Canada. Parl. Senate. Standing Comm.on Banking and Commerce, 1949.

1949

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill N, intituled:
"An Act respecting Bankruptcy"

No. 1
THURSDAY, MARCH 10, 1949

ACTING CHAIRMAN
The Honourable A. K. Hugessen, K.C.

WITNESSES

Honourable Mr. Justice Urquhart, Supreme Court of Ontario.
Mr. H. W. Macdonnell, Legal Secretary, Canadian Manufacturers' Association.
Mr. H. S. T. Piper, Montreal Board of Trade.
Mr. R. Forsyth, Superintendent of Bankruptcy.
Mr. Lee A. Kelley, K.C., the Law Society of Upper Canada.

APPENDICES

A. Observation of The Honourable Mr. Justice Urquhart.
B. Memorandum by the Montreal Board of Trade *re* Operation of Companies' Creditors Arrangement Act, 1933.
C. Recommendations of the Sub-Committee of the Legislation Committee of the Dominion Association of Chartered Accountants.
D. Brief of the Board of Trade of the City of Toronto.
E. Submission of The Canadian Credit Men's Trust Association Limited.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1949

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, 17th February, 1949.

Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (N), intituled: "An Act respecting Bankruptcy," be now read a second time.

After debate,

The said Bill was read the second time, and—

Referred to the Standing Committee on Banking and Commerce.

L. C. MOYER,
Clerk of the Senate.

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STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Elie Beauregard, K.C., Chairman.

The Honourable Senators Aseltine, Aylesworth, Sir Allen, Ballantyne, Beaubien, Beauregard, Buchanan, Burchill, Campbell, Copp, Crerar, Daigle, David, Dessureault, Duff, Euler, Fallis, Farris, Gershaw, Gouin, Haig, Hardy, Hayden, Horner, Howard, Hugessen, Jones, Kinley, Lambert, Leger, Mackenzie, Marcotte, McGuire, McKeen, McLean, Moraud, Murdock, Nicol, Paterson, Quinn, Raymond, Robertson, Sinclair, Vien and Wilson.—44.

MINUTES OF PROCEEDINGS

FRIDAY, February 18, 1949.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11 a.m.

Present: The Honourable Senators:—Copp, *Acting Chairman;* Aseltine, Buchanan, Kinley, Lambert, Leger, Quinn, Robertson, Sinclair and Wilson.—10.

In attendance: Mr. J. F. MacNeill, Law Clerk and Parliamentary Counsel.

Bill N, "An Act respecting Bankruptcy," was considered.

After discussion it was resolved to postpone hearings on the Bill until Thursday, March 10, 1949.

The Clerk of the Committee was directed to so advise those witnesses who were heard on a somewhat similar Bill in 1946.

At 11.15 a.m. the Committee adjourned to the call of the Chairman.

Attest.

JOHN A. HINDS,
Clerk of the Committee.

THURSDAY, March 10, 1949.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11 a.m.

Present: The Honourable Senators:—Aseltine, Buchanan, Burchill, Copp, Crerar, Fallis, Gouin, Horner, Howard, Hugessen, Lambert, Leger, Mackenzie, McGuire, McKeen, Paterson, Quinn, Robertson, Sinclair and Wilson.—20.

In attendance: Mr. J. F. MacNeill, Law Clerk and Parliamentary Counsel.

The official reporters of the Senate.

In the absence of the Chairman, and on Motion of the Honourable Senator Robertson, the Honourable Senator Hugessen was elected Acting Chairman.

The consideration of Bill N, "An Act respecting Bankrupty," was resumed.

On Motion of the Honourable Senator Robertson:

It was resolved to report recommending that the Committee be authorized to print 1,000 copies in English and 400 copies in French of the day-to-day proceedings on the Bill, and that Rule 100 be suspended in relation to the said printing.

The Honourable Mr. Justice Urquhart, Supreme Court of Ontario, was heard with respect to the Bill, and filed a brief with the Committee, which was ordered to be printed in the record. (*See* Appendix "A").

Mr. H. W. Macdonnell, Legal Secretary, Canadian Manufacturers' Association, read a brief on behalf of his association.

Mr. H. S. T. Piper, representing the Montreal Board of Trade, read a brief, and filed with the Committee a memorandum *re* the operation of the Companies Creditors Arrangement Act 1933, which was ordered to be printed in the record. (*See* Appendix "B")

Mr. R. Forsyth, Superintendent of Bankruptcy, was heard with respect to the Bill.

Mr. Lee A. Kelley, K.C., Ottawa, was heard on behalf of the Law Society of Upper Canada.

Briefs on behalf of:

The Dominion Association of Chartered Accountants (*See* Appendix "C"),

The Board of Trade of the City of Toronto (*See* Appendix "D"), and

The Canadian Credit Men's Trust Association Limited (*See* Appendix "E"), were filed with the Committee,

And were ordered to be printed in the record.

Further consideration of the Bill was postponed until Wednesday, 16th March instant, at 10.30 a.m.

At 1 p.m. the Committee adjourned until Wednesday, 16th March instant, at 10.30 a.m.

Attest.

JOHN A. HINDS,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE,

OTTAWA, Thursday, March 10, 1949.

The Standing Committee on Banking and Commerce to whom was referred Bill N, an Act respecting Bankruptcy, met this day at 11 a.m.

Hon. Mr. HUGESSEN in the Chair.

Hon. Mr. ROBERTSON: Honourable senators, before we proceed I have a motion that I should like to put forth. I would move that the committee be authorized to print 1,000 copies in English and 400 copies in French of its day to day proceedings on the Bill N, intituled: "An Act respecting Bankruptcy", and that Rule 100 be suspended in relation to the said printing.

Such a record was kept before and was found to be valuable.

The CHAIRMAN: Gentlemen, the committee has heard the resolution that the committee be authorized to print 1,000 copies in English and 400 copies in French of its day to day proceedings on the Bill N, intituled: "An Act respecting Bankruptcy", and that Rule 100 be suspended in relation to the said printing. Is there any discussion on that motion?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Ladies and gentlemen, there has been placed before me a list of witnesses who desire to be heard in relation to this bill which I understand now comes before us for the first time. Does the committee desire to hear witnesses in relation to this bill or to hear the Superintendent of Bankruptcy explain the bill first? What is the pleasure of the committee?

Hon. Mr. GOUIN: I think that a few words of explanation of the bill might be quite welcome. It is a rather lengthy piece of legislation.

Hon. Mr. LAMBERT: Mr. Chairman, one of the persons present here who was asked to give evidence is Mr. Justice Urquhart. He is serving in the court here and I think it would be a matter of courtesy if he were given an opportunity to speak first so that he could be released to attend to his official duties.

The CHAIRMAN: Is it the pleasure of the committee to hear Mr. Justice Urquhart as the first witness?

Some Hon. SENATORS: Carried.

The CHAIRMAN: We should be very glad to hear from Mr. Justice Urquhart now.

Hon. Mr. Justice GEORGE A. URQUHART, of the Supreme Court of Ontario: Honourable senators, I wish to thank you for the invitation to have an opportunity to speak to you upon this bill. I have gone over this bill with the aid of the Registrar of our Court, who is a man of even greater experience than my eleven years on the bench have afforded me. I have prepared a brief of amendments which I suggest, respectfully, in connection with this bill. (See Appendix A.) I do not propose to go over the amendments in detail, leaving them with you for your consideration. They are in writing and no doubt will be attached to your Minutes of Proceedings of today.

There are some features of the bill that I thought I would refer to, that particularly interest me. May I say at the outset that I am in agreement with almost the whole of the bill and I want to compliment the Superintendent of Bankruptcy on the admirable manner in which he has revised his legisla-

tion which extends, with amendments, over thirty years. The bill has been greatly simplified and there may or may not be, according to the views of various people, dangers in over-simplification. I do not myself notice many dangers in the bill but you will realize there has been a body of decision built up in Canada now for thirty years on the wording of the present legislation together with the amendments which it has accumulated during the past years. I just point this out for your consideration. There are lawyers among you and probably you will notice where, in your opinion, some old section has been simplified perhaps too much. I may say that I was not aware, in running through the bill, of any pitfalls except in one or two places that I shall mention.

In my brief I mention, on page 4, a point which I do not think is adequately dealt with in the bill, and that is the fact that trustees are often dilatory. The Superintendent of Bankruptcy will have all the details, but we have had in Ontario men who were simply dilatory and their estates got into arrears. Therefore, I would suggest that some amendment be made to either Section 12 (2) or Section 69 or Section 107. I think in one of those places I have outlined a proposed amendment. I think you will find there that if the trustee, say, after two or three years, has not wound up his estate, some teeth should be put into the Act. There are no teeth in the Act at the present time which I can see to bring him before the court or before the creditors to make him wind up his estate with some sort of speed.

The CHAIRMAN: You have mentioned a memorandum. Did you prepare a memorandum?

Mr. Justice URQUHART: I have prepared this memorandum which I will file with you.

The CHAIRMAN: Would the committee desire to have copies mimeographed and circulated to them of Mr. Justice Urquhart's memorandum?

Mr. Justice URQUHART: When I last appeared here two years ago my memorandum at that time was included as part of the record.

Then also at page 4 in my memorandum, near the bottom, there is a question on Section 21(6). That section, although it is apparently comprehensive, in my opinion does not provide for an adjudication which I think on the state of the authorities should be definitely provided for as in the present section of the Act. I would suggest, therefore, that 21(6) be amended by putting in these words to replace what is there now: "At the hearing the court shall require proof of the facts alleged in the petition and of the service of the petition and, if satisfied with the proof, may adjudge the debtor a bankrupt and in pursuance of the petition make an order, in this Act called a receiving order". Section 4 (6) of the present act says that if the court is satisfied with the proof it may adjudge the debtor a bankrupt, and to get the benefits of our decisions it is important that that question should be provided for in somewhat the manner that I have indicated.

There is a proposal in the bill to exempt a wage earner who does not earn more than $2,500 a year. In the present act the amount is $1,500, and my opinion is that it should remain at that figure, in view of the fact that we are now, we hope, at the peak of wages. I think the increase in the amount there is of some danger. That is referred to in my memorandum at the top of page 6.

I come now to section 64, the priorities section of the act. I have gone over this with some care and put some thought on it, and I advocate the retention of the present section 64. I know that Mr. Pickup, who is representing the Bankers' Association here, advocates the same thing. We spent some time together this morning going over the bill and I understand his views on the matter. I am in accord with the views which he will present to you, so I do not think I need say more than I would prefer the present section 64 to the proposed section 64 in the bill. I think we would be getting on dangerous ground if we abandoned what has been established now for more than thirty years.

On page 9 of my memorandum I refer to certain priorities covered by section 95 of the bill, that is at page 63 of the bill. With some variations these priorities are practically settled in a case which I argued before the Supreme Court of Canada when I was at the bar, about fifteen years ago, the General Fireproofing case. You will see that the first priority is funeral and testamentary expenses. That is all right. The next is the costs of administration and that is all right. Paragraphs (*c*) and (*d*) are all right also, but paragraph (*e*) gives priority to municipal taxes. That does not mean the land tax, which is a lien upon the land, but it means Hydro rates, business taxes and other municipal taxes. I know that others do not agree with me on this, but I think municipal taxes should be behind the landlord for rent and behind the fees and costs in the realization of the estate, because the estate must be realized and it is unfair to the trustees that they should take their chances behind the Hydro and other rates. If Hydro rates are not paid for a month the city can shut off the current, and so while the city has not a lien on the land for such rates it has its remedy. I think these municipal taxes should be behind claims resulting from injuries to employees of the bankrupt to which the provisions of the Workmen's Compensation Act do not apply. Personally, I would recommend that these municipal taxes be included in clause (*j*), claims of the Crown in right of Canada or of any province *pari passu*, or of any municipality *pari passu* in cases where the tax is not a lien on the land.

Then I would like to say a little about section 127 of the bill. As I said in my testimony two years ago, I am opposed to automatic discharge of the bankrupt, and in my brief I have set out what I said at that time. Just before that time I was consulted by American authorities, and they informed me that this scheme, which is an American scheme, had not worked out satisfactorily in the United States. I am subject to correction by my very good friend the Superintendent, who may have later information on this. I would suggest that instead of providing for the automatic discharge we should have a provision requiring the trustee, as a condition precedent to his discharge, to file what is now the report on the conduct of the bankrupt, so that we would have that on record in the court at all times, and then leave it to the bankrupt to ask for his discharge. A good many bankrupts do not seem to want to be discharged, and why we should make their discharge automatic, I do not know.

On page 12 of my memorandum I point out that under section 135 of the present Act alimentary debts, so-called survive the bankruptcy. In the interpretation section of the Act "alimentary debt" is defined as "a debt incurred for necessaries or maintenance". I think that a debt incurred for necessaries of life or maintenance should survive the bankruptcy. However, that is not important, and there is a division of opinion on it.

