

We think this probably means any alienation by the debtor. But actually there might be property of the debtor on which he has given a valid security in such a way that the person who holds that security is entitled to realize on it, and normally make good title. This new subsection would throw a cloud on that title if it is going to cover alienation by anybody of the property of the debtor. We think it would be better to clarify the wording by stating "any alienation by the debtor." This is no doubt the intention of the subsection.

In section 39, subsections 11, 12, and 13, there is a small point on administration. It is quite proper that the Superintendent should have access to the bank accounts or any other information he might want. The difficulty is that banks, by reason of the contract between depositor and banker, are under an obligation of secrecy. That obligation is so strong that if a bank discloses its customer's affairs it is liable in law. So the banks before giving information would want to be sure that they were giving it to properly authorized persons. The Superintendent could not do all the work himself, and presumably he may retain accountants to do it on his behalf. We suggest therefore that the Superintendent have power to authorize a person to act on his behalf. Then if that authorized person comes to a bank to secure information the bank would be protected. That is the usual procedure under the Income War Tax Act and a number of other statutes, both Dominion and provincial, where it is necessary to have access to bank accounts.

Hon. Mr. MORAUD: Don't you think, Mr. Rogers, that that again is an invasion by an officer of the department, of the jurisdiction of our courts? If an investigation is to be made, it should be made under the direction of our courts.

Mr. ROGERS: It is certainly more desirable. But we have had to submit with the best grace possible to similar provisions in Dominion as well as provincial legislation, where an officer is clothed with certain powers, as under the Securities Act and the Income War Tax Act and the Excise Act, and can examine bank accounts. It certainly would be more desirable if all this could be done under the aegis of the courts, as the honourable senator suggests, but in view of what has already happened we could scarcely urge that. All we can ask is that there be a clear-cut delegation of authority. If that is to be the case, we shall have to submit with good grace.

Hon. Mr. MORAUD: I submit that this should be done under the direction or authority of a court of justice.

Mr. ROGERS: There is something of that, sir, in subsection 12:—

The Superintendent or anyone in his behalf may with the leave of the court examine the private books, records and documents and bank accounts of a trustee. . . .

That brings in the principle there.

Hon. Mr. MORAUD: There is nothing of the kind in subsection 11.

Mr. ROGERS: No, there is nothing of that nature in subsection 11. It goes your way in subsection 12. But it is just as you honourable senators wish in matters of that sort. As I say, we have to submit with grace, as many others have, to requirements of that nature where investigations are conducted by representatives of the Crown without the authority of the court, but under the authority of a statute. We always insist on absolute compliance with the requirements of the order of the court or the statute, because otherwise we would be liable, and financially we cannot afford to accept that liability.

Sections 68 and 69 have given rise to a considerable amount of doubt as to their effect on banking transactions as well as others. Section 68 will be found on page 54 of the Bill. Subsection 1 provides:

Every transaction—

which, as you have seen, is very broadly defined now.