

SUB-COMMITTEE MEETING
23 NOVEMBER 1977

The Acts of Bankruptcy

A debtor commits an act of bankruptcy in each of the following cases (BA., s.1(1)):

- (a) If in England or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally.
- (b) If in England or elsewhere he makes a fraudulent conveyance, gift, delivery or transfer of his property, or of any part thereof.
- (c) If in England or elsewhere he 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.
- (d) If with intent to defeat or delay his creditors he departs out of England, or being out of England remains out of England, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house.
- (e) If execution against him has been levied by seizure of his goods under process in an action in any court, or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days.
- (f) If he files in the court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself.
- (g) If he fails to comply with a bankruptcy notice, ie, ^{just or order} a notice served upon him by a creditor who has obtained a final judgment against him, calling upon him to pay the debt within ~~seven~~ days, or to secure it to the satisfaction of the creditor or the court.
- (h) If he gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.

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Power to replace Administration Order by Receiving Order

S.11 Insolvency Act, 1976:-

(1) Where a person fails to make any payment which he is required to make by virtue of an administration order, the appropriate court may, if it thinks fit, revoke the administration order and make a receiving order against that person.

(5) Where a receiving order is made under this section against any person, he shall be deemed to have committed an act of bankruptcy at the time when the order is made and the provisions of the Bankruptcy Act 1914, except Part VII, shall apply as if for references to the presentation of a petition by or against a person there were substituted references to the making of such a receiving order.

Criminal Bankruptcy Orders

Schedule 2(1), Powers of Criminal Courts Act, 1973

(1) Subject to the provisions of this Schedule, where a criminal bankruptcy order is made against any person he shall be treated as a debtor who has committed an act of bankruptcy on the date on which the order is made.

Definition of inability to pay debts

S.223, CA 1948:-

A company shall be deemed to be unable to pay its debts:-

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding ~~fifty~~^{£200} pounds then due has served on the company, by leaving it at the registered office of the company, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

(b) if, in England or Northern Ireland, execution or other process issued on a judgment, decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(d) if it is proved to the satisfaction of the court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the court shall take into account the contingent and prospective liabilities of the company.

Restriction of rights of execution creditor

S.325(1)(a) CA 1948

(a) where any creditor has had notice of a meeting having been called at which a resolution for voluntary winding up is to be proposed, the date on which the creditor so had notice shall, for the purposes of the foregoing provision, be substituted for the date of the commencement of the winding up;

Definition of "Cessation of Payments"

Report of Cork MKI Committee, para 340:-

We put forward the following definition of cessation of payments which might prove acceptable to the other Member States as a uniform law, capable of being incorporated in their national insolvency laws, and also in the insolvency codes of each part of the United Kingdom:

- (1) Cessation of payments shall be constituted
- (a) by the manifest failure on the part of a debtor to pay his debts in the ordinary course of business or as they fall due; or
 - (b) by a debtor committing or suffering an act or acts demonstrating his insolvency.
- (2) In determining whether cessation of payments has been established regard shall be paid to all the circumstances, including the fact that the debtor has committed or suffered one or more of the following acts or events:

(Here would be set out a list of specific acts or events, to be agreed between Member States, such as dishonouring a bill of exchange, suffering an execution over (in Scotland, diligence upon) one's goods, giving notice of suspension of payments, or calling a meeting of creditors, etc; these examples are, of course, not exhaustive but merely illustrative.)