Then there is a point which though it may not be substantial is rather important, and it would please me very much if it were cleared up. Section 140 (1), which vests courts with jurisdiction, refers in paragraph (*e*) to our court in Ontario as the High Court of Justice. There are two divisions of the Supreme Court of Ontario: the Court of Appeal and the High Court of Justice. I think it would be safer if paragraph (*e*) read:

> (*e*) in the province of Ontario, the Supreme Court of Ontario, as administered by the High Court of Justice for the province.

That may be a hypercritical suggestion, but I think it is well to be on the safe side, so that no lawyer could raise the technical point that the wrong court is named. What I am suggesting may be a distinction without a difference.

As to examinations of bankrupts and others, section 120, I believe that the examination of bankrupts should be authorized to be read in every proceeding in which the bankrupt is concerned. I have before me now a reserved judgment in which I am really taking the bull by the horns and reading the examination,

but another court may think that I have taken too much on myself. In my opinion it is important that the examination should be read, and I think that section 120 might be broadened a little.

There is a change made by the bill which may be an error, but if so it is a good error. Section 149 (1) (*h*) empowers the registrar "to hear and determine any matter relating to proofs of claims whether or not opposed". In the present act the registrar is empowered to hear and determine appeals from the decision of a trustee where the claim does not exceed $500. I think that this proposed amendment is a very good one. The Registrar should hear disputes as to the claims of creditors. There is, of course, an appeal to the bankruptcy judge, who, in the province of Ontario I have the honour to be; and a further appeal to the Court of Appeal. Though the Registrar is not a full judicial official, I think he should have that power under the act.

Judge FORSYTH: Is there not an amendment?

Mr. Justice URQUHART: Perhaps, as Mr. Forsyth suggests, there is some amendment.

The CHAIRMAN: To hear and determine matters . . .

Mr. Justice URQUHART: I am just talking about the question of the $500 limit; in the other act a limit of $500 was provided. That provision meets with my approval, as does the whole bill. I think it is splendidly drawn. There are those particular matters which concern me, and I have referred to a number of others in my brief.

May I say that I have examined this bill with the eye of the administration of justice, and not with the eye of the bankrupt. My suggestion now is twofold: first, to see that the administration of the act operates as smoothly as possible, and secondly, that no further duties, unless they are absolutely necessary, should be imposed upon the Court. I do not know whether any of the groups represented here wish to propose that further duties be imposed upon the Court. While I do not object to the work, should any such suggestions be made, I should like to be heard further. No such proposals have come to me, so perhaps my remarks are gratuitous. My intention was, Mr. Chairman, to present a running comment on my brief. Now if there are any questions to be asked I shall do my best to answer them.

Hon. Mr. ASELTINE: Perhaps after we read your brief we may wish to hear you further.

Mr. Justice URQUHART: I will be in the city all day today and part of tomorrow, at least.

Hon. Mr. ASELTINE: When we adjourn today it is unlikely that we will meet again before next Wednesday.

Mr. Justice URQUHART: It would be difficult for me to come to Ottawa next week, but should further points come up I would be pleased to answer promptly by correspondence.

Hon. Mr. ASELTINE: I imagine that it will be some weeks before this bill is finally disposed of.

Mr. Justice URQUHART: With deference, I would say that you should have no difficulty in dealing with this legislation.

Hon. Mr. HOWARD: May I ask a question, Mr. Chairman, as to the matter discussed a few minutes ago? Section 12 (2), at page 19 of the bill, reads as follows:

> Where an estate has not been fully administered within three years after the bankruptcy, the trustee shall so report to the court within three months thereafter and the court shall make such order as it may see fit to expedite the administration.

Is that not strong enough?

Mr. Justice URQUHART: Yes, that is splendid. I must apologize for overlooking that provision, but I received copies of the proposed bill last summer, and some revisions have been made.

Hon. Mr. HOWARD: That subsection gives the court entire discretion.

Mr. Justice URQUHART: Yes; I am glad it is there.

The CHAIRMAN: Does any other member of the committee wish to take advantage of Mr. Justice Urquhart's suggestion, and ask him further questions.

Mr. Justice URQUHART: May I just say with respect to section 64, which will be dealt with by Mr. Pickup in a more general way, that I have two observations to make. I am opposed to the proving of what is called "concurrent intent". Mr. Pickup is probably not in agreement with me on that point. My second observation is that when a person makes a concurrent advance and takes security, it should be regarded as a good advance. For example, a man who is near bankruptcy may go to the bank and ask for a loan of $3,000 for his business. The bank, not knowing the customer's financial position takes a mortgage or a chattel mortgage on his property and lends him the money. The money having been lent on a quid pro quo basis, the debt should be honoured in some way. The situation is different when the bank or other creditor go to a person in financial difficulties and say to him, "You owe me a lot of money; now give me a mortgage on everything you have, and forget about the other creditors." As to the doctrine of concurrent intent, I think it is provided in this subsection that if a debtor has intended to give preference to a certain creditor, the transaction between them is vitiated. That question has been a bone of contention in law as long as I can remember—and my memory is older than the Bankruptcy Act—and it has been productive of many decisions. That is the reason I think that section 64 should be retained in its present form. In that way we will know exactly where we stand. I do not propose to go into the law on it, but there have been a great many decisions on the question known colloquially as fraudulent preference.

Hon. Mr. HOWARD: Mr. Chairman, do you require a motion to include the brief in the record?

The CHAIRMAN: Yes.

Hon. Mr. HOWARD: I would so move.

The CHAIRMAN: Senator Howard has moved that Mr. Justice Urquhart's brief be incorporated in this morning's proceedings.

Some Hon. SENATORS: Carried.

The CHAIRMAN: If there are no further questions to be asked of Mr. Justice Urquhart it remains only for me on behalf of the committee to thank him most sincerely for giving us the benefit of his experience and judgment on this bill. Thank you very much, my lord.

How does the committee now wish to proceed? We have the names of a number of witnesses who are appearing on behalf of various organizations and who I assume would wish to discuss various details of the bill. It occurred to me that because this legislation is new, that the superintendent should give us a brief explanation of the bill before we hear any other witnesses.

Some Hon. SENATORS: Hear, hear.

The CHAIRMAN: It does seem to me that we could proceed logically in that way.

Hon. Mr. HOWARD: Perhaps some of the people who are here today would not wish to come back.

The CHAIRMAN: That is possible. I have before me the names of a half a dozen organizations who would like to be heard. We will be sitting much beyond one o'clock today, and I understand that when we adjourn we will stand

adjourned until 10.30 on Wednesday morning next. It is therefore quite evident that we will not be able to hear nearly all of the witnesses now before us. I should like the guidance of the committee in this respect.

Hon. Mr. McKEEN: Are there many witnesses from out of town who would be inconvenienced by having to return?

The CHAIRMAN: Substantially all the witnesses are from out of town. I shall just read you their names and the organizations represented. They are: Canadian Bankers' Association, Mr. J. W. Pickup, K.C., Toronto; Dominion Association of Chartered Accountants, Mr. F. E. H. Gates, C.A., and Mr. Melville Pierce, Assistant Secretary, Montreal; Law Society of Upper Canada, Mr. Lee A. Kelley, K.C., Ottawa; Montreal Board of Trade, Mr. H. S. T. Piper, Montreal; Toronto Board of Trade; Canadian Credit Men's Trust Association Ltd., a representative from Toronto.

Hon. Mr. McKEEN: Would it not be possible for us to meet this afternoon after the house rises, rather than bring these witnesses back?

The CHAIRMAN: Well, that I don't know. Then there is the Canadian Manufacturers Association as well.

Mr. H. W. MACDONNELL: Yes, I am here for the Canadian Manufacturers Association. We should like to be heard, if possible. I have a very short statement.

The CHAIRMAN: Do the committee feel that we should proceed now with the out-of-town witnesses?

Hon. Mr. McKEEN: I would think so, Mr. Chairman.

The CHAIRMAN: Would the committee now like to hear the first witness I have on the list,—Mr. Pickup, representing the Canadian Bankers Association?

Hon. Mr. ASELTINE: How long will he take?

Mr. PICKUP: I shall take a little time, but I will try not to be longer than I think I should be.

The CHAIRMAN: I think the committee should realize that this is a very complicated bill, and the witnesses may have a good deal to say on some parts of it; also there may be a number of questions by members of the committee. I do not think we should try to hurry the witnesses, even for the sake of meeting the convenience of those who are from out of town.

Hon. Mr. McKEEN: The representative of the Canadian Manufacturers Association said their presentation would be a very short one. We could take that first.

The CHAIRMAN: Would the committee prefer to hear Mr. Macdonnell on behalf of the Canadian Manufacturers Association?

Hon. Mr. LAMBERT: I think it advisable. He could run until 1 o'clock.

Mr. H. W. MACDONNELL: The Canadian Manufacturers Association welcome the opportunity which has been given it of studying the proposed new Bankruptcy Bill, and appreciate the procedure whereby a bill on Bankruptcy was presented in the Senate last year, but held over to permit study by interested groups, thus giving ample time for such study.

The Association has studied the former bill, and has now studied the present Bill N. It respectfully submits the following observations and suggestions on this bill:

1. Elimination of Custodian, Sections 6 and 21 (9).

The Association approves of the elimination of the custodian in bankrupt estates, recognizing that almost invariably the custodian is confirmed as a trustee. This step therefore eliminates unnecessary procedure. However, the fact of having a custodian gave the prospective trustee an opportunity to consider

whether he should take on the bankrupt's estate. The elimination of the office of custodian, and the new provision of section 6 (4) making it obligatory for a trustee to continue his duties until relieved thereof, make it desirable that section 6 should be amended to provide that the trustee may withdraw up to the time of the first meeting of the creditors.

The Association suggests such amendment should be made to section 6.

2. Action by Trustee before first meeting of Creditors, Section 8(8).

It is suggested that at the end of subsection 8 of section 8, the following words be added:— "and provided that he shall at the first meeting of creditors obtain the approval of the creditors and if such approval is not obtained, he shall be entitled to costs and expenses of the action if the court is satisfied that he acted reasonably and in good faith".

The Association feels that it is desirable in the interests of the creditors that the trustee be required to obtain the approval of the creditors for action taken prior to the first meeting of creditors. However, in any case, if the trustee acted reasonably and in good faith he should be entitled to his costs and expenses. This provision would ensure that the creditors do not suffer as a result of unreasonable action by the trustee.

3. Proceedings by Trustee in Emergency, Section 8 (8).

It is proposed that subsection 9 of section 8 be amended by adding at the end the following words: "and provided that he shall as soon as possible obtain the approval of the inspectors and that if such approval is not obtained, he shall be entitled to costs and expenses if the court is satisfied that he acted reasonably and in good faith."

It is felt that the trustees should be relieved of costs and expenses only in respect of such legal proceedings and actions taken in an emergency as are taken reasonably and in good faith. This suggested change corresponds to the amendment proposed for the previous subsection, and is likewise designed to safeguard the interests of creditors.

4. Trustee's Separate Account, Section 9 (3).

It is suggested that the word "trust" in line 2 is unnecessary and should be deleted, so that the phrase would read "in a separate account."

It is suggested that the word "other" in the 6th line between "and" and "charges" should be deleted because dividends are not charges, and therefore could not be "other" charges.

5. Payments Made by Trustee, Section 9 (4).

It is proposed that this subsection reading: "all payments made by a trustee shall be made by cheque drawn on the estate account" should be deleted.

This provision would require even petty cash payments to be made by cheque. The matter is sufficiently covered by a provision requiring the deposit in a separate account of all moneys belonging to the estate.

6. Trustee Carrying on the Business of the Bankrupt, Section 10 (*c*).

It is proposed that the words "with a view to an early winding-up" be added after the word "estate" in the third line of the paragraph.

It is felt that the trustee should not be encouraged to carry on the business indefinitely but any work of administration done by him should be with a view to an early winding-up.

7. Non-compliance with Bulk Sales Act an act of bankruptcy, Section 20.

It is recommended that Paragraph (*h*) of the present Act reading: "if he makes any bulk sale of his goods without complying with the provisions of any Bulk Sales Act applicable to such goods in force in the province within which he carries on business or within which such goods are at the time of such

bulk sale," be included as an additional paragraph to section 20. It is realized that a debtor who does this will probably have committed some other act of bankruptcy designated in the present bill, but such other act may be much more difficult to prove than the failure to comply with the provisions of the governing provincial Bulk Sales Act. Therefore, failure to comply with such legislation should be designated as an act of bankruptcy in the present bill.

Hon. Mr. ASELTINE: You are referring to the Bulk Sales Acts of the different provinces?

Mr. MACDONNELL: That is it, sir.

8. Persons Not Covered by the Act, Section 25.

It is proposed that section 25 be amended by substituting the word "twenty-five" for the word "twenty-four" in the first line. It is also suggested that section 25 be placed after section 26, in other words, that section 26 be re-numbered as section 25, and section 25 be re-numbered as section 26.

