MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Wednesday, July 31, 1946.

The Standing Committee on Banking and Commerce to whom was referred Bill A5, an Act respecting bankruptcy, met this day at 10.30 a.m.

Hon. Mr. BEAUREGARD in the chair.

The CHAIRMAN: Gentlemen, we are to hear from Mr. A. W. Rogers, K.C., Secretary of the Canadian Bankers' Association.

Mr. ROGERS: Mr. Chairman and honourable senators, we realize that it is very difficult for any one drafting legislation designed to remedy certain evils to cover the ground adequately without perhaps going a little too far one way or the other. The study being made by your Committee, and the opportunity afforded various interests and organizations to present what, we hope, are constructive criticisms, will, I think, help materially in making the legislation more effective. My own experience years ago in drafting legislation impressed on me that sometimes there is a tendency for the draftsman in trying to remedy an evil to cut too wide a pathway and so get into territory that he would rather not have touched. It is only when an opportunity like this is afforded to discuss the matter generally with the public before a tribunal such as yours that the pertinent points can be brought out. Any submissions we may make are intended to be not merely critical but, we hope, constructive, and we trust they will have some beneficial effect.

There are some points arising from interpretation which I think can better be dealt with in connection with some of the sections, but there is one particular definition I might mention, that of "creditor" in section 2 (o). This definition has now been amended to include a secured as well as unsecured creditor. No doubt the definition in general terms of a creditor would have sufficed, but when you specifically mention that it is to include secured creditors, it has certain effects, as will appear from consideration of certain sections of the Bill that are related to the definition. For instance, in section 19, subsection 1:—

> A composition accepted by the creditors and approved by the court shall be binding on all creditors with claims provable under this Act, but shall not release the debtor from the debts and liabilities referred to in section one hundred and fifty-four of this Act except to such an extent and under such conditions as the court expressly orders in respect of such liability.

By that broad phraseology the composition would be binding on all creditors, including secured creditors, by reason of the specific definition; whereas, it was probably the intention that it would be binding only upon the creditors who had not had an opportunity of obtaining securities for their debts.

In section 26 the same question arises with respect to a stay of proceedings. The first subsection provides generally that during the bankruptcy of a person or on the filing of a proposal of composition no creditor shall have any remedy against the person who is to be put into bankruptcy "or shall commence or continue any action, execution or other proceedings for the recovery of a debt provable in bankruptcy," unless with leave of the court. As the provision stands in the Act, subsection 2 went on to deal with the position of secured creditors and it stated that, "subject to the provisions of certain other sections, any secured creditor may realize or otherwise deal with his security as if this section had not been passed, unless the court otherwise orders." This of course is quite a proper proceeding, for it the court felt a secured creditor should not realize his security, it might on special representations make an order requiring the secured creditor not to realize.