

The Ontario Weekly Notes

VOL. XIX. TORONTO, NOVEMBER 12, 1920. No. 9

HIGH COURT DIVISION.

HOLMESTED, REGISTRAR IN BANKRUPTCY. OCTOBER 28TH, 1920.

RE SHAW.

Bankruptcy—Practice—Official Trustee Asking for Approval of Composition Agreement—Application to Appoint Time for Hearing—Bankruptcy Act, 1919, sec. 13 (5), (7), (8)—Application by Trustee in Person—"Party to the Proceeding"—Solicitors Act, secs. 3, 4.

An application by Mr. Weatherbe, an official trustee under the Dominion Bankruptcy Act, 1919, 9 & 10 Geo. V. ch. 36, for an order appointing a time for hearing an application to approve of a composition and extension of time arrangement, agreed to by a majority of the creditors of an authorised assignor.

THE REGISTRAR, in a written judgment, said that the Act expressly authorised the trustee to apply to the Court to approve of the agreement: see sec. 13 (5). This was the first application of the kind; and the question whether the trustee may apply in person, or whether he must apply by solicitor, where he does not happen himself to be a practising solicitor, arose.

It is to be noted that the application is not a mere matter of form, but involves the exercise of judicial discretion. Before approval, the report of the trustee as to the terms of the agreement, and as to the conduct of the debtor, and any objections which may be made on behalf of any creditor (sec. 13 (7)), have to be considered; and, if the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, or in any case where circumstances are proved which would require the Court to refuse or suspend a discharge to a bankrupt, the application to sanction the proposal must be refused: see sec. 13 (8).

The learned Registrar had already held in *Re X.* (1920), ante 12, that an official trustee who is not a solicitor cannot file a petition in bankruptcy. But this application involved different considerations. The Solicitors Act, R.S.O. 1914 ch. 159, secs. 3 and 4, forbids any person acting as a solicitor in any Court who is