The purpose of the proposed amendment is to exclude from recourse to voluntary bankruptcy, the persons who are excluded from the application of the receiving order under section 25.

It is not considered just and equitable that persons against whom receiving orders cannot be filed, should be able to avail themselves of bankruptcy proceedings where it suits their purpose, regardless of whether it suits their creditors.

9. If no Licensed Trustee is Willing to Act, Section 26 (5).

It is recommended that the words "or where the trustee withdraws" be inserted after the word "act" in the second line of this subsection so that the subsection shall read as follows:

> Where the official receiver is unable to find a licensed trustee who is willing to act or where the trustee withdraws, he shall, after giving the bankrupt seven days' notice of his intention, cancel the assignment.

This is to provide for the carrying out of the procedure suggested in Item 1 of this submission for allowing the trustee to withdraw up to the time of the first meeting of creditors because without such amendment as proposed, the official receiver in the case of a trustee withdrawing, might not be able to cancel the assignment.

10. Proposals, Section 27.

The Association approves of this section which brings back into bankruptcy practice, the right of a bankrupt person to make a proposal to his creditors without going into bankruptcy, and without thereby being designated a bankrupt. It is well known that, generally speaking, in a case where a proposal is made before bankruptcy, much more is realized by the creditors than would be the case if the debtor was declared a bankrupt. Almost always, the assets of a bankrupt estate depreciate a considerable amount due to the fact that it is a bankrupt estate, and even if the business of the bankrupt is carried on, it is very difficult to receive full value for the goods or services which are sold or furnished.

11. Protection of Trustee from Personal Liability in Certain Cases, Section 49.

It is suggested that in the sixth line of section 49, the word "unregistered" be deleted, and after the word "charge" in the same line, the following words be inserted:— "not registered or not protected against creditors under the law of the province".

The reason for this is that some provinces such as Ontario, permit liens on manufactured goods to continue valid without registration provided that the name and address of the vendor are marked thereon. With respect to property which is subject to a valid but unregistered lien, under the present

wording of the section, the trustee is not personally liable for any loss or damage. This cuts down the rights of lienholders holding such liens. A competent trustee would be familiar with the Conditional Sales Act of his province, and should take notice of all liens which are properly protected. It may be that in such provinces, the trustees will be put to considerable trouble in making the necessary inquiry but this is preferable to valid lienholders being deprived of their rights as secured creditors and reduced to the status of ordinary creditors.

The next is section 64, Unfair Preference. The association agrees with the views expressed by Mr. Justice Urquhart.

It is submitted that section 64 should be replaced by something like former section 64, in order that the intent of the bankrupt to prefer the creditor, should be a condition precedent to the preference being declared null and void. It is realized that some provinces have interpreted the present section 64 as providing that there must be concurrent intent, but with a slight re-wording of section 64 of the present Act, such interpretation could be guarded against.

It is felt that if every transaction entered into within three months of bankruptcy, regardless of the intent of the bankrupt, is to be void, then few creditors will be found to come to the aid of a debtor in financial difficulties, because if they give the debtor any aid based on surety or guarantee, such surety or guarantee will be worthless if the debtor goes bankrupt within three months. There have been cases where debtors have kept out of bankruptcy by aid from their creditors. Therefore, the effect of the section, as now worded, would seem to make for more unnecessary bankruptcies.

The next section 95, Priorities.

The association approves this section in that it lays down a comprehensive scheme of priorities. This should clarify this contentious matter, and should reduce the amount of litigation. The higher priority given to the ordinary trade creditor is welcomed. It is the trade creditors that usually institute the proceedings, and heretofore, too often, they have not realized any worthwhile dividends as a result of their efforts.

The CHAIRMAN: Have you any comments to make on Mr. Justice Urquhart's suggestion about putting unprivileged municipal taxes lower in rank than any claims of the landlord and any indebtedness under Workmen's Compensation Acts?

Mr. MACDONNELL: No, sir. I have not heard that until this morning. The next is section 114, Summary Administration.

The association approves of this new procedure for the administration of a bankrupt person's estate with few assets. It appears to fill a gap in bankruptcy procedure. It serves to permit a bankrupt person to obtain his discharge and start over again. At the same time, it provides for an inexpensive administration of the estate.

The next is section 127, Discharge of Bankrupt.

The association has considered the new provision under section 127 respecting the discharge of a bankrupt, and considers that it is an improvement.

The final section is 149, Powers of Registrar.

The association approves of the additional statutory powers given to the registrar, some of which have been exercised by him without specific legislative sanction, as it would appear that the new powers given should expedite proceedings and cut down the expense which court hearings would entail. However, these additional powers will only be an improvement if the registrars who are appointed to exercise them possess the necessary high qualifications.

The CHAIRMAN: Have the members of the committee any questions to ask Mr. Macdonnell? If there are no questions to put to him I have a note before me that Mr. Piper of the Montreal Board of Trade would only take about ten minutes. Would the committee like to hear Mr. Piper now?

Some Hon. SENATORS: Carried.

Mr. H. S. T. PIPER, of the Montreal Board of Trade: Mr. Chairman and honourable senators, I have before me copies of the submission of the Montreal Board of Trade which might be distributed for the convenience of the members of the committee.

The Montreal Board of Trade for many years has made a special study of legislation concerning insolvency and bankruptcy. During the war there was a marked decrease in commercial failures but since 1945 the number and the liabilities involved have shown a definite increase. In 1948 according to statistics prepared by Dun & Bradstreet of Canada Limited, the number of commercial failures in Canada was 493 with liabilities $11,755,000, the highest amount since 1935. Of the 1948 failures, 139 or 28·2 per cent took place in the Montreal area. Their liabilities totalled $3,038,000, representing 25·8 per cent of the whole. In 1947 the percentages for Montreal were 40·5 per cent of the total number and 45·9 per cent of the total liabilities. In that year failures in Canada totalled 304 in number and $7,228,000 in liabilities. These statistics will explain perhaps the unusual and peculiar interest in insolvency matters of The Montreal Board of Trade. In the years 1937 and 1938 particular attention was given bankruptcy legislation in general by this Board and by other interested bodies and groups. As a result, the late Mr. W. J. Reilley, K.C., then Superintendent of Bankruptcy, called into conference on December 5, 1938, a representative group of those interested. At that meeting it was clear that existing legislation required amendment and co-ordination.

The war intervened but in 1946 as a result of the 1938 conference, Bill A5 was submitted. It was designed to consolidate all insolvency legislation and reflected the experience and judgment of Mr. Reilley arising from his long service as Superintendent of Bankruptcy. This Board pays tribute to his administration and particularly to the general improvement in the conduct of bankruptcy proceedings which resulted from his supervision. Because of wide differences of opinion expressed in the evidence given before this Committee on certain provisions of Bill A5, it was not proceeded with. Bill N replaces it.

The Montreal Board of Trade regards Bill N as a major step forward in bankruptcy legislation and merits general approval. In particular it welcomes the most important and fundamental change projected in Part III—Proposals, a change long advocated by this Board, i.e., the restoration of the right of debtors, individuals and corporations alike, to make a proposal to creditors before as well as after bankruptcy, but in either case subject to the control and supervision provided for in the Bankruptcy Act. This provision was contained in the Bankruptcy Act 1919, but was removed by amendment in 1923 due to abuses which obtained before trustees were required to be licensed and before the office of Superintendent was created.

In view of the changes contemplated in Part III, this board is of the opinion that if so enacted, Bill N contains the essential requirements for incorporated companies, partnerships and individuals alike, to make proposals before bankruptcy involving compositions, extensions of time or other arrangements with creditors or any class of them.

It would seem therefore that The Companies' Creditors Arrangement Act 1933 would then become unnecessary and should either be repealed or amended to limit its application only to corporations where there is an outstanding issue of bonds or debentures issued under a trust deed running in favour of a trustee acting for security-holders and where a compromise or arrangement is proposed between such companies and the holders of such issues.

The Montreal Board of Trade is of the opinion that Section 38 (2) of Bill N, concerning the Companies' Creditors Arrangement Act 1933, should not stand unless that Act is either amended, or repealed altogether.

The abuses which have taken place and which will continue as long as the Companies' Creditors Arrangement Act, 1933 exists, are well known in commercial circles.

They were referred to at length in evidence given before the Standing Committee on Banking and Commerce of the House of Commons on 7th June 1938, when that Committee had before it Bill No. 26, an act to repeal the Companies' Creditors Arrangement Act, 1933, which was later withdrawn.

The grave abuses which have occurred and which will recur under the operation of this act in its present form, arise from its many weaknesses, some of which are recited in a special memorandum which this board has prepared. In view of the pressure of time, Mr. Chairman, I will not read this memorandum, but it is appended to this submission.

It is clear therefore that as long as the Companies' Creditors Arrangement Act, 1933 remains on the statute books or is not restricted in its operations in the manner suggested, companies which for obvious reasons wish to evade the supervision and control provided by the Bankruptcy Act, will attempt to carry through their schemes under the wide-open and loose provisions of the other.

The Montreal Board of Trade, whilst approving in general the revision of the Bankruptcy Act contained in Bill N, nevertheless feels that complementary legislation is required to remove the serious objections referred to arising from the operation of the Companies' Creditors Arrangement Act, 1933.

Bill N greatly simplifies, clarifies, broadens and strengthens the bankruptcy law. Subject to the reservations and representations herein submitted, the Montreal Board of Trade respectfully recommends approval of the bill as a progressive step in legislation relating to commerce and the casualties thereof.

(For memorandum from the Montreal Board of Trade *re* operation of Companies' Creditors Arrangement Act, 1933, see Appendix B to today's report.)

The CHAIRMAN: Thank you, Mr. Piper. Has any member of the Committee any questions to ask Mr. Piper about his memorandum? If not, we will pass on.

The Dominion Association of Chartered Accountants, represented here by Mr. Gates and Mr. Pierce, has prepared a memorandum, and in view of the lateness of the hour it is suggested that the memorandum should be filed now and circulated among honourable members. Mr. Gates would be available next Wednesday when the Committee reconvenes, and he could then answer questions on the memorandum.

Hon. Mr. MCKEEN: Mr. Chairman, have you received any other memorandum? If so, I would suggest that the same procedure be followed with respect to them.

The CHAIRMAN: Is the Committee willing that the memorandum of the Dominion Association of Chartered Accountants be filed and copies circulated?

Hon. Mr. ASELTINE: Provided that we have an opportunity later on to ask questions about it.

The CHAIRMAN: Yes, Mr. Gates, who represents the association, will be here next Wednesday morning to answer any questions.

Mr. GATES: Here are a number of copies of our memorandum, Mr. Chairman. I do not know whether there are sufficient copies for all members of the Committee. (See Appendix C.)

The CHAIRMAN: Are there any other persons present who desire to file submissions this morning, subject to being questioned about them at the next meeting?

A REPRESENTATIVE: Mr. Chairman, speaking for the Board of Trade of the city of Toronto, I would point out that we forwarded a number of copies of our brief to the Committee, and I presume the Clerk of the Committee has them. (See Appendix D).

A REPRESENTATIVE: Mr. Chairman, I represent the Canadian Credit Men's Trust Association, which filed a memorandum with the Committee. (See Appendix E.)

Hon. Mr. ASELTINE: Are there enough copies of these memoranda for distribution among members of the Committee?

Hon. Mr. LEGER: I think these should be printed in the record.

The CHAIRMAN: We should have a motion to that effect.

Hon. Mr. LEGER: I move that the memoranda be printed in the record.

The motion was agreed to.

JUDGE FORSYTH: Mr. Chairman, I have received copies of these memoranda and considered every suggested amendment. Whenever I rejected a proposed amendment I had some reason for doing so, and I prepared a compendium of my reasons in every instance.

Hon. Mr. McKEEN: I think that should be filed too.

Hon. Mr. ASELTINE: Mr. Chairman, will the printed record of this morning's proceedings, including these memoranda, be ready next Wednesday morning?

The CHAIRMAN: The committee knows how over-burdened the Printing Bureau is.

Hon. Mr. ASELTINE: It will not be much use for us to meet next Wednesday morning if we have not had an opportunity to look over these memoranda.

The CHAIRMAN: Mr. Pickup, whose evidence will be fairly long, will be a witness next Wednesday. Then there is Mr. Kelley, who represents the Law Society of Upper Canada. His home is in Ottawa, so I suppose he would be available next Wednesday, if required.

Mr. KELLEY: Mr. Chairman, Mr. Justice Urquhart has pretty well made the same submissions that the Law Society of Upper Canada asked me to bring forward. I am, of course, completely at your disposal, but if you wish I could run over the Law Society's points in a few minutes.

The CHAIRMAN: Would the committee like to hear Mr. Kelley?

Hon. Mr. ASELTINE: Agreed.

