Trustee not liable for costs”

It is submitted that the question of liability for costs should be left entirely in the discretion of the court, particularly if the onus is shifted as proposed in section 69(2).

Section 126(1)—“priority of claims”

The subsection commences

Subject to the rights of contractual secured creditors . . .

There need not be any reference to secured creditors, whether contractual or otherwise, because the section purports to deal only with the application of the proceeds realized from the property of a bankrupt, and has nothing to do with a creditor’s security.

In any event, the word “contractual” should be deleted because it would not include

- (a) any security the bank may have by way of banker’s lien at common law, and
- (b) a bank’s statutory lien upon the shares of its shareholders for unpaid debts or liabilities under section 76 of the Bank Act.

Neither of these is contractual. There does not appear to be any need to mention secured creditors. The trustee is not dealing with their property. Their freedom of action to realize should, as hitherto, be unhampered. If the wording were changed to read “the proceeds realized by the trustee from the property of a bankrupt” there would be less objection to saying “subject to the rights of secured creditors” if the purpose is to accept such rights clearly from the provisions of section 126.

The foregoing suggestions are submitted, not in any spirit of adverse criticism, but with a keen appreciation of the difficulties encountered by the draftsmen of the Bill and in a genuine effort to present possible effects of the proposed Bill upon the banks, with some constructive proposals for overcoming the objections.

Respectfully submitted,

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