Sir LOMER GOUIN: That is to say, the debtor cannot be adjudicated bankrupt because he has failed to pay one of his debts. He must cease generally to meet his obligations.

Sir HENRY DRAYTON: We have not that in front of us. It is rather hard to follow.

Sir LOMER GOUIN: It is subsection (j) of section 3a, which now reads as follows:

If he ceases to meet his liabilities as they become due.

We propose to include the word "generally" after the word "liabilities." The subsection will then read:

If he ceases to meet his liabilities generally as they become due.

That is to say we cannot adjudicate a man bankrupt because he fails to pay one of his debts; he must cease generally to meet his obligations.

Mr. JACOBS: Does not the word "liabilities" carry the implication of "generally."

Sir LOMER GOUIN: No. There was a judgment rendered by Mr. Justice Fisher in the case of Stevenson vs. Taylor, reported in volume 70, Dominion Law Reports, page 853, where it was decided that failure to pay one debt that was an act of bankruptcy within this paragraph.

Mr. BOYS: It seems to me that the minister will cause litigation by using the phrase that a man shall only be adjudicated bankrupt when he "generally" fails to pay his debts. Who knows what that means? It is quite evident it does not mean the failure to pay one debt; does not mean two or three, or twenty? Why not have a provision that if on written demand he fails to pay his debts for a week, or two weeks, or some such period, then he may be adjudicated bankrupt? The word "generally" is very indefinite, and is certain to give rise to litigation.

Sir LOMER GOUIN: I do not see what litigation it could give rise to. It is for the judge to reach a decision. A petition is presented to the judge and if there is any objection from the debtor, if he says, "I have not ceased meeting my obligations" the petitioner will give proof that in three, or four, or five instances, he has failed to do so. Then the petition will be granted.

Mr. BOYS: There may be an answer to that suggestion or some explanation given. Surely it is better to have the section definite in its wording. The provisions of The Companies Act are somewhat along the line I have referred to. If you do not want to prolong the situation make the period one or two weeks, but let there be a written demand for the payment of the debt. On failure to pay the debt within a specified time he may be adjudged bankrupt. In that case there will be no doubt about it. Otherwise, I think, you will have doubt, possibly difference in judicial decision, as to what the wording means, and there will certainly be answers and unfounded excuses given for failure to pay the claims which might delay the declaration of bankruptcy.

Sir LOMER GOUIN: I thought this was the best amendment we could draft. There certainly were abuses in declaring a man bankrupt because he ceased or refused to pay one of his debts. By saying that it should be "generally" and leaving the matter to the judge to decide we thought there was protection for the creditors and for the debtor.

Mr. JACOBS: I want to say that the section we are now discussing was inserted in the Bankruptcy Act as an amendment, I think, last year and it is taken word for word from the old Bankruptcy Act which was reproduced in our Code of Civil Procedure.

At six o'clock the Speaker resumed the chair and the House took recess.

After Recess

The committee resumed at eight o'clock, Mr. Gordon in the chair.

The CHAIRMAN: It is moved that the bill be amended by adding section 2A as follows:

Section 3 of this act is amended by inserting the word "generally" after the word "liabilities" in paragraph (j) thereof.

Amendment agreed to.

Section as amended agreed to.

On section 3—If petitioning creditor is a secured creditor.

Mr. CLARK: Sub-clause (2)—

Sir LOMER GOUIN: We should add the words "as far as possible" after the word "custodian" in the third line of sub-clause (2).

Mr. CLARK: What I was going to suggest was that the words in the third line "one of the most interested creditors" should be struck out, and the words "a person qualified to act as trustee" inserted. That would be in keeping with the spirit of paragraph (mm) of clause 2, subclause (2), which was amended by striking out the word "creditor", and inserting the word "person".