Mr. LEE A. KELLEY, K.C.: Mr. Chairman, since I came here this morning I was handed a memorandum from the Law Society of Upper Canada asking me to express on its behalf entire concurrence in the submissions on page 4 of Mr. Justice Urquhart's brief, with respect to section 21 (1) (*a*) of the bill. That is, we think that a creditor or creditors should be able to file a bankruptcy petition where the amount of the debt or debts is not less than $500, which is the amount specified in the present Act. In the bill the amount is increased to $1,000.

I am also asked to say that the society approves in principle the brief of the Board of Trade of the City of Toronto, as well as the rest of Mr. Justice Urquhart's brief. One of the sections in which the Law Society is interested is section 83 (1). It will be recalled that under the Act no one could prove a bankruptcy for unliquidated damages unless the claim arose through contracts, breach of trust or through a promise. Now, in the bill, this has been very much widened, so that a matter arising in tort or from negligence would be within the purview of section 83 of the bill.

Hon. Mr. LEGER: Do you mean after judgment or before judgment?

Mr. KELLEY: Before judgment or before settlement, sir. Suppose, for instance, that an action in negligence was taken and that prior to judgment or settlement a bankruptcy occurred, that claim could be proven under this bill.

In section 144 (8), on page 88 of the bill, it is provided that the bankruptcy court may direct any issue to be tried or inquiry to be made by any judge or

officer of any of the courts of the province. No provision is made for trial by jury, and since the bill has been widened to encompass negligence claims the Law Society suggests that this section should be broadened to permit trial by jury to be had, so that a plaintiff would not be deprived of the right which he ordinarily would have had if the bankruptcy had not intervened.

Hon. Mr. LEGER: Would the trial by jury take place in the usual way?

Mr. KELLEY: Yes. I understand from my friend Judge Forsyth that his objection to trial by jury is because of the delay which might ensue, and prevent estates being wound up as quickly as had the trial taken place before a judge alone. I would point out that most of these trials would take place in larger centres, where there are nearly as many Assizes for the trial of cases by jury as for trials by judge alone.

Hon. Mr. ASELTINE: That is correct.

Mr. KELLEY: Secondly, I would ask the committee to consider the ancient right of any subject to have his case tried by his peers or by a jury. That is a very ancient right and even at the risk of a slight delay the Bar Society feels that right should not be taken away from a subject merely because bankruptcy intervenes.

I shall deal very quickly with the next point, because Mr. Justice Urquhart has covered it in his brief. It has to do with the automatic application for discharge upon assignment being made. The Bar Society feels that it is not in the public interest to allow that provision to remain. It is felt that the bankrupt should make his own application.

The CHAIRMAN: What section are you dealing with, Mr. Kelley?

Mr. KELLEY: I am dealing with section 127. Previously, as you know, the bankrupt had to, after proceedings were completed, make an application for his discharge. This section changes that procedure entirely and the application for discharge becomes automatic and puts the onus on the trustee to apply for and take out an appointment for the bankrupt's discharge. We feel, as I say, that that is against public policy. One can cater, perhaps, too much to the debtor; the law over the years has undoubtedly leaned in favour of the debtor. We quite agree that his rehabilitation is an absolute essential for the business life of Canada, but on the other hand, I would point out, in reply to what I believe is the position of the superintendent, that a lot of debtors do not know that they can apply for discharge—

Hon. Mr. LEGER: But they do not apply even when they do know that they can.

Mr. KELLEY: A great many never apply. That could be corrected by making it incumbent upon the trustee in bankruptcy, before discharge, to send a notice to the bankrupt advising him of his right to apply at any time. With respect to section 128 which provides for the filing of a report by the trustee in bankruptcy of the conduct of the bankrupt, the manner in which he has handled himself and as to whether the bankruptcy appears to be an honest or a dishonest one, we feel that should be continued. That report could still be filed, and as Mr. Justice Urquhart said, left in the court. Then at any time the bankrupt wishes to apply for discharge, that information is on file and available to the court. We do feel that the onus should be on the bankrupt to apply for his discharge.

Mr. Justice Urquhart referred to the terminology in section 140 (1) (*e*), and suggested that "High Court of Justice" should read "Supreme Court of Ontario". For the purpose of the record I would call attention to section 144 (1) which reads:

> Every court shall have a seal describing the court, and judicial notice shall be taken of the seal and of the signature of the judge or registrar of any such court in all legal proceedings.

As that applies to Ontario, the only court which has a seal is the Supreme Court of Ontario, which is covered by section 10 of the Judicature Act. Not to make a change would lead to an inconsistency, and that court which has no seal could not comply with section 144 (1).

A further point with which I wish to deal is that of legal costs,—

Hon. Mr. ASELTINE: That is very important.

Mr. KELLEY: —which is section 155 of the bill. Subsection 7 of that section as presently drafted, makes an allowance in respect of costs of an amount not to exceed ten per cent, which amount is based on the sum received by the trustee less what he may pay to secured creditors. The result is that whatever is required for the secured creditors is deducted before the solicitors' costs of ten per cent can be arrived at. We would point out that the total of the secured creditors' claims sometimes amounts to a good deal, which rather complicates matters. May I interject a personal note? I am interested in a bankruptcy here in Ottawa at the present time which involves a great many of the veterans' homes erected near the Isolation Hospital. I would venture to say that as solicitor for the estate I have spent almost three-quarters of my time advising the trustee in connection with the rights of the mortgagees lienholders and so on. It does seem unfair that the solicitor should be obliged to advise the trustee in this way when, by the time the estate is wound up, the greater part will have to be paid over to secured creditors. In other words, I will have spent the greater part of my time advising in matters from which I will receive no benefit, because of the amount of the secured creditors' claims.

Judge FORSYTH: The court may increase the amount.

Mr. KELLEY: That is correct, but my suggestion is that a great deal of time could be saved if we would leave out the amount claimed by secured creditors, and permit the solicitor and the trustee to make a satisfactory adjustment between themselves. I see my friend Mr. Denison here, and I know I have dealt with him in that way on estates. We may get together, decide that ten per cent is too high, a suggestion is made and we decide upon an amount by mutual agreement. If the amount of the secured claims is allowed to remain in, there is no opportunity for negotiation between the trustee and the solicitor in arriving at a fair compensation. It is most unfair to the solicitor.

Those, Mr. Chairman, are the submissions which the Law Society of Upper Canada wish to place before you.

The CHAIRMAN: Thank you very much, Mr. Kelley. Are there any questions?

Hon. Mr. ASELTINE: I move that we adjourn until Wednesday next at 10.30 a.m.

The committee adjourned until Wednesday, March 16, 1949, at 10.30 a.m.

Appendix "A"

SENATE BILL N

AN ACT RESPECTING BANKRUPTCY

OBSERVATIONS OF THE HONOURABLE MR. JUSTICE URQUHART

In my study of the proposed Senate bill, I have had the advantage of reading the recommendations of the committee of the Board of Trade of the City of Toronto, and of consulting with Mr. F. G. Cook, K.C., Registrar of the Bankruptcy Court. I approve of the bill in principle and, save as otherwise referred to herein, in detail.

The Superintendent of Bankruptcy, I consider, has done a splendid job in revising the bill which was discussed by me in committee at a former session in 1946.

I find myself in agreement with practically all of the recommendations of the Board of Trade committee as set forth in their memorandum of February 22, 1949. I will deal with a number of these specially as I go along, together with ideas of my own which have occurred to me in the reading of the draft bill and the results of the Board of Trade's study.

The bill itself shows a tendency to simplification in language, which is very commendable. On the other hand there is danger of over-simplification, and where possible it seems to me that the wording of the present sections should be closely followed. In the last thirty years in which the Bankruptcy Act with amendments has been in force, there has been built up a considerable body of law in bankruptcy, and these decisions, of course, are based upon the Act as it now exists. It is often found, in interpreting the wording of the statutes, there is danger that the benefit of these decisions will be lost.

Dealing with the sections seriatim, it is my opinion that:

Section 2 (g) should have the word "original" in front of the word "jurisdiction" in line 1.

Section 2 (h) of the present Act should not be eliminated in my opinion.

Section 2 (j) appears to me to be over-simplified and I should have thought that section 2 (*p*) of the present Act would have been better.

Section 2 (k) does not seem to me to show any improvement over old section 2 (*y*).

Section 2 (b) of the present Act should be retained.

Section 2 (v) of the present Act, defining "Judge" should be retained.

Senate Bill L-11 contained in *section 2 (z)* the following definition of "transaction":—

> " 'transaction' means anything done that affects another person's rights or obligations and out of which a cause of action may arise, and, without limiting the generality of the foregoing, includes contract, dealing, gift, delivery, payment, settlement, sale, conveyance, transfer, assignment, charge, lien, pledge, mortgage, hypothecation or judicial proceeding taken or suffered."

The word "transaction" replaced the various specific terms referred to in the definition throughout the Bill. Senate Bill N now drops the definition of

"transaction" without replacing the specific terms in their appropriate context. There is apprehension that confusion will result, and it is proposed that a definition of transaction be written back into the Bill if it is decided not to retain sections 64 and 65 of the present Act.

Section 4 (2), I was wondering why the words "or more" were included in line 1 thereof. I would have thought that the present section 160 (2) would be better.

It is considered that the bill should contain provision for Official Receivers depositing in Court authorized assignments and relevant material so that when applications are made to the Court all material will be available. This provision has been omitted from the bill, apparently due to an oversight. It was part of section 10 of the present Act. To that end, it is proposed that the following section be written into the Act to provide for this feature of section 10 of the present Act and present Rule 88:—

> After the first meeting of creditors has been held, the Official Receiver shall deposit forthwith in the court having jurisdiction in the locality of the debtor the authorized assignment, or the certified copy of the receiving order, together with the statements of affairs made pursuant to sections 26 (2) and 117 (*d*), the questionnaire, the notes of the examination under section 120 (1), and the minutes of the first meeting of creditors.

This provision could be added to section 4 of the bill.

Section 6 (3). The following provision should be added to section 6 (3):

> and shall forthwith deposit in the court having jurisdiction in the locality of the debtor a certificate of such appointment.

Section 8 (7). As a safeguard against the ill advised carrying on of a bankrupt's business, section 8 (7) should require an order of the Court to enable a trustee to carry on the business of a bankrupt up to the first meeting of creditors. The inspectors will be appointed at that meeting, and they will then become responsible for deciding whether or not the bankrupt's business is to be carried on.

Section 9 (14). This section requires the trustee to prepare and file in Court a report on the affairs of the bankrupt prior to the discharge of the trustee. Very few corporations which become bankrupt ever apply for discharge from bankruptcy. To relieve the trustee from the unnecessary duty of preparing and filing a report on so many corporations, where it will not have any importance on an application for discharge, it is suggested that corporations be excepted from the report required in section 9 (14).

Section 12 (2). It is my opinion that the recommendation of the Board of Trade to be found in its supplementary recommendations should be adopted. One of the difficulties in the administration of estates is that certain trustees are dilatory. I have one or two in mind, and applications have to be made to bring these men to time. The present Rule 123 does not seem to cover the situation that has occurred in a number of cases and it seems to lack teeth, so that my recommendation is that this clause be strengthened in order to secure efficiency in the clearing up of estates.

Section 17 (1). Inspectors as well as creditors should be enabled to vote the trustee's remuneration. This can be done by inserting the words "inspectors or of" after the word "of" in line 3 of section 17 (1).

Section 21 (1) (a). It would appear that $1,000 is too high a figure, as it might be difficult for a creditor whose claim amounted to less than $1,000 to induce another creditor to join in a petition. Creditors are often reluctant to

join in a bankruptcy petition. In the present Act the debt due to the petitioning creditor or creditors is required to be $500 or more, and this would seem to be a reasonable amount.

Section 21 (6). There is no provision in this section, or any other section of this Bill, for adjudging the debtor bankrupt. In ordinary practice, the effect of a receiving order taken by itself, is merely the appointment of a receiver of the property of the debtor. The definition of "bankrupt" in section 2 (*c*) of the Bill is:

> a person who has made an assignment or against whom a receiving order has been made or the legal status of such a person.

Notwithstanding this definition, and section 41 (5) of the Bill which provides for the vesting of the debtor's property in the trustee, there should be a substantive provision in the Bill for adjudging the debtor bankrupt, as in the present Act. The wording of section 4 (6) of the present Act should be retained, namely:

> and, if satisfied with the proof, may adjudge the debtor a bankrupt and in pursuance of the petition, make an order, in this Act called a receiving order.

The adjudication of bankruptcy is the basis in the administration of involuntary bankruptcy proceedings.

Section 21 (10). I am in doubt about the recommendation of the Board of Trade, and think that the matter ought to be further considered. My recommendation would be not to depart from old section 4 (8). The Bankruptcy Court can not only determine whether there is a debt, but also if there is a *bona fide* dispute, or where there is a doubt about the matter, require the creditor to bring an action to establish his debt before the petition is disposed of.

