

That, gentlemen, leads me to another section of the bill dealing with the rights of the Crown, section 193 on page 115:

Save as provided in this Act, the provisions of this Act relating to the remedies against the property of a bankrupt, the priorities of debts, the effect of a composition and the effect of a discharge, shall bind the Crown.

That section has been in the Bankruptcy Act ever since it was enacted on the 1st of July, 1920, and the courts have held that that puts the Crown in exactly the same position as any other creditor: it must prove its debt. If the trustee disallows the debt the Crown can appeal, and if it does not appeal within the proper time it has lost its rights and the trustee can make out his distribution sheet, disregarding the Crown. As you can see, this and these other sections have created an almost impossible situation. The section providing for a trustee getting a certificate is directly in conflict with this section, which says that the Crown must prove its debt just the same as any other creditor.

Hon. Mr. GOUIN: What section are you speaking of?

Mr. REILLEY: It was referred to by Mr. McEntyre—section 50 of the Income War Tax Act. Consequently the trustee here is again in a quandary as to what he should do. All he has to say to the Crown is: Prove your debt. Suppose he disregards this filing of income tax returns, and the Crown does not prove its debt, what can we do to him? I have had to advise trustees—against my will—when the issue is involved: Go ahead and make your distribution sheet, and if the department does not file its claim the courts will protect you and you will be under no liability to the department of Income Tax. Here you have these conflicting situations, which at times are hardly reasonable, and the trustee is placed in a position which is not consistent with good straightforward administration. Besides, when a trustee takes over the records of a debtor in order to ascertain what the assets and liabilities are so he can carry on the administration of the estate, he is a stranger to the debtor and is not in a position to know what the debtor knows to enable him to file an income tax return. A good deal of the information necessary to file income tax returns, particularly when you get into an involved bankrupt estate, depends on the knowledge of the debtor, and the trustee being without that information simply cannot file any returns.

Hon. Mr. HUGESSEN: Surely he should file income tax returns where he carries on the business for some years?

Mr. REILLEY: Yes. If he carries on the business as a trustee naturally he must be subject to the same requirements as other people, and he would have to file his income tax returns; and if there is any tax payable he would have to pay it.

Hon. Mr. FOSTER: You mean up to the time the trustee takes charge?

Mr. REILLEY: Yes.

Hon. Mr. GOUIN: But, Mr. Reilley, if up to the time the trustee takes charge there is what we call in law a privilege, it affects the estate of the bankrupt, and any third party applying must be satisfied that the privilege of the Crown, for instance, for income tax is duly taken care of. That is why we are always careful to obtain a clearance from the income tax department.

Mr. REILLEY: No, Senator, there is no privilege.

Hon. Mr. GOUIN: But in the province of Quebec, as I look at the matter from the point of view of the civil code, the privilege of the Crown ranks first; for instance, its priority for certain taxes. Therefore I do not understand you when you say bluntly, "There is no privilege."

Mr. REILLEY: I was referring to income tax, Senator.