

*Omnibus Feature Unworkable*

The apparent proposal to bring all insolvencies, reorganizations, liquidations and winding-up proceedings under the Bankruptcy Act does not take account of the fact that each of the Acts mentioned is a highly specialized instrument carefully and specifically devised to serve entirely different purposes. They simply cannot be lumped together in one omnibus scheme and remain effective in accomplishing their objects.

For instance as regards the Companies' Creditors Arrangement Act, Section 23 would enable the Court to impose a composition, etc., on a class of creditors where the proposal would not carry the votes of a majority of the class. If such a provision were enacted, it would have a detrimental effect on the sale of securities and might well raise the question of whether Canadian securities could be marketed in the United States where even majority clauses are not permitted in trustee deeds. Section 23 violates the fundamental principle of the Companies' Creditors Arrangement Act, namely, that holders of securities shall enjoy the protection of normal laws and not be coerced into accepting as a class a settlement to which the majority of the class does not assent.

Again, in connection with the Companies' Creditors Arrangement Act, Section 104 of Bill A-5 would require, for the purpose of voting, secured creditors to surrender and value their securities and be entitled to vote only in respect of the balance (if any) due after deducting the value of the securities. Obviously, this would create an impossible situation from the point of view of a security holder. Reference is also made to Section 98 which separates classes of creditors for voting purposes and provides for intervention by the Court.

So far as winding-up proceedings are concerned, the proposed clauses fail to take into account decisions of the Privy Council to the effect that the Dominion Parliament has not constitutional power to legislate respecting the winding-up of solvent companies incorporated otherwise than under Dominion legislation.

Further examples of the unworkability of the omnibus scheme could be cited but possibly those mentioned above will suffice.

*Proper Scope of Bankruptcy Act*

Each of the Acts mentioned should be left as a separate instrument to accomplish its particular purpose. The Bankruptcy Act is an efficient instrument for enabling traders to realize claims on trade debtors. It should be left to serve that purpose and no effort be made to include under it other fields.

*Compositions, etc., Without Bankruptcy*

However, there would be a decided advantage in expanding the present composition sections of the Bankruptcy Act, which only operate after bankruptcy, to enable compositions before bankruptcy within the Act's proper field as indicated. Often trade estates suffer loss in goodwill on becoming bankrupt and lose valuable contracts cancellable on bankruptcy because compositions cannot be carried out without bankruptcy under the Act. Provision for compositions without bankruptcy were formerly in the Act and were repealed because of abuses which grew up. This was before the office of Superintendent of Bankruptcy was established and trustees were licensed. It is considered that the administration of the Superintendent and the control over trustees will prevent a recurrence of the former abuses.

All of sections 11 to 24, not necessary for compositions without bankruptcy within the scope described above, should be eliminated. As to certain sections which may remain, the following observations are submitted:—