Section 22 (1). This section provides that a petition may be filed against the estate of a deceased debtor, but it is defective in that proceedings must always be taken against a person. Section 22 (1) should be revised in the words of the English Act to provide for a "petition for an order for the administration of the estate of the deceased debtor according to the law of bankruptcy".

Section 24. The added protection seems to be very good and in my opinion should be adopted.

Section 25. I am still of the opinion that the amount of the wages in this section should remain at the present amount of $1,500.00, and I believe that the future will bear out that the sum of $2,500.00 is too high.

Section 40 (1). The words "until the trustee has been discharged or" in line 7 conflict with the overriding purpose of the Act and certain other specific sections, and should be deleted.

The result of these words is that following the trustee's discharge and prior to the bankrupt's discharge creditors could bring actions against the bankrupt respecting claims provable in the bankruptcy, without the leave of the court.

The unfettered ability of creditors to take proceedings against a bankrupt is contrary to the purpose of the Act which is to stay all proceedings during the bankruptcy. Moreover, it is not necessary that creditors should have the right to take action against a bankrupt following the trustee's discharge, nor is it desirable that a creditor should gain a preference by any such right. By virtue of section 19 (10) the trustee remains *de facto* trustee following discharge, and the bankrupt's assets would vest in him. Also, in case of need, under section 19 (11) the *de facto* trustee could be reappointed trustee to complete the administration of the estate.

Section 46 does not specifically cover sections 70 (3) (4), 71, 72 and 73 of the present Act, which contain provisions that have been found important in use. It is considered that these sections of the present Act should be carried forward into the Bill; also for the same reason the provision of present rules 144 to 152 should be retained. The alternative to the simple group procedure provided by these sections would be individual action against each of the contributories, who sometimes number in the hundreds.

Section 50 (2). I agree with the Board of Trade that thirty days is too long in both this subsection and in subsection 4, and I concur with the Board of Trade's suggestion in its memorandum of January 6, 1949, page 11, under the heading of section 52 (2), as it was then.

Section 64. I do not approve of any change in this section (except as suggested below) or in section 65, believing that the sections which have been the subject of interpretation for years should remain as they are.

The effect of section 64 of this Bill will be that all "transactions" entered into by the debtor with his creditors within three months preceding the bankruptcy are void, regardless of any intention on the part of the debtor to prefer any creditor. The present Act requires proof of an intention to prefer one or more creditors over the general body of creditors. This has been the policy of the Act since its inception, and is also the policy of the English Act. Under section 64 of the Bill, payments made to creditors within three months preceding the bankruptcy, bona fide and in the ordinary course of business, would be void. This would result in unsettling many ordinary and legitimate business transactions. There would be no assurance that a legitimate transaction would not be set aside in the event of a bankruptcy within three months which could not reasonably have been foreseen.

It is recommended that section 64 of the present Act should be retained.

It is recommended, however, that a clause be added to section 64 of the present Act, providing that there is no need to prove concurrent intent. Section 64 requires proof of intention to prefer by the debtor only, and the doctrine of concurrent intent apparently has been taken over from decisions under the provincial Assignments and Preferences Act.

Section 65 (1). It is recommended that section 65 of the present Act be retained.

Section 65 of the Bill is over-simplified, and does not contain all the provisions of section 65 of the present Act. Section 65 of the Bill omits reference to "the effect of bankruptcy or of an authorized assignment on an execution, attachment or other process against property" referred to in section 65 (1) of the present Act. It also omits reference to the payments which are protected by section 65 (1) (*a*) and (*b*) of the present Act.

Section 65 of the present Act sets out in detail and explicitly transactions which are protected. Section 65 of the Bill appears to be too general in its provisions, and it would lead to ambiguity.

Section 65 (2) of the Bill is section 58 of the present Act, and it should be retained.

Section 69. I would suggest that subsection be added in something like the following terms:

> The Court may at any time if satisfied upon the application of a creditor that the trustee is not diligently performing his duties, order the trustee to call a meeting and such meeting shall be called within seven days of the date of the order.

The object of this is to try to supplement what has been provided for in new section 12 (2).

Section 75 (3). It should be set out in positive form that proxy by telegram or cable is valid.

Section 82 (12). It should be noted that section 186 (2) of the present Act has the words "trustee or" before "inspector". Is there a similar provision in this Bill for defects in the appointment of the trustee?

Section 82 in general, I do not think it wise to have so many subsections, and it would be better if there were a renumbering of these.

Section 85 (1). I do not think it is equitable to deprive non-filing creditors of participation in the dividend, as the absence of filing may be accidental and not in any sense deliberate.

Section 85 (6) appears to me to be too harsh.

Section 95. The idea behind this section appears to be good, but in the case of 95 (e) it has always been my opinion that these taxes have been placed too high in the scale of priorities, and that they should go behind the claim of the landlord for arrears of rent (f), and the claims set out in (h) (i) and (j).

Section 107. Is this not the place to provide for the failure of the trustee to wind up promptly? Section 74 of the present Act seems to me to be better than the proposed section.

Section 111 (3) and (4). I think the procedure provided in these subsections is unnecessary and will only tend to create delay.

Sections 117 (o) and 120 (1) refer to general rules. A good many of the present rules have been absorbed into the new Act as sections. What provision is being made as to the remainder of the rules, or is a new set of rules being drafted and made applicable.

Section 120. I think the report of the Official Receiver is unnecessary and should not be made to the Court or Superintendent. I agree with the recommendation of the Board of Trade in regard to section 120 (1) (2) and (3), as I consider this report unnecessary.

Section 121 (3) does not carry forward into Senate Bill N the provisions of existing section 138 requiring the debtor to answer questions even though his answers might incriminate him or expose him to civil liability. The elements of present section 138 mentioned are considered necessary, and for that reason retention of section 138 of the present Act in the place of section 121 (3) of the Bill is preferred. If section 138 of the Act is retained, it will not be necessary to keep section 125 of the Bill which is already provided for in section 138 of the present Act.

Section 127 provides for the automatic discharge of the debtor. The responsibility is placed on the trustee of obtaining an appointment for hearing the application for discharge. The provisions of the present Act (sections 141 et seq.) should be retained, pursuant to which the bankrupt makes his own application for discharge.

However, I would suggest that the trustee be required to file in the court, as a condition precedent to his discharge, a report in the form now used (form 73) on the discharge of debtor, leaving it to the debtor to seek his own discharge, but having the report available in case the trustee is not available. Copies of the report should be served on the debtor and sent to the Superintendent. This report should not be required in the case of debtors which are limited companies.

The question of the automatic discharge of debtor was discussed in the memorandum which I presented before the Standing Committee on Banking and

Commerce on the 20th of June, 1946. (See page 49 of the Minutes of Evidence). My comments and objections to the principle of automatic discharge as contained in the 1946 Bill apply with equal force to section 127 of this Bill.

My comments at that time were:

> Section 146 [corresponding to section 127 of the present Bill] dealing with the discharge of the bankrupt would prove most unsatisfactory. It shifts the onus of making the application for discharge from the debtor to the trustee. This section is apparently an attempt to provide "an automatic procedure" for the discharge of the bankrupt. The Superintendent in his note to the section states that this procedure has been taken from the American Bankruptcy Act, and reference is made to section 14 of the amendment to the Bankruptcy Act of the United States as approved on the 22nd of June, 1939. In 1943 I was consulted as Bankruptcy Judge by American authorities in Washington as to the Canadian procedure on discharge of bankrupts, and I understood that the American procedure was not satisfactory and was to be amended. I understand that a Bill to amend the American Bankruptcy Act is now before Congress.
>
> The provision in the American Act for "an automatic procedure" for discharge of bankrupt is not so serious in its consequences as such a procedure would be in Canada, as, unlike the Canadian Act, the American Act has no provision for making the after-acquired property of the bankrupt available for distribution among his creditors, except that "all property which vests in the bankrupt within six months after bankruptcy by bequest, devise, or inheritance, shall vest in the trustee". See section 23 (*a*) of the present Canadian Act, retained as section 25 (*a*) in the New Act [retained as section 39 (*c*) of the present Bill] for the definition of "property of the debtor" which includes:—
>
> > all property which may be acquired by or devolve on him before his discharge.
>
> Also, the American Act does not provide for conditional discharges of bankrupts.
>
> The present procedure is to be preferred. The bankrupt makes a special application for his discharge, and this places the responsibility on the bankrupt of satisfying the court as to his conduct and that he is entitled to his discharge. This has been the practice under the Canadian Act since it was passed in 1919 and it has always proved satisfactory. It is based on the practice under the English Act, which has been found satisfactory through many years of experience.

The present Bill makes no provision for the discharge of persons who have gone bankrupt under the present Act.

Section 129 appeals to me as leaving the matter of discharge to the court's discretion.

Section 135 seems to eliminate the continuance of alimentary debts which are preserved by section 147 (1) (*d*) of the present Act, and which should be retained in this section.

Section 138 should contain provision for the court annulling a bankruptcy upon filing a bond or payment into Court in satisfaction of the debt, along the lines of section 140 (3) of Senate Bill L-11.

Section 139 contains part of the present rule 162, but it omits the very important provision that the order of discharge "shall take effect from the day it is drawn up and signed".

The Bill provides in section 139 (2):

> Notice of an order of discharge or annulment shall be published in the *Canada Gazette* by the bankrupt, and the order shall not become effective until so published.

The above provision of present rule 162 is preferable, as it is more in conformity with the regular practice of the court. The discharge should take effect from the date the order is drawn up and signed and becomes part of the records of the court. Although publishing in the *Canada Gazette* is necessary, the effect of the discharge should not be made dependent on the actual gazetting of the order.

Section 140 (1) (e) provides that "in the Province of Ontario, the High Court of Justice for the province" shall have original jurisdiction in bankruptcy.

This should be changed to read "the Supreme Court of Ontario", as in the present Act. "The High Court of Justice" is not a court, but is a branch of the Supreme Court of Ontario. See the following sections of the Judicature Act, 1937 R.S.O. chap. 100:

Section 2:

> *The Supreme Court shall be continued as a superior court of record,* having civil and criminal jurisdiction, and it shall have all the jurisdiction, power and authority which on the 31st day of December, 1912, was vested in or might be exercised by the Court of Appeal or by the High Court of Justice or by a Divisional Court of that Court, *and such jurisdiction, power and authority shall be exercised in the name of the Supreme Court.*

Section 3:

> The Supreme Court shall continue to consist of two branches—The Appellate Division, which shall hereafter be known as "The Court of Appeal for Ontario", and The High Court Division, which shall hereafter be known as "The High Court of Justice for Ontario", and this Act and rules shall be deemed to be amended throughout accordingly.

Section 10:

> There shall be a seal for the Supreme Court to be approved by the Lieutenant-Governor in Council.

Section 140 (2). While this section appears to imply (which is correct) that the Courts of Appeal throughout Canada have no original jurisdiction, should not that be made clear in this section?

Section 140 (3). I would add the word "likewise" before the word "has" in line 1 of section 140 (3).

Section 144 (8). Under section 83 (1) claims respecting damages arising from tortious acts will be provable in bankruptcy. The rights to trial by jury now existing respecting such causes of action should be preserved. To that end the words "with or without jury" should be inserted in section 144 (8) after the word "tried" in line one.

Section 149 (1) (h). The wording of section 149 (1) (*h*) is related to the original intention in the revision of the Act to have claims dealt with directly by the Court. As that intention has been discarded, the wording is not appropriate and should be changed back to that of section 150 (*i*) of the present Act under which the Registrar has power to hear and determine any appeals from a decision of a trustee allowing or disallowing a creditor's claim where such claim does not exceed five hundred dollars.

Section 149 (1) (i) should be expanded to enable the Registrar to deal with the remuneration of the trustee.

Section 150. I approve of the Board of Trade's suggestions in that regard.

Section 156. In regard to the section generally I would prefer to leave it in the form it now is in the present section 191. In particular, I consider 156 (*a*) and 156 (*g*) as being too drastic. In regard to the latter, no one in business could buy stocks for example, and the penalty is too severe and might lead to discrimination. The indictment clause should be deleted, and the penalty clause thereunder is too high. (See the English Act, sec. 157 (1)).

Section 160 (g). In regard to soliciting proxies, I regret to say that I do not approve of the suggestion of the Board of Trade that this subsection should be deleted. I think the business of soliciting proxies has gone too far, and that the new section rightly curtails such activities.

Section 162. I think this should be left in the form as appears in section 201 of the present Act.

Section 171 provides that the enactments mentioned in the schedule on page 101 of the draft Act are to be repealed. Does this also include the general rules, or in what position are they?

