

THE ONTARIO LAND TITLES ACT AS AFFECTED BY THE BANKRUPTCY ACT.

The Bankruptcy Act (said to be an overriding Act) treats land registered under the Land Titles Act as if it were land registered under the Registry Act. This causes difficulty because the Registry Act registers deeds whereas the Land Titles Act registers titles. The register under the Land Titles Act is a list of owners with particulars of the land they own and with particulars of any incumbrances.

The distinction is clearly expressed in a recent Report on Land Registration as follows:

There are in fact two systems in operation, namely,

- (1) Registration of documents of title, and
- (2) Registration of title.

The two systems are radically different. The essential difference between them is that while under the first system documents only are registered for the purpose of determining priorities, under the second system the title itself is registered so as to confer upon the registered proprietor the right to the property, an insurance fund being available to compensate those suffering loss

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The Ontario Land Titles Act is almost a transcript of the English Land Transfer Act 1875, now incorporated in the Land Registration Act 1925. In England, of course, there is but one Parliament which enacts both the Land Registration Act and the Bankruptcy Act. The Bankruptcy machinery in England so far as it affects land under the Land Registration Act might I think be adopted in Canada with modifications.

Under Section 6 of the Bankruptcy Act (Canada), a Receiving Order and under Section 9 an Assignment takes effect whether registered or not and the land is vested first in the Court and then in the trustee.

Under Section 27 the receiving order and the assignment are taken out of the operation of the Land Titles Act.

We have had to make the Bankruptcy Act fit in as well as we can and the practice adopted in Ontario is as follows:

1. The Master of Titles enters in the Alphabetical List of Bankrupts and Insolvents every week the names of all insolvents in the Province of Ontario (not in Canada). This is taken from the Canada Gazette. See Section 28(3).

2. Before entering any person as owner of land under a transfer or as owner of a charge, the Local Master and the purchaser

must search the Alphabetical Index to see if there is an assignment or a receiving order against the registered owner of the land. This must be done, even if the trustee has not registered in the Land Titles Office, under Section 29 of the Bankruptcy Act, the assignment or receiving order. Such a search is imperative as by the Bankruptcy Act anything belonging to the debtor has passed from him to the trustee, is out of the jurisdiction of the Province and no longer can be dealt with under the Land Titles Act.

3. Under Section 29 of the Bankruptcy Act every receiving order or assignment shall be registered or filed by the custodian or trustee in the Land Titles Office or Registry Office in which according to Provincial law deeds or other documents of title to real property ought to be registered but by Section 30(3), except as against innocent purchasers for value, the omission to so register shall not invalidate the assignment or receiving order. These Sections 29 and 30 treat the Land Titles Act as if it dealt with registration of deeds and not with registration of title.

4. Every receiving order or assignment so brought in for registration is accompanied by an affidavit identifying the parcel of land or charge affected. Section 29(4) declares that they shall be registered according to the ordinary procedure for registering documents which evidence liens or charges. Such receiving order or assignment we enter in full with all affidavits and certificates in a special book provided for the purpose, just as if we were registering the instrument in a Registry Office under the Registry Act. This is foreign to the underlying principles of the Land Titles Act but we do it because the Bankruptcy Act has treated the Land Titles Act as if it were a Registry Act. At the same time we enter a notice in the nature of a caution against the parcel of land or charge affected as follows:

Under Authorised Assignment No. (or Receiving Order No.)
dated registered made by under the Bankruptcy
Act the title of the above is said to be affected.

5. We do not enter in the register the trustee as owner of the parcel of land or charge for the reasons set out below nor do we attempt to follow step by step the proceedings taken in bankruptcy but we wait until the Bankruptcy Court has finally disposed of the bankrupt's estate.

The land may be disposed of under the Bankruptcy Act in several ways, namely,

1. The land may revert to the original bankrupt owner.

2. It may become vested in some person who has a charge against it.

3. It may be sold by the trustee to some stranger.

Under Section 68(1) of the Land Titles Act, no person other than the registered owner shall be entitled to transfer or charge registered land by a registered disposition. Accordingly, Land Title Rule 38 provides that where registered land or a charge is transferred by a registered owner to an assignee for the general benefit of creditors of the assignor, whether by general words or otherwise, the Master of Titles shall upon the assignee's application, describing the land by the number of the parcel, register the assignee as the owner of such land or charge. This Rule was no doubt made before the Bankruptcy Act was passed because Section 27 of the Bankruptcy Act, by providing that no receiving order or assignment shall be within the operation of any provincial statute, abrogates in effect, both Section 68(1) of the Land Titles Act and Rule 38 passed under that Act.

