

CHAPTER 67.

S. F. No. 658. - 95 C 07
07 - 204
66-M - 185
68-NW 834

An act to amend chapter 148 of the general laws of one thousand eight hundred and eighty-one, entitled "An act to prevent debtors from giving preference to creditors and to secure the equal distribution of property of debtors among their creditors and for the release of debts against debtors" and all acts amendatory thereof relating to insolvency.

95 C 67
75-M 256
80-NW1121

Be it enacted by the Legislature of the state of Minnesota:

SECTION 1. Said chapter 148 of the general laws of the state of Minnesota, of 1881, and all acts amendatory thereof are hereby amended by adding at the end thereof the following sections to-wit:

State bankruptcy act.

Sec. 14. Whenever an insolvent debtor who has made or shall hereafter make, an assignment of all his property and estate not exempt by law, under and pursuant to chapter 148 of general laws of Minnesota of 1881, or for whom a receiver has been appointed under said law shall desire to have determined and set apart to him his property which is exempt by law and shall desire, instead of receiving the discharge provided for in section 10 of said chapter 148, receive the discharge and release hereinafter provided for in the said assignment provided notwithstanding the terms of said deed of assignment.

Absolute discharge—when.

Such exempt property may be determined and described and set apart to such insolvent, and such insolvent debtor may be discharged and released from his debts, as a part of the proceedings under such assignment, or in said insolvency, proceedings upon compliance with the provisions of this act.

Sec. 15. Such insolvent debtor who shall desire to be discharged from his debts shall, at any time before the distribution of said insolvent's estate, present to the district court, in which said assignment proceedings are pending, his application for such discharge and determination of exempt property, in which application he shall state the date of the filing of such assignment in the clerk's office where the same was filed, or the date of the order appointing a receiver of his property under said act, and the name and postoffice address of the assignee named in such assignment, or the receiver or receivers appointed by the court.

Affidavit.

Said insolvent debtor shall sign said application, and annex thereto an affidavit subscribed and sworn to by him, substantially in the following form:

Form.

STATE OF MINNESOTA

County of _____

} ss.

I _____ do solemnly swear (or affirm) that I have read (or heard read) the foregoing application signed by me; that the same is true of my own knowledge; that the inventory of my estate and the list of my creditors, filed in the office of the clerk of the district court, for the county of _____, as a part of my assignment, or in the insolvency proceeding against, are as accurate and complete statements of all my property except such as is exempt from sale on execution by the laws of this state and of my creditors as I can make; that I have not within six years in any manner whatsoever disposed of or made over any part of my estate for the future benefit of myself or of my family, or in order to defraud any of my creditors, and that I have in no instance created or acknowledged a debt for a greater sum than I honestly or truly owed and that I have not paid secured to be paid, nor in any way compounded with any of my creditors with a view to fraudulently obtain the discharge prayed for in the foregoing application."

Application—
hearing.

Sec. 16. Upon the filing of such application in said court and the presentation thereof to a judge of said court, such court, or judge, shall make an order which shall be entitled in the matter of such assignment or insolvency proceeding, directing the issuance out of said court, and under the seal thereof, of an order to show cause and citation, requiring all the creditors of said insolvent debtor to show cause, if any they have, why said insolvent debtor should not be discharged from his debts. Such order and citation shall refer to said assignment or insolvency proceeding, and shall fix a date in the same, or the next ensuing term, or any special term of said court for a hearing thereof at the court house, or at the chambers of said judge, designating the place thereof. Such order and citation shall be served upon the creditors of said insolvent in the same manner as is now provided by law for the service of summons upon defendants, or in such manner as said court may determine in its said order.

Term in.

Proceedings
upon hearing.