As has been pointed out by the Board of Trade memorandum, there appear to have been certain sections of the present Act which are not carried into the Bill as drafted. I have gone over these in conjunction with the Board of Trade report, and I agree with the following recommendations of the Board of Trade report:

Section 9 (7) of the present Act. The Act should contain a provision corresponding to section 9 (7) of the present Act under which every assignment of property, other than an authorized assignment made by an insolvent debtor for the general benefit of creditors, shall be null and void. Such a section is needed to cope with assignments prejudicial to the interests of creditors.

Section 10 of the present Act. I have already referred on page 3 of these observations to the importance of retaining section 10 and rule 88, combined, and I have outlined a section which, in my opinion, should be written into the Bill.

Section 33 of the present Act. The Bill should retain provisions along the lines of those in section 33 of the present Act which enable the court to correct mistakes, defects, or imperfections in authorized assignments or receiving orders or proceedings connected therewith, and prevent any creditor taking advantage of mistakes, etc.

Section 80 of the present Act. Section 103 of the Bill applies where both partners of a partnership are in bankruptcy, but does not make specific provision for the case where only one partner is bankrupt. Section 80 of the present Act, which covers the situation where only one partner is bankrupt accordingly should be carried forward into this Bill.

Section 149 of the present Act. The Bill should contain a provision along the lines of this section, settling the evidentiary value of an order of discharge and, in particular covering the point that such an order shall be conclusive evidence of the bankruptcy and of the validity of the proceedings therein. The bankrupt can then plead the order of discharge in respect to proceedings founded on causes of action which occurred before his discharge.

Section 153 of the present Act. This section of the present Act has apparently been omitted by mistake. Its continued retention is necessary to carry out the underlying intention that the Bankruptcy Act shall apply to all insolvent companies, but that in special cases the Court can grant leave to take proceedings under the Winding-up Act.

This is not to be taken that I disagree with the other recommendations of the Board of Trade, but I specially commend these to the consideration of this Committee and the Superintendent.

With regard to *section 141 (6) of the present Act,* it seems to me that this section should make it clear that the examinations in question may be read in any proceeding having reference to the bankrupt's estate; also that I think it would be advisable to provide that the examination of any claimant should be able to be read in any situation.

I have before me at the present time examinations of claimants made under the authority of the present Act in which I am in doubt as to whether they can be used. In a sense they are cross-examinations on claims filed, but in another sense there seems to be some doubt as to their admissibility as admissions against a claimant.

As suggested in the recommendations of the Board of Trade, it would be advisable to provide for proceedings pending under the present Act. The comments of the Board of Trade are as follows:

> In order to provide for Pending Proceedings, consideration should be given to the need for including in the Canadian legislation provisions along the lines of section 168 (2) and (3) of the United Kingdom Act:
>
> 168 (2). This Act shall apply to proceedings under the Bankruptcy Acts 1883 to 1913, pending at the commencement of this Act, as if commenced under this Act.
>
> 168 (3). Until revoked or altered under the powers of this Act, any fees prescribed and any general rules and orders made under the Bankruptcy Acts, 1883 to 1913, and the Bankruptcy (Discharge and Closure) Act, 1887, which are in force at the commencement of this Act, shall continue in force, and shall have effect as if made under this Act.

APPENDIX "B"

THE MONTREAL BOARD OF TRADE

MEMORANDUM re OPERATION OF COMPANIES' CREDITORS ARRANGEMENT ACT 1933

1. Meetings are called at the instance of the debtor company, notwithstanding the fact that the company may be in bankruptcy or in liquidation under the Winding-Up Act.

2. The granting of a petition to call a meeting is invariably accompanied by a stay of all other proceedings.

3. Until the meeting is held, or an arrangement is effected, the debtor company may:

(*a*) make payments (e.g. to creditors, for salaries, etc.);
(*b*) process raw materials—a matter of vital importance in the Province of Quebec where the law permits revendication. During the delay required to submit the proposal the unpaid vendor may lose his right to repossess the goods sold.
(*c*) conduct its business without control.

4. When a meeting is summoned, unless the court so orders:

(*a*) a statement of the debtor's affairs need not accompany the proposal;
(*b*) a list of creditors need not be issued;
(*c*) there is no provision for an examination of the debtor's affairs.

5. The Act does not specify the period of time to be allowed in calling the meeting, so that creditors at a distance frequently find it impossible to attend or to be represented, on account of insufficient notice.

6. Frequently proxies are issued by the debtor company and executed in favour of the company or a nominee of the company by creditors unable to attend or by creditors for small amounts.

7. The debtor company may without notice to its creditors alter its proposal at the meeting.

8. There is no provision that a representative of the debtor company shall not preside and control the meeting and this often happens.

9. Creditors' claims may not be admitted by the company in which event summary application must be made by either the company or the creditor to the court for a decision.

10. The company may permit creditors' claims for the purpose of voting but later deny such claims.

11. The statement of affairs prepared and submitted by the company is not usually verified. It may not classify the creditors nor fully disclose the debtor's true position so as to enable the creditors to judge whether the proposal is feasible and fair.

While the creditors may demand an examination and further information, the fact remains that they are at a decided disadvantage in not having that control which the Bankruptcy Act provides in similar circumstances.

12. Should an examination of the debtor's affairs be asked, the debtor cannot be compelled to pay the cost thereof. Creditors are reluctant to assume such expense as the company may at any time elect to withdraw its proposal or it may make an assignment.

13. The Act may be and has, it is believed, been used by companies formed for the express purpose of effecting a compromise.

14. The Act makes no provision for the payment of the expenses of submitting the proposal.

15. Although the Act provides that general rules may be issued by the Governor in Council, this has not been done and there is no evidence that the courts in any of the districts concerned have applied any particular rules providing adequate control by unsecured creditors.

16. The administration of the Act is not assigned to any particular department so the responsibility for the General Rules provided for in Section 17 cannot be determined.

17. Because no Department is responsible for its administration, no statistical information regarding its operations and effects are required to be filed with any department or agency of the Government.

Montreal, 7th March, 1949.

Appendix "C"

THE DOMINION ASSOCIATION OF CHARTERED ACCOUNTANTS

Recommendations of the Sub-Committee of the Legislation Committee on the Proposed Bankruptcy Act, 1949, (Bill N)

1. Section 3 (9)—Remission of Funds on Deposit to Receiver-General on Order of Superintendent

This subsection provides that where a bankrupt estate is left without a trustee in the circumstances mentioned, the Superintendent may require the funds of the estate on deposit in a bank or elsewhere to be remitted to the Superintendent for deposit with the Receiver-General pending the appointment of a trustee.

It is recommended that the Superintendent be required to obtain an order from the Court requiring the remittance of the funds in the circumstances specified.

2. Section 8 (13) and Sec. 163 (4)—Initiation of Criminal Proceedings by Trustee

The decision to initiate criminal proceedings should be made by the inspectors or by the Superintendent; and the responsibility of the trustee should be confined to transmitting the inspectors' recommendation to the Superintendent.

It is therefore recommended that the two subsections referred to be amended to provide that where proceedings are recommended by the creditors, the inspectors or the Court against any person believed to have committed an offence, the trustee shall transmit such recommendation to the Superintendent for his consideration and the Superintendent shall take whatever action he considers desirable.

3. Section 9 (8)—Inspection of Books and Records of Estate

The right to inspect the books and records of the estate should be limited to the Superintendent and the inspectors. To extend the right to others would often create an intolerable burden on the trustee.

It is therefore recommended that Sec. 9 (8) be amended to limit the right of inspection to the Superintendent and the inspectors.

4. Section 10 (1) (*a*)—Power of Trustee to Sell Bankrupt's Property

It is recommended that Sec. 10 (1) (*a*) be amended to read:

(1) The trustee may, with the permission of the inspectors, do all or any of the following things:—

(*a*) *sell or otherwise dispose of for such price or other consideration as the inspectors may approve* all or any part of the property of the bankrupt, etc. etc.

5. Section 13—Redirection of Bankrupt's Mail

The procedure for obtaining the redirection of the bankrupt's mail to the trustee as outlined in this section is over-complicated, and the three months' limitation is not always a sufficient length of time.

It is therefore recommended that the redirection of the bankrupt's mail be effected upon the filing with the appropriate agencies of a certified copy of the trustee's appointment, for a period of three months from such date, and that an extension of such period for an additional period not exceeding three months may be obtained by application to the Court.

6. Section 27—Proposals, Powers of Trustee

In order to prevent abuse of this procedure respecting proposals by insolvent persons it is recommended that a provision be added that upon the making of a proposal by an insolvent person, the trustee shall have the same powers in respect to the property of the debtor as an interim receiver has under Sec. 24 (2) or as a trustee has on the making of a receiving order.

7. Section 36(1)—Proposals, Proceedings in Case of Default

This subsection now provides that in case of default in making payment pursuant to a proposal or where the proposal cannot be carried out without injustice or undue delay or where the Court's approval was obtained by fraud, the Court may, on the application by the trustee or by any creditor, set aside the proposal and make such order as it deems proper in the circumstances.

It is recommended that the right be given the debtor also to make application to set aside the proposal.

8. Section 36(3)—Annulling Proposals

This subsection provides that whenever the debtor is convicted of a bankruptcy offence a proposal may be annulled.

It is recommended that the enactment be amended by insertion of the words "by the Court" following the word "annulled", to ensure that a proposal can only be annulled by an order of the Court.

9. Section 38(2)—Proposals by Corporations

It is considered that the provisions respecting proposals in the proposed Bankruptcy Act are superior to those contained in the Companies Creditors' Arrangement Act, which lend themselves to manipulation to defeat the rights of creditors. The suggestion is therefore offered for consideration that the Companies Creditors' Arrangement Act be amended simultaneously with enactment of these new provisions respecting proposals in the Bankruptcy Act to provide for the utilization of a licensed trustee to supervise the administration of businesses brought under the Companies Creditors' Arrangement Act.

10. Section 87—Removal of Security from Bankrupt's Premises

It it recommended that an additional subsection be added to Sec. 87 to provide that in the case of a security on movable property, where the creditor has valued the security and such valuation has been accepted by the trustee, the trustee may require the creditor to remove the asset from the bankrupt's premises forthwith, and that if the creditor fails to do so, the trustee may sell the asset for the account of the secured creditor.

11. Section 95(1) (*d*)—Priority of Claims—Salary and Wages

Having regard to provincial legislation in respect of vacations with pay, it is recommended that in addition to the priority of claim for wages, salaries, etc.

to the amount of $500, this paragraph (*d*) be amended to give priority to an employee's portion of a provision for vacation with pay required to be set up by the employer under any provincial legislation but not to exceed $100 for any employee.

12. Section 105—Application of Provincial Law to Landlords' Rights

Under Sec. 42 (4) a trustee has a prior claim to goods of the bankrupt (or the proceeds thereof) seized under distress for rent.

It is therefore recommended that Sec. 105 should also except this right of the trustee from the application of a province's law respecting the rights of landlords.

13. Section 127 (1)—Automatic Application for Discharge of Bankrupt

This provision imposes an obligation on the trustee which in a great many cases will be quite unnecessary. Full effect could be given to the intention of this provision by simply requiring the trustee to notify the bankrupt of his right to a discharge and outlining the procedure to be taken.

It is recommended therefore that Sec. 127(1) be amended accordingly.

APPENDIX "D"

THE BOARD OF TRADE OF THE CITY OF TORONTO

TORONTO, February 22, 1949.

The Honourable E. BEAUREGARD, Chairman, and Members of the
Committee on Banking and Commerce of the Senate,
Parliament Buildings,
Ottawa, Ont.

SENATE BILL N—AN ACT RESPECTING BANKRUPTCY

Dear Sirs:—The Board of Trade of the City of Toronto is primarily a trade association, having been incorporated by a Special Act of the Parliament of Canada, originally dated February 10, 1845.

Its present membership comprises over five thousand five hundred business and professional men engaged in all branches of commerce, industry and finance and in the various professions. Many of them operate on a national or international scale.

A substantial number of members are interested in legislation respecting bankruptcy. Accordingly, the Board appreciates the opportunity given by the Senate Standing Committee on Banking and Commerce to place before the Committee on behalf of interested members its considered views on bankruptcy law revision.

When Senate Bill A-5 was before this Committee in 1946 the Board submitted a number of recommendations which were mainly concerned with principle. These recommendations were the result of an exhaustive study carried out by a Committee operating under the auspices of the Board which was comprised of representatives of unsecured and secured creditors, trustees and liquidators and members of the legal profession specially concerned with bankruptcy law.

It has been gratifying to observe that so many of the recommendations made in 1946 have been incorporated in the Bill now before the Senate. Consequently, the Board is able to say that it approves Senate Bill N in principle and to a large extent in detail. The Board takes this opportunity to record its appreciation of the fine work performed by the Superintendent in Bankruptcy, Mr. Robert Forsyth, K.C., in developing the revision of our bankruptcy law to the high point at which it exists in this year's revising Bill.

Also, it is desired to comment favourably upon the method of revising legislation which has been employed in this case—that of introducing a bill, giving it one reading and then standing it over until the next Session. This procedure provides those interested with adequate time to make the extended studies necessary to the preparation of well considered representations.