Accordingly, the Trustee may deal with the bankrupt's property registered in the Land Titles Office even though he has not got himself registered as owner.

It is stated by Rose, J., in *In re Pacey*¹ that:

by the Land Titles Act () it is enacted (Sec. 68) that no person other than the registered owner shall be entitled to transfer registered freehold or leasehold land by a registered disposition; but by Sec. 69(5) of the Land Titles Act, the Master may enter as owner of freehold or leasehold land any person "who is entitled by virtue of the exercise of any power conferred by a statute."

6. Upon a sale by the Trustee the purchaser under a transfer from the Trustee (who, as above mentioned, is not registered as owner) applies to the Master of Titles to be entered as owner producing the transfer and evidence of the appointment of the Trustee and of the Inspectors at a creditors' meeting and also showing that the Inspectors have by resolution at an Inspectors' meeting approved of the sale.

It is instructive to consider how the British Parliament having jurisdiction to enact the Land Registration Act 1925 (*i.e.*, the Land Titles Act) as well as the Bankruptcy Act deals with such a transaction.

Sections 41 to 45 of the Land Registration Act 1925 are grouped together under the general heading of "Transmissions of Land and Charges on Death and Bankruptcy" just as Sections 56 to 61 of the

¹ (1928), 62 O.L.R. 616 at p. 617.

Ontario Land Titles Act are collected under the title of "Transmissions of Land and Charges on Owner's Death."

Section 41 of the Land Registration Act 1925 provides for the transmission of land and charges on the death of the proprietor to his personal representative who upon application is registered as owner in place of the deceased owner. This Section corresponds to Sections 56 and 57 of the Ontario Land Titles Act.

Then Section 42(1) of the Land Registration Act 1925 is as follows:

Upon the bankruptcy of the proprietor of any registered land or charge his trustee shall (on production of the prescribed evidence to be furnished by the official receiver or trustee in bankruptcy that the land or charge is part of the property of the bankrupt divisible amongst his creditors) be entitled to be registered as proprietor in his place.

The official receiver shall be entitled to be registered pending the appointment of a trustee.

Transmission upon bankruptcy under the English Act is treated exactly the same as upon death.

Section 43 of the Land Registration Act 1925 is as follows:

Any person registered in the place of a deceased or bankrupt proprietor shall hold the land or charge in respect of which he is registered upon the trusts and for the purposes upon and subject to which the same is applicable by law and subject to any minor interests subject to which the deceased or bankrupt proprietor held the same; but, save as aforesaid, he shall in all respects and in particular as respects any registered dealings with such land or charge, be in the same position as if he had taken such land or charge under a transfer for valuable consideration.

Section 59 of the Ontario Land Titles Act corresponds word for word with the above except that it omits any reference to a bankrupt proprietor and "minor interests" are referred to as "any unregistered estates, rights, interests or equities."

Section 45 of the Land Registration Act 1925 is as follows:

The fact of any person having become entitled to any registered land or charge in consequence of the death or bankruptcy of any proprietor shall be proved in the prescribed manner.

Section 60 of the Ontario Land Titles Act is word for word the same as the above Section 45 except that the words "or bankruptcy" are omitted.

Under Section 61 of the Land Registration Act the registrar is required as soon as practicable after the registration of a petition in bankruptcy as a pending action under the Land Charges Act 1925 to register a creditors' notice against the title of any proprietor of any registered land or charge which appears to be affected, and

as soon as practicable after registration of a receiving order in bankruptcy under the Land Charges Act 1925 to enter a bankruptcy inhibition against the title of any registered land or charge which appears to be affected. Such inhibition is to the effect that no disposition or transmission is to be registered until a trustee in bankruptcy is registered.

A creditors' notice remains in force until a bankruptcy inhibition is registered or the trustee in bankruptcy is registered as proprietor.

