

this mode of proceeding he has the undisputed possession of his estate, and his books, for a time amply sufficient to enable him, if he pleases, to dispose of assets, make entries, or receive or expend debts due to him, in such a manner as to injure his creditors.

On the other hand, if he follows the procedure permitted by the Act of 1865, he himself exercises the right of selecting his assignee; and however limited the number of persons from whom his selection may be made—it is stated that in certain cases the competition has given rise to collusive arrangements and favouritism;—both alike detrimental to that thorough investigation of the affairs of the estate in which the creditors should have the energetic co-operation of the assignee.

These considerations and the suggestions contained in the replies laid before the committee, appear to point to some arrangement by which the debtor should make an immediate assignment to some official person, who should at once call a meeting of the creditors, and during the interval of time required for notices, should perform similar duties to those imposed by the present act upon the guardian in compulsory liquidation. By this mode it is suggested that the estate would be at once secured; the information required to enable the creditors to act intelligently in the choice of assignee would be prepared; their freedom of selection would be preserved; and while the notices were being published the preparations for realizing the estate would be progressing.

With regard to the residence or quality of the assignee to be ultimately chosen by the creditors, the prevalent idea of the Act seems to be, to give the entire control of the conduct and arrangement of the estate to the creditors as being a matter in which they alone are interested. They are authorized to make such regulations for winding it up as they think proper—they can pronounce upon nearly every question as to its administration, that can arise; and the success or failure of the means they adopt only results in the increase or diminution of their

dividends, as the case may be. It may be of the highest importance to creditors to have an active and competent man as assignee, though he may not reside in the same place as the debtor, and the identity of domicile of the debtor and the assignee will be an insufficient substitute for qualities essential to the advantageous administration of an estate. Your committee therefore are of opinion, that a liberal interpretation of the Act, under which no restriction is imposed on the choice of an assignee by the creditors, is beneficial, and in accordance with the general tendency of the Act. But the selection of assignee should not in any respect affect the *forum* having jurisdiction over the Insolvent and over his acts and contracts.

The same remarks will in many respects apply to the proceedings, by means of which an insolvent is compulsorily divested of his estate. The choice by the Sheriff of a guardian, like the choice of an interim assignee by the creditors, should be restricted to persons resident in the locality, for the sake of convenience in the immediate protection of the estate; while the ultimate selection of an assignee should be left free, that the creditors may obtain the person they consider best calculated to procure for them the largest returns from it.

With regard to the procedure for compulsory liquidation; in the great majority of answers the provisions of the Act seem to be considered convenient and sufficient. The most important addition proposed is suggested by several of the Boards of Trade, to the effect that a levy under execution should be made a ground for compulsory liquidation; and that money so levied within sixty days before the insolvency should be recoverable by the assignee either from the Sheriff, or from the seizing creditor to whom he has paid it, as the case may be. The first branch of this suggestion appears to be already met by the provisions of the Act. The second would seem to be open to many grave objections, and could only be sustained on a principle inconsistent with that upon which mainly rests the law as to preferences enunciated by the Act.