

Scope and Nature of Proposed Bankruptcy Act

Great Value that will result to the Business Interest of the Dominion by the passage of Credit Men's Association's Proposed Act which was laid on table for one year at last session of Dominion House.

Address by Mr. J. H. Senkler, K. C. at the annual meeting on May 16, 1918, at the Hotel Vancouver, Mr. Senkler said:

"I do not imagine that you want to hear anything about the history of our old insolvency act. All you want are some practical suggestions as to what the new act is to be, the arguments for and against it. The two objects of the English act are very short. One is that the estate of a debtor is for the creditor and the second is that it assists in commercial solubility. There is nothing in the Canadian history of the act. We had an act in 1875 and it was done away with in 1880 and we have not had one since. An act was brought up in this session of the house but I understand it is going to be left over till the next session. I understand that a gentleman named Mr. Grundy prepared a draft of an Insolvency Act. I propose to take this act as it is and deal shortly with the different parts of it. When we are through with that I will give you a few of the arguments used against the act and a few for it.

"Part one of the act is the courts and procedure. The courts are simply the superior courts of the different provinces and one good thing about it is that all the courts, that is, the courts of British Columbia, will assist the courts of the other provinces and vice-versa. The procedure is simply the procedure to be adopted when the petition for insolvency is presented and will not be interesting to discuss here.

"The second part of the act is bankruptcy and receiving orders. Under the heading of bankruptcy the different ways in which a man can become bankrupt or the different things which cause a man to become bankrupt are given. It would not do to give you a list of these but they are the things which cause bankruptcies such as having an execution levied against his goods. But the receiving orders are very interesting. When a petition is granted or rather made by a petition to bankruptcy, when the petition comes on for hearing, a receiving order is made whereby a trustee is appointed over all the debtor's property. But there is a further provision, that, if at the time the petition is presented and before it is heard, the petitioner believes the debtor is going to do—has been done in this and other countries—get rid of some of the goods quickly and get out and not pay anybody, they can apply at once to the court which will grant an interim order and will allow the trustee to go in at once and take the goods. I think that is a very excellent thing in the act.

"There is another thing in regard to a debtor's estate. Up to date it has been very difficult to deal with such estates. People have been afraid of tackling them. The executors may say there is nothing in the estate or that it all belongs to the wife of the debtor. Under this act the order granted is against the estate just the same as anybody else and the trustee can take possession and can insist on the executors or administrators turning over everything to them. That will be of great advantage to the community.

"Part three is the question of assignments—assignments for the benefits of creditors. Under the act the assignments are to be to the trustee and all other assignments are null and void. The assignments must be made to a trustee in a way I will explain or if I think three-fourths of the creditors agree he can assign to another trustee.

"Possession.—This means arrangements made between debtors and their creditors. This is one of the points on which a great argument has been made in the House of Commons against the act, and the argument is that it is too easy to make one. But I do not think it is under the act. This act says that a debtor may make a deed of arrangement. But he has to get a large proportion of his creditors

to agree and in the second place it has to be confirmed by the court. In other words, the matter is brought before the courts and then any creditor can oppose it and have the man made a bankrupt in the ordinary way.

Part Four.—Trustee and administration.—The trustees under the act are nominated by the various Boards of Trade of the community and these nominations are sent forward to the Lieutenant-Governor-in-Council for the province, and if he approves of them he appoints them and they are recognized as the proper trustees of the various districts.

"Administration.—There are a great many things in the act that the trustee can do that, up to the present time he has not been able. He had to go to the court to get an order. Under his act he has not to do that. He can examine a debtor and not only that, but he can examine any of his clerks or agents or anybody in order to find out about the business of the debtor. In other words if I were declared a bankrupt and they examined me and I was sharp enough to fool them they could call in my book-keeper and examine him in the same way. I think that is a great point because I know of my own knowledge, debtors who got away with things by reason of the court being unable to examine anybody else.

"Part Five.—Creditors' inspectors. One good thing in this act is that the majority of the creditors in number and value have the full control over a debtor's estate, absolute and full control. Any point that comes up is decided in the first place by the majority in numbers and value. Inspectors are appointed in the usual way by the creditors.

"Part Six.—Debtors, the duties of a debtor. In this act the duties are set out very carefully. A debtor has to make a statement of all he has got, all his estate of every kind and description. If a debtor is found afterwards to have left anything out of the estate or to have stated anything that was untrue or to have done anything to fool the trustee or creditors he is guilty of a misdemeanor and can be put in jail and he will never get a discharge. A debtor who has been declared a bankrupt has certain disqualifications. He may not be a senator or a member of the Dominion House or an alderman or a school trustee and a lot of other things. Of course these disqualifications disappear as soon as he is discharged.

"Now as to discharge:—This is in my opinion one of the great points of the act. A discharge is granted on the application of the debtor himself. He makes an application to the court for a discharge. Thereupon the court asks the trustee to make a statement as to whether this man is entitled to a discharge. When the statement comes up the points that are considered are these: Has the debtor carried on his business as a sane man would carry on his business. Has he been honest in his dealings. Has he done everything he could possibly do to assist the creditors when he was declared a bankrupt. All these things are considered. The creditors may instruct the trustee to appear before the court and say this man should not be discharged for another six months or a year. During that time he cannot enter into business and cannot borrow money over \$50.00. He could not enter into business in his wife's name or in any other way.

"Part Seven.—Bankruptcy offences.—Under this section there are a great many things such as I have already indicated to you—a debtor making a false statement. The list is very long. For doing any of the things stated he is guilty of a misdemeanor and is liable to a fine or imprisonment or both. He can be declared a felon and put in jail for two years. That practically gets through the bankruptcy act. Those are the different sections of the act. I know you would not like me to go into them in more detail than I have. There are a few arguments which have been used against it. I will give you a few of these.