The general procedure on bankruptcy is summarised in Brickdale & Stewart-Wallace's Land Registration Act 1925 Ed. 3 at p. 209, as follows:

The first stage is outside the register altogether: the act of bankruptcy, the presentation of a petition and the registration of the petition as a pending action in the Land Charges Register. This register though kept by the registrar in the Land Registry, has no connection with the register of title. Up to this point a purchaser who has no notice of the act of bankruptcy or petition can (in the absence of a creditors' notice or bankruptcy inhibition . . .) obtain a good title on the register under a disposition by the bankrupt (Sec. 61(6)).

It is, however, the duty of the registrar, as soon as practicable after the registration of the petition in the Land Charges Register, to enter (of his own motion) a "creditors' notice" against every title and charge of which the bankrupt is proprietor and which appears to be affected by the petition (Sec. 61(1)). This has the effect (Secs. 49 and 52 and Rule 179) of subjecting all subsequent dealings by the bankrupt proprietor to the estates, rights and claims arising out of the bankruptcy.

The next step is the making of the receiving order and its registration as an "order" in the Land Charges Register.

As soon as practicable after that the registrar is to enter (again of his own motion) a "bankruptcy inhibition" against every title and charge which appears to be affected (Sec. 61(3)).

After that comes the adjudication and appointment of a trustee, upon which the trustee (or pending his appointment, the official receiver) becomes entitled to apply for registration as proprietor in the bankrupt's place (Sec. 42).

Registered dealings for money's worth by the bankrupt prior to the entry of a creditors' notice or bankruptcy inhibition are good against the trustee in bankruptcy, provided the grantee had not at the date of the execution of the disposition, notice of the act of bankruptcy petition, receiving order or adjudication (Sec. 61(6)).

Under this procedure it would seem that the trustee or official receiver is under no obligation to be registered as proprietor unless he desires to transfer or otherwise deal with the property: in many cases no dealing takes place, the bankruptcy goes on, and, at its conclusion, the debtor obtains his discharge and, his property returns to his own keeping. In such cases there is no occasion to alter the registered proprietorship; the inhibition gives all necessary interim protection to the creditors and on the discharge of the

debtor either he or the trustee or other person concerned will merely apply (under Rule 181) for it to be vacated.

There is no corresponding machinery in Ontario for registering a petition in bankruptcy as a pending action or for registering a receiving order under a Land Charges Act, such as there is in England. Accordingly, the Master of Titles could not be compelled to register a creditors' notice or inhibition against land or charges owned by the bankrupt unless some means were devised whereby the Master of Titles could obtain the information necessary to enable him to so register. The Alphabetical List from the Gazette contains merely names of bankrupts and their property is not identified or described so that some other machinery would have to be devised.

The Land Titles Offices should be freed from the obligation to keep an Alphabetical List of Bankrupts.

Under Land Titles Rule 77 there is in each Land Titles Office an Alphabetical Index of Owners of Land and Charges shewing the parcels owned by them or charged in their favour respectively.

If any of such owners of land or of charges become bankrupt, it should be a simple matter to enter against the register of his parcel an inhibition until the trustee gets himself registered as owner, so as to prevent the bankrupt from alienating the parcel in the meantime.

The duty should be cast upon the proper Master of Titles of checking over each week the names of the authorised assignors or bankrupts in Ontario from the Canada Gazette with the Alphabetical List of Owners to ascertain if they are the registered owners of any parcels of land or charges and, if they are, of entering at once (of his own motion) in the register of the particular parcel affected an inhibition against any dealing.

In many Land Titles Offices this task would perhaps be heavier than keeping up the Alphabetical List of Bankrupts but the underlying principles of the Land Titles Act would be respected.

The above sections found in the English Land Registration Act providing for a transmission to the trustee should be enacted either by the Canadian Parliament or by the Ontario Legislature or by both, if necessary, and Sections 6, 9, 27, 28, 29 and 30 of the Bankruptcy Act should be repealed or amended, so far at all events, as land registered under the Ontario Land Titles Act is concerned. There should be no attempt to override provincial legislation.

The British Parliament covering the whole field has incorporated in the Land Registration Act (which provides for a State-guaranteed title) provisions as to bankruptcy which carry out the objects of

bankruptcy legislation and at the same time harmonise with and carry out the objects of the Land Registration Act. It should not be impossible for the Parliament of Canada and the Legislature of Ontario between them to accomplish the same end.

The above concrete scheme is tentatively suggested. It is not ideal but it has the merit of making use of an index already in existence. Even if it is not approved, yet it will serve to clarify the nature of the problem to be solved, and the consideration of it may suggest some better solution.

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