

BANKRUPTCY ACT FOR DOMINION

Credit Men's Proposed Legislation and Recommendations

The Canadian Credit Men's Trust Association has for some time past been urging the preparation and adoption of an uniform assignments act by the various provinces in Canada, but as this course would not overcome the present weakness of our insolvency laws, which do not provide machinery for forcing an insolvent debtor into involuntary bankruptcy, nor provide any method by which an honest debtor could obtain his discharge, and as there appears to be a strong feeling throughout the country that the time is now ripe for a bankruptcy act, the legislative committee of the association decided to support a Dominion bankruptcy act if the cumbersome and expensive features of the English and United States acts could in some way be eliminated.

Exhaustive enquiries have satisfied the association that the methods now in force in most of the provinces of Canada of closing out and realizing upon the assets of an assignor are less expensive and more expeditious than under the bankruptcy acts of England or the United States or Australia.

Legislation Outlined.

An outline of the objects of the association in connection with this legislation, which has been prepared by Mr. H. P. Grundy, barrister, Winnipeg, is as follows:—

1. To retain so far as possible the present method now followed in most of the provinces of realizing upon the assets of an insolvent and of distributing the moneys among the creditors, by having such assets vested in a trustee to sell and realize on them with the advice of the inspectors in each state, and to declare dividends from time to time direct to the creditors whose claims are to be filed (not in court) but with the trustee, and without the necessity of frequent court applications.

2. Have one or more trustees appointed in each province, with either limited or unlimited territorial jurisdiction, such trustees to furnish security to the government in an amount sufficient to protect creditors in respect to all assets in their hands.

3. Provide that a debtor may always make an assignment for the benefit of creditors to a trustee appointed under the act, and provide that an assignment may be made to any person other than a trustee so appointed with the consent of at least fifty per cent. in number and amount of creditors; the assignee, however, to give security if deemed advisable by the creditors.

Discharge as in English Act.

4. Provide that if the debtor commits any act of bankruptcy (as outlined in the act) he may, on a creditors' petition, be declared bankrupt, and a receiving order made by the court.

5. The receiving order is to direct that all the property of the debtor be vested in a trustee under the act for sale and distribution among the creditors.

6. Provide that a debtor, whether he has made an assignment or been declared a bankrupt, is to have the right, after a specified period, to apply to a judge in bankruptcy for a complete discharge from his liabilities; the provisions of the English act in this respect are to be substantially followed.

7. Make provision for confirmation by the court of compositions, extensions or other schemes with creditors, provided that the same have been approved of by a certain percentage of the creditors, say 75 per cent.; the object being that if a debtor is justly entitled to a composition or extension, and such appears to be in the best interests of the creditors generally, a few small creditors cannot successfully oppose it.

Will Make Assignment.

8. Provide that the court having jurisdiction in each province will prepare general rules as to the practice in bankruptcy in each such province.

9. Dispense with most of the complicated and expensive machinery in the English and United States acts—a few illustrations of which are briefly as follows:—

- (a) There will be no necessity to make provision for the presentment by a debtor of a voluntary petition in bankruptcy, for the debtor's proper course will be to make an assignment direct to a trustee without the intervention of a court or referee in bankruptcy, or official receiver.

- (b) Very few creditors' petitions to have a debtor declared bankrupt will ever be filed, because the debtor will

generally make an assignment, for three very good reasons: First, with a view to obtaining his discharge he will desire to retain the good-will of his creditors by avoiding unnecessary expense; second, there will be a strong sentiment against being declared a bankrupt; third, the debtor will be subject to certain disqualifications if declared bankrupt until he receives a certificate of discharge.

Too Many Officials.

- (c) Under the United States act there are too many officials; for example, the referee, with whom claims are filed, and who declares dividends to creditors notwithstanding the fact that a trustee appointed by the creditors has charge of the disposal of the assets. There seems no good reason for two officials, both of whom must furnish bonds, and for two sets of fees and remuneration, when one official could quite easily do the work. A somewhat similar provision exists in the English act, where we have the "Official Receiver," a "Special Manager," and a "Trustee" to be appointed by the creditors, and although (unlike the United States act) these officials do not act concurrently, there seems to be no necessity for the appointment of an official receiver so far as Canada is concerned. The English procedure is further complicated by applications to the board of trade and the court.

- (d) We see no necessity for the court to call meetings of creditors, or for a judge, referee or official receiver to attend the first or any meetings of creditors, nor for the public examination in open court of "every bankrupt" as provided by the English act. There will be many cases where the examination of a debtor would be unjustifiable expense.

Somewhat Expensive Procedure.

- (e) In the "Appendix of Forms" to the English act there are over 200 forms, and this alone is some indication of the complicated nature of the proceedings thereunder, while a perusal of the scale of "Solicitors' Costs" convinces one that these costs, added to court disbursements, official receiver's fees and trustee's remuneration, make the system a somewhat expensive one.

- (f) The procedure under both the United States and English acts appears to be somewhat similar to the proceedings under the Dominion "Winding-Up Act," and it is well known that the machinery under such last-mentioned act applied to insolvent estates would not be satisfactory to commercial interests in Canada.

10. Give jurisdiction in bankruptcy to the high court in each province, for as few bankruptcy matters will come before a judge there seems to be no necessity for giving jurisdiction to the lower courts. Applications of debtors for discharges will be practically the only matters requiring a judge's consideration, except in the few cases where receiving orders are made.

11. The details relating to meetings of creditors, appointment of inspectors, proof of debt, valuation of securities, examination of debtors and other similar matters have not yet been taken into consideration, but generally speaking the object is to carefully consider the provisions and procedure now existing in all the provinces under the various assignments acts, to compare the same with similar provisions in the English and United States acts, and adopt the best and most inexpensive features for the Canadian act.

12. It is not proposed that the act be confined to traders, but that the same should apply to all classes of persons, including firms and corporations.

DOMINION CUTLERY COMPANY

What is claimed to be the first cutlery plant in Canada is that of the Dominion Cutlery Company, Limited, at Westport, Ont.

This company has an authorized capital of \$100,000. Its head office is at 591 St. Catherine Street West, Montreal. The plant is valued at \$60,000, against which there is owing \$13,500. According to the prospectus, the company intends, in addition to the manufacture of cutlery, to produce drop forgings and coffin trimmings.

The company's directors are Messrs. A. Shearer, Montreal; W. E. Tomlinson, Ottawa; Mathew Feeny, Montreal; H. L. Coombs, Montreal; and G. A. Marshall, Toronto.

The Northern Crown Bank has opened a branch at Steinbach, Man.