

MINUTES OF EVIDENCE

THE SENATE,

OTTAWA, TUESDAY, May 28, 1946

The Standing Committee on Banking and Commerce to whom was referred Bill A5, an Act respecting Bankruptcy, met this day at 11.45 a.m.

Hon. Mr. HUGESSEN (Acting Chairman) in the Chair.

The ACTING CHAIRMAN: Gentlemen, we have with us Mr. Justice Louis Boyer. If it meets with the convenience of His Lordship and members of the committee may I suggest that His Lordship give us a statement now and we can reserve our questions until we re-assemble after the house rises this afternoon.

Mr. JUSTICE BOYER: Gentlemen, you have me here, and I feel you want to ask me some questions. If you have any questions on special points I should be glad to be helpful in clearing them up. Otherwise I will make a few suggestions.

The ACTING CHAIRMAN: You will remember, Your Lordship, that we are not the expert you are, and that we are looking for guidance.

Hon. Mr. COPP: I think His Lordship might give us any objections he has to sections then we could study them.

Mr. JUSTICE BOYER: In the first place, I find that this act supersedes the Winding Up Act and the Companies Creditors Arrangement Act; it would necessarily abrogate the Winding Up Act and the Companies Creditors Arrangement Act. Of course the Winding Up Act could be preserved for the winding up of insolvent companies. There is a saving clause in the present Bankruptcy Act to the effect that permission should be had under the Winding Up Act. I do not see why there should be two acts. I am strongly in favour of the Bankruptcy Act providing only one act, and disposing of the Winding Up Act and the Companies Creditors Arrangement Act.

This act provides that a compromise may be offered before bankruptcy proceedings. It was contemplated by the Companies Creditors Arrangement Act. On that point it is just a question of disposing of the other statutes. As far as section 27 (5) of the bill is concerned it says the bankrupt should not sell any property at all; there is nothing said about exempted property. In the province of Quebec certain articles are exempted from seizure and are not to be turned over to the trustees. This section provides no exception at all.

The ACTING CHAIRMAN: That is subsection 5 of section 27?

Mr. JUSTICE BOYER: That is right. In our province once the trustee had been discharged any creditor could take action against the bankrupt. I understand the jurisprudence of the other provinces is the other way. But it often happens that the bankrupt does not ask for his discharge, and he contracts more debts, and since those debts are not provable under the Bankruptcy Act, the new creditors are left without any remedy at all.

Hon. Mr. HAIG: We understand that.

Mr. JUSTICE BOYER: So it is up to you if you want to clarify this point.

The ACTING CHAIRMAN: Which section?

Mr. JUSTICE BOYER: Section 26. There is the question of the right of the seizing creditor. Under the proposed law the seizing creditor is only privileged after the trustee. In my experience it happens very very often that the debtor, as soon as the seizure is taken against him, makes abandonment, a trustee is appointed, and very often he never realizes enough to pay the seizing creditor.