

Section 21 (a)—Petition for Receiving Order

Section 21 (a) provides in part that one or more creditors may file in Court a petition for a receiving order against a debtor if the debt or debts owing to the petitioning creditor or creditors amount to \$1,000,000. This new section increases from \$500.00 to \$1,000.00 the debt necessary in the case of a petition for a receiving order. We submit that increasing the requirement from \$500.00 to \$1,000.00 imposes an unnecessary burden on a petitioning creditor in that in many cases it would be necessary for him to endeavour to join with other petitioning creditors of whom he has no knowledge in order to ascertain the debtor's liability and creditors are frequently reluctant to join in a bankruptcy petition. It is, therefore, submitted that the present requirement of \$500.00 would seem to be a reasonable amount, and that section 21 (a) be amended to reduce the amount required to \$500.00.

Section 25—Re Exclusion of Section 21 and Following

The effect of this proposed section would exempt a wage earner who does not earn more than \$2,500.00 a year from those provisions of the Act relating to the application for a receiving order. In the present Act the amount is \$1,500.00 and it is submitted that this figure should remain and that an increase to \$2,500.00 is not warranted.

Section 83 (1) and Section 144 (8) Re Debts Provable in Bankruptcy and Trial of Issue

One of the important changes in the Bankruptcy Act is in Section 83 (1) of Bill N. Prior to this amended section, one could only prove in bankruptcy for unliquidated claims arising by way of a contract, promise, or breach of trust. Unliquidated claims for tortious actions, or in actions arising otherwise than by reason of a contract, promise, or breach of trust, could not be proved in bankruptcy. However, now it will be possible to prove in bankruptcy for unliquidated claims arising out of a tortious transaction.

Thus, one could make a claim against the bankrupt estate for damages arising, let us say, out of the ordinary negligence action. Although there is much to be said for the extension of the Act in this regard, the difficulty arises where the proceedings with respect to the tortious action are pending at the time the assignment, or receiving order is made, and there is no settlement and no judgment. Under such circumstances the Bankruptcy Court under the proposed Section 144 (8) could direct a trial of an issue to determine the liability and the quantum of damages, but under the present subsection the Court is limited in that the issue could only be tried by Judge or other officer of the Court of any of the provinces, and there is no provision for trial by jury under such circumstances.

Thus, if the section were to stand as it is now, the Plaintiff in a negligence action, in which the defendant becomes a bankrupt before judgment, would be deprived of his right to a trial by jury.

This Section should be amended to permit the litigant to pursue his ordinary course where there is a dispute as to either the liability or the amount of damages and subsection 8 of Section 144 should permit the Court, in directing the issue to be tried, to allow the litigant trial by jury if under ordinary circumstances he would be so entitled. We suggest that Section 144 (8) should be amended to read as follows:

The Court may direct any issue to be tried or inquiry to be made by any judge or officer of any of the courts of the provinces or by a Judge or jury according to the practice relating thereto to trial of such