

Paragraph (d) covers:—

Any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would have the effect of defrauding, delaying or defeating his creditors or any of them.

HON. MR. LEGER: In other words, he could not mortgage his property.

MR. ROGERS: It is just a question whether under certain circumstances a mortgage which might be taken and given in all good faith would come within this, because undoubtedly it would have the effect of delaying or defeating his creditors or any of them. That is, one creditor might be defeated by the giving of a certain security; there might be no fraud intended, yet it would be an act of bankruptcy. Our feeling is that it goes further than should be necessary.

I turn now to page 6. Paragraph (i) of section 3 relates to bulk sales. Under the paragraph in the Act a bulk sale made without complying with the requirements of the provincial laws would be an act of bankruptcy. But the phraseology now is such that the whole purpose of the paragraph is changed, and if anyone makes a bulk sale "wherein the sale price will not be sufficient to pay his creditors in full" that sale constitutes an act of bankruptcy. The danger is that a man might make a bulk sale and the proceeds would be insufficient to pay his creditors in full, but he might have other assets, including bank deposits, from which the balance of his creditors' claims could be paid, but the definition could result in his being forced into bankruptcy regardless of his real financial position.

HON. MR. LEGER: That would come in conflict with our provincial Bulk Sales Act.

MR. ROGERS: Perhaps it calls for a sale under the provincial law, but it states that an act of bankruptcy will have been committed if the sale price is not sufficient to pay all creditors in full. It ignores the fact that there might be other assets, so the sale would be perfectly sound and the man absolutely solvent. Perhaps the amended paragraph is cutting too wide a swath from that point of view.

In paragraph (i) of section 3 we find another point of difficulty. It is an act of bankruptcy if the man "ceases to meet his liabilities generally as they become due." That, of course, has always been in the Act. But the paragraph is amended to read:—

... or fails to pay any particular debt or debts after repeated demands for payment.

If it is going to constitute an act of bankruptcy when a man fails to pay any debt after repeated demands for payment, it would constitute a very serious encroachment on the right of an individual to contest claims of debt on sound legal grounds. While there may have been some cases of uncertainty, as Mr. Reilley states, it seems to me that where a man might be stalling and too much delay might result in the loss of some assets, it is just a question whether legislation should go so far as to make it difficult for others to do business with a man, and certainly this amendment would expose the individual to threats of bankruptcy proceedings at the hands of an unscrupulous creditor unwilling to establish his claim to the debt in the civil courts. It seems to us to be going too far.

There is a small point in section 18, subsection 11 on page 18 of the Bill, which we wish to make.

The subsection provides:—

On the filing of a proposal the property of a person not bankrupt shall be deemed to be under the custody of the court until the proposal is finally disposed of by the court and any alienation thereof except in the normal course of business shall be null and void.