Sec. 17. On the day fixed in such order and citation, or at any subsequent day or time that such judge or court may appoint, such judge or court shall hear the proofs and allegations of the parties, and before any other proceedings be had, shall require proof of the service of said order and citation as in said order required. On the hearing of such application, such application shall be regarded as a complaint, and any creditor of said

insolvent debtor who may desire to object to the discharge of said insolvent debtor may file in the office of the clerk of said court, and present on such hearing his answer to such application, duly verified in the manner that pleadings are required to be verified, setting forth the grounds of his objection to such discharge.

Sec. 18. Every creditor opposing the discharge of an insolvent debtor may, at the time appointed for the first hearing, demand of the court, or such judge, that the case of such insolvent debtor, be heard and tried by a jury, and shall be entitled to an order to that effect; and in all cases ordered to be tried by a jury under the provisions of this section such trial shall be had in the county where such insolvent proceedings are pending, and at the term of said court then pending, if a term of such court be then pending, and if not then at the next succeeding term of said court, and shall be tried as other civil cases are tried, but if no demand be made for a jury trial, said court or judge shall hear, determine and try said matter at the pending term of said court or at the succeeding special term thereof unless said hearing shall be adjourned to a time fixed by said court upon proper cause shown.

Creditors first heard.

Sec. 19. Such jury having heard the proofs and allegations of the parties, shall determine the matter submitted to them unless they are discharged by said court for failure to agree.

Jury.

Sec. 20. There shall be but one hearing before a jury, unless a retrial is granted, and if such jury cannot agree, after being left together for a reasonable time, they shall be discharged, and such court or judge shall decide the merits of such application and objections in the same manner as if no jury had been called, upon the evidence introduced, and such determination shall also determine and describe the property of said insolvent debtor which is exempt by law.

To be tried by court if jury fail to agree.

Sec. 21. At the hearing on any such application before a jury or otherwise, the insolvent debtor may be examined on oath at the instance of any creditor, touching his estate or debts, or as to any matter stated in his application, and any such creditor may contradict or impeach by other competent evidence any testimony given by such insolvent debtor.

Insolvent debtors examined.

Sec. 22. Every creditor of such insolvent debtor, whether residing within or without this state, who shall file, or shall have filed an affidavit, or make, or made other proof of his claim against such insolvent debtor, or who shall accept or receive any dividend from the assignee or receiver of such insolvent debtor or out of the estate of such insolvent debtor or insolv-

Who are parties.

ency proceedings, shall be deemed to be a party to such proceedings for a discharge of such insolvent debtor from his debts, and to the determination of his property exempt by law; and the filing of such affidavit and the making of such proof of claim, or the receiving such dividend, or participation in such proceedings, or the service within this state of said order and citation in accordance with the order of said court shall be deemed to be, and is declared to be, an appearance in the matter of such assignment and application for discharge, and to confer jurisdiction upon said court to make such order and determination.

And the order and discharge, made and granted by said court, or judge shall be final and binding upon all the creditors of said insolvent debtor, who shall have filed an affidavit of their claims, or make other proof of the indebtedness of such insolvent debtor, or received such dividend, or participated in such proceedings, or who have been served with said processes within this state subject to the right of such creditor to appeal from any order, decision or judgment made or entered in such proceedings in the manner provided by law.

Decree of discharge.

Sec. 23. If it shall appear upon the hearing, or trial, that such insolvent debtor has in good faith made such assignment or turned over his property to such assignee or receiver, and has in all respects complied with the laws of the state in relation thereto, and with this act, such court, or judge, shall grant such insolvent debtor a discharge from his debts, which shall have the effect declared in this act, and shall determine and describe in said order, and set apart to such insolvent the property and effects of said insolvent which are exempt by law of this state.

Judgment.

