

We have prepared a brief, (See Appendix B), which deals with only one aspect of the bill, but an aspect which we consider of great practical importance. Instead of reading the brief, which is always rather a dull process, with your permission I should like to speak to it and draw the attention of the committee to some of its more important aspects.

It is our understanding of the bill that it proposes to bring all corporate reorganizations under the terms of the Bankruptcy Act, and do away with procedure under the Companies Creditors Arrangement Act, although this Act is not specifically repealed in terms so far as I can discover.

The association believes that that would be a mistake. It thinks that the interest of investors, while technically they may in some cases be creditors, is really of a different type from that of ordinary creditors. Therefore it is quite appropriate to have two different types of procedure: in England reorganizations are of course under the Companies Act, and ordinary compositions under the Bankruptcy Act. It is true that in the United States company reorganizations come under the Bankruptcy Act because of the constitutional problem involved; but you may remember they are in a special part of the Act passed as a separate bill, and it is usually referred to colloquially as the Chandler Act.

The association recognizes that in the administration of the Companies Creditors Arrangement Act in the past there have been abuses and arrangements have been put through under that Act that probably were not fair to the creditors. Therefore the association is putting forward certain proposed amendments, which it submits for the consideration of the committee, to be made to the Companies Creditors Arrangement Act. We are not putting forward those amendments in any spirit of presumption, for we recognize that they will be carefully scrutinized by this committee and by the law officers of the Crown; but until the thing is actually put down in black and white it is often very difficult to understand just what is proposed.

I should like to say that these amendments have not been hastily prepared or ill considered. The association went into this matter a good many years ago, and in 1943 it asked three very experienced corporation lawyers, Mr. Gilbert Stairs of Montreal and Mr. Kaspar Fraser and Mr. R. B. F. Barr—he is here with me today—both of Toronto, to prepare amendments that might be considered suitable for the Companies Creditors Arrangement Act. The work was not gone on with at the time owing to the war, but the amendments presented for your consideration today are substantially the amendments prepared by counsel at that time, reconsidered and gone over by the representatives of the various companies concerned.

Perhaps it might be useful to the committee for me to recall something of the history of the Companies Creditors Arrangement Act. Prior to the first war, when all or most of Canada's foreign financing was done in England, the practice in issuing securities was to follow the English precedents, and practically all trust deeds contained clauses permitting a majority of the bondholders in a meeting to vary the terms of the contract. Later, when American financing became commoner, in the twenties, those provisions were deleted from a great many trust deeds because they were not usual in the United States. So when the depression came along it was discovered that a large number of companies had to be reorganized, and that the provisions of the trust deeds were inadequate to permit a reorganization by agreement, and in reality there was no way in which the companies could be reorganized at all.

It was as a result of that situation that the Companies' Creditors Arrangement Act was passed. Its provisions were very largely taken from the British Companies Act of 1929, and the body of British authorities and precedents of that act have been used in the Companies' Creditors Arrangement Act. Nevertheless at that time, and since, there was no way in which a company could make any kind of compromise with its creditors—that is an ordinary trading