IMPORTANT FEATURES OF SENATE BILL N SUPPORTED

Senate Bill N makes many improvements in the bankruptcy law which, while not mentioned in this brief, are nevertheless approved. It is desired to refer to some of the more important of them.

Proposals Without Bankruptcy

The provisions in Section 27 and following will enable both individuals and corporations to make proposals without bankruptcy under the safeguards provided by the procedure laid down in the Bill. In the case of businesses which, while in financial difficulties, are capable of being saved both debtors and creditors will benefit. The fact of bankruptcy in itself greatly increases the difficulty of re-establishing a business as a going concern. Also, there is normally less loss on realization in the case of an operating business than in the case of one which has been adjudged bankrupt.

Relation to Companies' Creditors Arrangement Act

In future all debtors will be able to make proposals without bankruptcy instead of only incorporated companies under the Companies' Creditors Arrangement Act, as at present. While realizing that the Companies' Creditors Arrangement Act is not before the tSanding Committee on Banking and Commerce, it is considered that the question of proposals without bankruptcy under the Bankruptcy Act should not be passed over without reference to the relationship between the two Acts.

So far no procedure has been established under the Companies' Creditors Arrangement Act. This has not been a disadvantage in the large and complex corporation reorganizations, involving classes of securities, for which that Act is primarily intended. However, the Act, as any public legislation should be, is open to use by any incorporated company. In the years before the war it was resorted to quite unexpectedly by a large number of simple incorporated trading companies without different classes of securities. The lack of established procedures enabled improper compromise settlements to be put through in too many cases. The abuses occurred as a rule where the interests affected were not deemed substantial enough to warrent retention of counsel in their protection.

The position then is that an incorporated company will be able to elect to make a proposal under either Act. As the procedure under the Bankruptcy Act is subject to more supervision and safeguards. it is reasonable to expect that debtors who contemplate improper proposals will try to effect their compromise settlements under the Companies' Creditors Arrangement Act. There is apprehension that in the event of a business recession, with its resulting increase in the number of firms experiencing financial troubles, there will be a recurrence of the pre-war abuses.

The secured creditor interests concerned have displayed a co-operative attitude in finding a solution. The Dominion Mortgage and Investment Association in 1946 recommended amendments to the Companies' Creditors Arrangement Act which provided for writing into the Act the procedure which has been developed in practice in the case of the financial reorganizations for which the Act was intended. The amendments proposed will not impair the value of the Act in true financial reorganizations affecting classes of securities but the procedure to be established would provide the controls needed to prevent the abuses in connection with trading companies described above.

If amendements along the lines proposed are enacted, there would be no possible advantage for trading companies, without classes of securities, making proposals under the Campanies' Creditors Arrangement Act. In fact, there is every reason to believe they will uniformly proceed under the Bankruptcy Act, the procedures of which are better suited to the problems of such companies.

Consequently, the Board is of the opinion that the results hoped for from the provisions for proposals without bankruptcy under the Bankruptcy Act will only be realized when the Companies' Creditors Arrangement Act is amended along the lines proposed. Consequently, the Board hopes that rapid progress can be made in amending the latter Act.

Summary Administration

The provisions for summary administration will be most helpful. Their benefit will not be limited by any means to merely administration of bankruptcies with limited assets at less than the normal scale of costs. This abridged procedure will enable poor but legitimate debtors to obtain relief, through bankruptcy, from debts which are beyond their capacity to meet, and to re-establish themselves in life. The provisions for summary administration will go far to make the benefits of bankruptcy available to our poor as well as to our financially more fortunate citizens.

Scheme of Distribution

Heretofore one of the most vexing aspects of bankruptcy administration has been the chaotic state of the priorities of distribution, due to conflicting claims for priority under various provincial and federal statutes. The clarification of priorities in the scheme of distribution sections in Bill N are therefore of great value.

Trustees' Remuneration

It has been gratifying to note the steps taken to improve the remuneration of trustees. Up to now the basis of trustees' remuneration has remained the same as when the Act was first passed. Not only have all costs increased since that time, but many additional duties have been imposed on trustees. Some relief in fees, especially as to small estates, has become necessary if trustees are to be expected to continue to administer the small estates. Further suggestions respecting trustees' remuneration will be found below.

Income Tax Returns

One of the most troublesome and costly duties placed on trustees has been that of preparing and filing income taxe returns which the debtor should have, but has not, made. Where the debtor has not kept proper books, books have had to be posted and balanced for several years before the trustee could make the returns. The costs that trustees have been put to have had to be paid out of the assets of the bankrupt and, therefore, at the expense of creditors, as the amount of money distributable to them is decreased by the amount of such costs. Frequently, even wage claims have been decreased by expenses incurred in preparing income tax returns.

Bill N places this matter on its proper basis by limiting the trustees' obligation to making the books and records of the bankrupt available to officials of the Income Tax Department to enable them to ascertain the bankrupt's income tax liability. If the officials consider that the situation warrants carrying out at the public expense whatever work is involved in preparing the bankrupt's income tax returns, the returns can be prepared and made on that basis, which is the proper one in the circumstances. There does not seem to be any valid reason for expecting creditors to add to their losses the expenses of administering the public revenue.

Futher Recommendations

Since the introduction of Senate Bill L-11 in 1947, the Committee working under the Board's auspices has carried out a further detailed study of bankruptcy law revision principally from the point of view of practical operation under the legislation. After having examined Senate Bill N in the light of the conclusions reached in the course of this study, the Committee considered that the following recommendation should be placed before the Senate Standing Committee on Banking and Commerce.

These recommendations have been adopted by the Board and are placed before the Senate Committee as a statement of the Board's policy respecting bankruptcy law revision. It is hoped the suggestions made will assist in developing our bankruptcy legislation to the most efficient operating basis possible.

Interpretation

Definition of Transaction

Senate Bill L-11 contained in Section 2 (*z*) the following definition of "Transaction":—

> "Transaction" means anything done that affects another person's rights or obligations and out of which a cause of action may arise, and, without limiting the generality of the foregoing, includes contract, dealing, gift, delivery, payment, settlement, sale, conveyance, transfer, assignment, charge, lien, pledge, mortgage, hypothecation or judicial proceeding taken or suffered.

The word "transaction" replaced the various specific terms referred to in the definition throughout the Bill. Senate Bill N now drops the definition "transaction" without replacing the specific terms in their appropriate context. There is apprehension that confusion will result and it is proposed that a definition of transaction be written back into the Bill.

Appointment and Substitution of Trustees

No Trustee Bound to Act—Section 6 (6)

Under Senate Bill L-11 the office of custodian is eliminated and the trustee is appointed in the first instance. Consequently, the trustee no longer has an interval before his appointment during which he can investigate the sufficiency of the assets to defray his costs. As a result, it is unfair to trustees to require, as in Section 6 (6), that on accepting appointment the trustee shall, until discharge or another trustee is appointed in his stead, perform the duties of a trustee under the Act. In the face of such a requirement the trustees' only protection will lie in requiring advance indemnification for expenses from creditors in many cases before accepting appointment as trustee. To avoid any unfairness to trustees or the onus of the provision being shifted to creditors, the trustee should not be bound to continue to act until following his acceptance of appointment he has been confirmed at the first meeting of creditors. By that time the trustee will have had opportunity to investigate and satisfy himself concerning the sufficiency of the assets to meet his costs and whether there is actual need for requesting indemnification from creditors.

Under the provisions of the Bill the property of the bankrupt is vested in the trustee on his appointment in the first instance. Provision should be added to divest this property from the trustee and revest it in the bankrupt in those cases where the trustee finds that there are not sufficient assets to cover his fees and expenses and the creditors do not agree to indemnify him, as a result of which the trustee declines to continue with the administration of the estate.

Duties and Powers of Trustees

May Continue Business of Bankrupt—Section 8(7)

As a safeguard against the ill-advised carrying-on of a bankrupt's business, Section 8 (7) should require an order of the Court to enable a trustee to carry on the business of a bankrupt up to the first meeting of creditors. The inspec-

tors will be appointed at that meeting, and they will then become responsible for deciding whether or not the bankrupt's business is to be carried on.

Insurance—Section 9(1)

Section 9(1) should clarify the coverage for which the trustee is required to insure by limiting his obligation to insure for fire risk in such amount as the inspectors approve and for such other coverages in such amounts as the inspectors may decide upon.

Trustee to File Report Before Discharge—Section 9(14)

Section 9(14) requires the trustee to prepare and file in Court a report on the affairs of the bankrupt prior to the discharge of the trustee. Very few corporations which become bankrupt ever apply for discharge from bankruptcy. To relieve the trustee from the unnecessary duty of preparing and filing a report on so many corporations, where it will not have any importance on an application for discharge, it is suggested that corporations be excepted from the report required in Section 9(14).

Powers Exercisable by Trustees with Permission of Inspectors—Executory Contracts—Section 10 (1) (c)

Empowering the trustee, upon payment in full for value received after the bankruptcy, to require any executory contract to which the bankrupt was a party to be carried out is approved generally. It is noted, however, that this provision would apparently enable a trustee to require the carrying out of a contract by its terms cancellable or terminable upon bankruptcy. This would affect licences or confidential arrangements, expressed to be cancellable or terminable in the event of bankruptcy for the reason that the non-bankrupt party is unwilling to continue the licence or arrangement with any person or corporation other than the bankrupt. To guard against the subsection affecting such licences or arrangements the following words should be inserted in Section 10 (1) (c) after the words "executory contract":—

> which does not otherwise provide for cancellation or termination thereof by reason of the bankruptcy and

Consideration should be given to whether this subsection in dealing with contracts, a matter of property and civil rights, may be ultra vires the Dominion Government.

Official Receivers to Deposit Assignments in Court

It is considered that the Act should contain provision for Official Receivers depositing in Court authorized assignments and relevant material, so that when applications are made to the Court all material will be available. To that end, it is proposed that the following Section be written into the Act to provide for this feature of Section 10 of the present Act and present Rule 88:—

> After the first meeting of creditors has been held, the Official Receiver shall deposit forthwith in the court having jurisdiction in the locality of the debtor the authorized assignment, or the certified copy of the receiving order, together with the statements of affairs made pursuant to Sections 26(2) and 117 (d), the questionnaire, the notes of the examination under Section 120 (1), and the minutes of the first meeting of creditors.

Remuneration of Trustee

To Be Voted by Creditors—Section 17 (1)

Inspectors as well as creditors should be enabled to vote the trustee's remuneration. This can be done by inserting the words "inspectors or of" after the word "of" in line three of Section 17 (1).

Not to Exceed 7½ Per Cent—Basis, Section 17(2)

As the trustee has to perform services in connection with the claims of secured creditors, the amount paid secured creditors should not be deducted in computing the amount upon which the trustee's fee is to be calculated. In this connection it is noted that under Section 106 the levy payable to the Superintendent covers payments on account of dividends or otherwise on account of claims of creditors, whether unsecured, preferred or secured.

Petition for Receiving Order

Bankruptcy Petition—Conditions on Which Creditor May Petition—Section 21 (1) (a)

Section 21 (1) (a) increases from $500 to $1,000 the debts necessary in the case of a petition. Attention is drawn to the practical difference respecting the amount of debt necessary in the cases of assignments and petitions. In the case of an assignment, the assignee has knowledge of all his debts and, therefore, can make use of all his debts in establishing the minimum of debts necessary. A petitioner has not knowledge of all the debtor's liabilities and must find enough creditors to constitute the minimum necessary for a petition and get them to join in the petition. Consequently, the amount of debt necessary to support a petition should not be as great as that necessary to support an assignment. Debts of $1,000 in the case of an assignment are satisfactory but the amount of debts necessary to support a petition should be left at $500 as at present.

Proof of Facts, etc.—Adjudicating Bankrupt—Section 21 (6)

While the procedure for obtaining a receiving order and having a debtor adjudged bankrupt is set out, the Bill does not contain an actual provision empowering a court to adjudge a debtor bankrupt. In this connection it is to be noted that a receiving order, which the court is authorized to make in Section 21 (6), does not in itself provide for an adjudication of bankruptcy. Notwithstanding the definition of bankrupt, there is need for a substantive provision for adjudicating bankrupt such as that contained in Section 4 (6) of the present Act which should be retained. This can be done by incorporating the provisions of Section 4 (6) of the present Act in Section 21 (6) of the Bill. However, the terms now in the Act should be revised to provide that the judge "shall" adjudge bankrupt.

Receiving Order on Another Petition—Section 21 (13)

To properly integrate the original petition and subsequent petition and the disposal of them, the words following the word "Act" in line six of Section 21 (13) should be revised to read—

> or may consolidate all petitions against the same debtor and make a receiving order on any petition or the consolidated petitions and may thereupon dismiss on such terms as it may deem just the petition or petitions in respect of which a receiving order has not been made.

