

Vacation of office by trustee

94. Release of trustee

- (1) When the trustee has realized all the property of the bankrupt or so much thereof as can, in his opinion, be realized without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a voluntary arrangement having been approved, or has resigned or has been removed from his office, he shall apply to the court for his release, and if all the requirements of the court with respect to accounts and with respect to any order of the court against the trustee have been fulfilled, the court may make an order for release accordingly. (*Amended 76 of 1996 s. 49*)
- (2) Where the release of a trustee is withheld the court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.
- (3) An order of the court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.
- (4) The provisions of subsections (1), (2) and (3) shall apply to the Official Receiver when he is or is acting as trustee, and when the Official Receiver has been released under this section or any previous similar enactment he shall continue to act as trustee for any subsequent purposes of the administration of the bankrupt's estate but no liability shall attach to him personally by reason of his so continuing in respect of any act done, default made or liability incurred before his release. (*Amended 76 of 1996 s. 72*)
- (5) Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the Official Receiver shall be the trustee.
- (6) Where on the release of a trustee the Official Receiver is or is acting as trustee, no liability shall attach to him personally in respect of any act done or default made or liability incurred by any prior trustee.

[cf. 1914 c. 59 s. 93 U.K.]