Sec. 24. Upon the granting of such discharge by said court or judge, the clerk of said court shall immediately enter judgment, in the judgment docket of said court against the insolvent debtor, and in favour of each of his creditors who appears by the list of creditors filed with any assignment, of such insolvent debtor, or in said insolvency proceeding, to be a resident of this state, and in favour of each of the creditors of said insolvent debtor whose residence appears from the said list to be out of said state, and who has proved his claim against said insolvent debtor under such assignment or in said insolvency proceeding, or who has appeared in the proceedings under such assignment or receiver, or has received any dividend from the assignee or receiver of such insolvent debtor, or out of the estate of such insolvent debtor, or in any way participated in the pro-

ceedings under such assignment or receivership, or who has appeared in the proceedings for such discharge, for the sum respectively appearing or shown to be due to him, and allowed to him in the proceedings under such assignment or receivership; and shall also enter a satisfaction and discharge thereof upon such docket by order of said court, which shall discharge said insolvent debtor from all personal liability in favour of such of his creditors as shall reside in this state and such of his creditors as reside out of this state who have proved their claims against said insolvent debtor in the proceedings on such assignment or in said insolvency proceeding, or who have received any dividend from the assignee of such insolvent debtor, or out of the estate of such insolvent debtor, or in any way participated in the proceedings, or who have appeared in said proceedings for such discharge, and from personal liability upon any judgment theretofore entered and docketed since the filing of said deed of assignment, in favour of any of said creditors against said insolvent upon the same claim or demand.

Upon the entering of said judgments, and the discharge and satisfaction thereof, as herein provided, all said creditors, in favour of whom said judgment was entered and satisfied, may, by said order of said court, receive the benefits of said assignment, and receive a pro rata share of the proceeds thereof.

Sec. 25. In any action which may be brought against such insolvent debtor a discharge granted under this act may be pleaded, and shall constitute a bar to the recovery against him for or on account of any indebtedness or liability of his found to be due in said proceedings, and included in said judgment so entered and discharged as above provided.

Decree is bar to future actions.

Sec. 26. Appeals may be taken to the supreme court by such insolvent debtor, or by any creditor, from any order or judgment made or entered in such proceeding by such judge, or court, within the same time and in the same manner as appeals in ordinary civil actions; and whenever necessary, bills of exception, or a case may be settled, as in the ordinary appeals in civil actions.

Appeals.

Sec. 27. This act shall not be construed to change nor to prohibit the proceedings and discharge of the insolvent provided for in said chapter 148, general laws of 1881, nor to repeal the same, nor in any way to affect such proceedings, but shall be held and construed to furnish and provide an additional remedy and relief only upon compliance of said insolvent with the provisions

Effect of this act.

of this act, initiated by the petition or application of of said insolvent as aforesaid.

SEC. 3. This act shall take effect, and be in force from and after its passage.

Approved April 24th, 1895.

H. F. No. 500.

CHAPTER 68.

To amend
Chap. 42 G. L.
1865.

An act to amend chapter forty-two (42) of the general laws of eighteen hundred and sixty-five (1865) relating to the duties of the adjutant general of the state.

Be it enacted by the Legislature of the state of Minnesota:

First Minne-
sota Infantry
Regimental
Bonds.

SECTION 1. That chapter forty-two (42) of the general laws of eighteen hundred and sixty-five be amended by adding thereto a section to read as follows:

It is hereby made the duty of the adjutant general of this state to demand and receive from David Wills of Gettysburg, Pennsylvania, the sum of two hundred (200) dollars (and any accumulated interest thereon) placed in his hands by Gov. Miller of this state, as the balance of the regimental fund of the old First Minnesota regiment, the interest of which was to be used by said David Wills in maintaining a vase of flowers on the graves of the members of said regiment in the Gettysburg national cemetery. The adjutant general, upon the receipt of said funds, shall at once turn the same into the hands of the state treasurer to be by said treasurer invested in bonds to be known as the First Minnesota infantry regiment bonds, and the interest thereon to be annually drawn by the adjutant general of this state and applied in caring for the vase in said national cemetery and the monuments erected by this state upon the Gettysburg battlefield in memory of the action of said First Minnesota regiment.

SEC. 2. This act shall take effect and be in force from and after its passage.

Approved April 25th 1895.