Petition Against Estate of Deceased Debtor—Section 22 (1)

Section 22 (1), which provides that a petition may be filed against the estate of a deceased debtor, is defective in that proceedings must always be taken against a person. Section 22 (1) should be revised in the words of the English Act to provide for a "petition for an order for the administration of the estate of the deceased debtor according to the law of bankruptcy".

Stay of Proceedings

The words "until the trustee has been discharged or" in line seven of Section 40 (1) conflict with the overriding purpose of the Act and certain other specific sections and should be deleted.

The result of these words is that following the trustee's discharge and prior to the bankrupt's discharge creditors could bring actions against the bankrupt respecting claims provable in the bankruptcy, without the leave of the court. It is appreciated that under Section 127 and following sections the bankrupt will in most cases receive his discharge prior to the discharge of the trustee and the point won't arise. However, there will be circumstances which in some instances will result in the Court refusing or suspending discharge under Sections 129 and 130. It is in such cases that the point will arise.

The unfettered ability of creditors to take proceedings against a bankrupt is contrary to the purpose of the Act which is to stay all proceedings during bankruptcy. Moreover, it is not necessary that creditors should have the right to take action against a bankrupt following the trustee's discharge, nor is it desirable that a creditor should gain a preference by any such right. By virtue of Section 19 (1) the trustee remains *de facto* trustee following discharge and the bankrupt's assets would vest in him. Also, in case of need, under Section 19 (11) the *de facto* trustee could be reappointed trustee to complete administration.

General Provisions

Contributory Shareholders—Section 46

Section 46 does not specifically cover Sections 70 (3), (4), 71, 72 and 73 of the present Act, which contain provisions that have been found important in use. It is considered that these Sections of the present Act should be carried forward into the Bill, also for the same reason the provision of present rules 144 to 152 should be retained. The alternative to the simple group procedure these sections provide would be individual action against each of the contributors, who sometimes number in the hundreds.

Settlements and Preferences

Avoidance of Certain Settlements—Section 60 (1) If Bankrupt Within Five Years—Section 60 (2)

Section 60 (1) of the Bill voids settlements of property if the settlor becomes a bankrupt within one year after the date of settlement, and Section 60 (2) of the Bill voids settlements of property if the settlor becomes bankrupt within five years after the date of the settlement, unless the parties claiming under the settlement can prove that at the time of making the settlement the settlor was solvent without the property comprised in he settlement. Section 60 (1) would void settlements within the one-year period apart from any question of intent and even though the settlor was solvent at the time of making the settlement. This might have unjust effects on the beneficiaries of marriage and other family settlements. To avoid any such result, Section 60 (1) should be deleted. Then in each case the validity of settlements will rest on the five-year rule and the question of whether or not the settlor was solvent at the time of making the settlement.

Avoidance of Preferences in Certain Cases—Section 64 Protected Transactions—Section 65

There is apprehension lest dropping the requirement of proof of intent in Sections 64 and 65 of the present Act might result in unsettling many ordinary and legitimate business transactions which are made in good faith and for adequate valuable considerations and without any intent to prefer. Many legitimate transactions are entered into with the knowledge that the debtor is in some degree in financial difficulty and would come within the words "without notice or knowledge of or reason to suspect the insolvency of the bankrupt or of his having committed an act of bankruptcy" appearing at the end of Section 65 (1) of the Bill.

Sections 64 and 65 of the existing Act have operated satisfactorily in their present form in the bankruptcy laws of the United Kingdom for many years and the difficulty in the application of these sections in Canada has been due principally to certain decisions of the Courts requiring proof of concurrent intent. It is so difficult to prove concurrent intent that it is unduly hard to have preferences set aside which should be set aside. It is considered that the problems in Canada under Section 64 and 65 would be overcome if present Section 64 were amended to clearly state that there is no need to prove concurrent intent. The application of intent would then rest on proof of intent on the part of the debtor which in most cases would be established by his financial status at the time of any disposition of property attacked.

Inspectors

If No Inspector Appointed—Section 82 (8)

Section 82 (8) should retain provision for the alternate power of the Court to act in appointing or substituting inspectors where there are no inspectors or the inspectors fail to act. This was provided for in Section 84 (8) of Senate Bill L-11.

Duties of Inspectors—Section 82 (13)

It is impractical, as provided in Section 82 (13) to require Inspectors to verify bank balances, audit accounts, etc., and it would be difficult to obtain the services of Inspectors if they are to be required to discharge the responsibilities laid upon them by this sub-section. For these reasons the sub-section should be enabling rather than mandatory in form and to that end the word "shall" in the first line should be replaced by the word "may".

Inspector's Fees—Section 82 (15)

The scale of fees for Inspectors set by Section 82 (15) is inadequate in general and in particular respecting large estates where the services of the Inspectors are frequently of great value, but are not in the nature of the special service which at present can be suitably remunerated by the Court. The scale of fees should be doubled and coupled with provision for the Court increasing the Inspector's fees to larger amounts both in respect to special services and ordinary services, where the value of the ordinary services merits remuneration higher than that provided in the scale.

Scheme of Distribution

Claims Resulting from Injuries to Employees—Section 95 (1) (i)

Section 95 (1) (*i*) places in the ninth priority claims resulting from injuries to employees of the bankrupt to which the provisions of any Workmen's Compensation Act do not apply, but only to the extent of monies received from persons or companies guaranteeing the bankrupt against damages resulting from such injuries. Under the present Act, according to the explanatory note in the Bill, these claims stand in fourth priority. It is suggested that such claims continue to be given fourth priority by merging this subsection with subsection (*d*) relating to wages, salaries, etc.

Claims of Crown—Section 95 (1) (j)

There is no limitation of time placed on claims of the Crown under Section 95 (1) (*j*). The lack of this limitation is often prejudicial to creditors who after bankruptcy find that there are large claims by the Crown running back over several years of which they were unaware. Also, in the case of claims for income tax, the confidential regulations of the Income Tax Department would properly preclude creditors from finding out what, if any, tax

arrears may be owing by any person to whom they contemplate extending credit. In order to reduce this hazard to creditors to a reasonable limit, claims of the Crown in the right of Canada or any province under subsection (*j*) should be made subject to a two-year limitation, the same as municipal taxes under sub-sub-section (*e*).

Preferential Lien or Charge For Taxes Against Realty Not Affected—Section 95 (4)

Section 95 (4), after giving protection to preferential liens or charges against real property for taxes, provides that "any other preferential lien or charge against the property of the bankrupt created by statute is null and void and is entitled to rank as provided by this Act." This would appear to make null and void the preference as to mechanics' and woodsmen's liens and possibly other charges which are created by statute. The difficulty could be overcome as to mechanics' liens by redefining secured creditor in Section 2 (*s*) to make it clear that it includes the holder of a mechanic's lien.

Dividends

Copy To Be Sent to Superintendent Thirty Days Before Issue—Section 111 (3)

The requirement in Section 111 (3) that the trustee forward copies of the statement and dividend sheet to the Superintendent a least thirty days before mailing to creditors provides an unnecessarily long time period and will result in unnecessary delay in completing the administration of estates. The thirty day period should be reduced to ten days.

Notice of Final Dividend, etc.—Section 111(5)

The wording of Section 111(5) would be brought more in conformity with the sequence of practice if the words down to and including the word "three" in line three were revised to read—

> After the Superintendent has approved the statement and dividend sheet and the trustee's accounts have been taxed...

Unclaimed Dividends and Undistributed Funds—Section 113

Section 113(1) requires the trustee to forward to the Superintendent for deposit with the Receiver-General of Canada all unclaimed dividends and undistributed funds remaining in his hands before proceeding to his discharge. Owing to delays by creditors in cashing dividend cheques due to distance or for other causes, this provision will lead to serious delays in trustees applying for discharge and terminating the administration of estates. To avoid such delays, it is suggested that the trustee be allowed sixty days after discharge in which to forward unclaimed dividends to the Superintendent. This would compare with the six-months' period heretofore allowed for this purpose under Section 82 of the present Act.

Examination of Bankrupt and Others

Examination To Be Filed—Section 121(3)

Section 121(3) does not carry forward into Senate Bill N the provisions of existing Section 138 requiring the debtor to answer questions even though his answers might incriminate him or expose him to civil liability. The elements of present Section 138 mentioned are considered necessary and for that reason retention of existing Section 138 of the Act in the place of Section 121(3) of the Bill is preferred. If Section 138 of the Act is retained, it will not be necessary to keep Section 125 of the Bill which is already provided for in Section 138 of the Act.

Penalty for Failure to Attend Meetings—Section 124

Section 124 of the Bill does not retain the features of Sections 135(1) and (2) of the Act which impose a penalty for refusing to make satisfactory answers to questions or to produce books, records, etc. upon examination. The elements of the present Sections mentioned are considered necessary and for that reason the wording of Sections 135(1) and (2) of the Act is preferred to the wording of Section 124 of the Bill.

Discharge of Bankrupts

Bankruptcy to Operate as Application for Discharge—Section 127(1)(2)

Section 127(1)(2) introduces an automatic discharge principle and places on the trustee the onus of obtaining an appointment for hearing the application for discharge. The estate should not bear the cost of the application. These provisions should be deleted and the Act left in its present state wherein the bankrupt is responsible for applying for his discharge.

While the automatic discharge principle is not favoured, value is seen in that part of Section 127 which makes provision for the Trustee filing a report, as provided for in Section 128, so that the information contained in such report will be on record in the Court whenever the bankrupt may apply for his discharge. Copies of the report should be served on the debtor and filed with the Superintendent.

In any event, if Section 127 stands, corporations should be excepted from its operation. Owing to so very few corporations ever taking steps for their discharge, the procedure required would be completely unnecessary in nearly all cases. Also, if Section 127 stands, provision should be made in it for old debtors getting their discharge.

Power of Court to Annul Bankruptcy—Section 138

Section 138 should contain provision for the Court annulling a bankruptcy upon filing a bond or payment into Court in satisfaction of the debt, along the lines of Section 140(3) of Senate Bill L-11.

Courts and Procedure

Courts Vested with Jurisdiction—Section 140(1)(e)

The High Court of Justice in Ontario is only a branch of the Supreme Court of Ontario. Therefore, the reference in Section 140(1)(e) should be to the Supreme Court of Ontario. See the Judicature Act R.S.O. 1937, Chap. 100, secs. 1-3.

Authority of Courts

Trial of Issues, etc.—Section 144(8)

Under Section 83(1) claims respecting damages arising from tortious acts will be provable in bankruptcy. The rights to trial by jury now existing respecting such causes of action should be preserved. To that end the words "with or without jury" should be inserted in Section 144(8) after the word "tried in line one.

Powers of Registrar

(1) The wording of Section 149(1)(h) is related to the original intention in the revision of the Act to have claims dealt with directly by the Court. As that intention has been discarded, the wording is not appropriate and should be changed back to that of Section 159(i) of the present Act under which the

Registrar has power to hear and determine any appeals from a decision of a trustee allowing or disallowing a creditor's claim where such claim does not exceed five hundred dollars.

(2) Section 149(1)(i) should be expanded to enable the Registrar to deal with the remuneration of the trustee.

Appeals

Court of Appeal—Section 150

Section 150 makes an appeal from a Judge of the Court to the Court of Appeal dependent upon obtaining leave to appeal from a Judge of the Court of Appeal. Section 74(1) of the existing Act gives an appeal to the Court of Appeal as of right. The wording of the present section should be retained.

Stay of Proceedings on Filing of Appeal—Section 152

In conformity with the recommendation respecting Section 150 the words "where a judge has granted leave to appeal" should be deleted from Section 152.

Legal Costs

Limitation of Costs—Section 155(7)

In computing the 10 per cent of gross receipts to determine the maximum amount of legal costs under Section 155(7) amounts paid to secured creditors should not be deducted. Frequently, the handling of secured creditors' claims causes legal work and consequently this item should not be deducted in computing the maximum of legal fees. As legal costs are always controlled by legal tariffs, protection is afforded by this control over legal costs.

Bankruptcy Offences

Bankruptcy Offences—Section 156,
Duties of Bankrupt—Section 117

Upon comparison of Section 117, Duties of Bankrupts, and Section 156, Bankruptcy Offences, both of the Bill, with Section 191 of the Act it appears that Section 191 sub-sections (d), (e), (l), (n) and (o) have not been carried into the Bill. These sub-sections deal with specific offences which are not directly covered by the broader language employed in Sections 117 and 156 of the Bill. Owing to the technical position taken by the Courts in criminal charges under bankruptcy offences, there is apprehension that the general wording of Sections 117 and 156 will be found insufficient to cover the particular offences dealt with in the sub-sections mentioned. Consequently, it is considered that the provisions of Section 191 sub-sections (d), (e), (l), (n) and (o) should be carried forward into the Bill. For the same reason elements in Section 191 sub-sections (f), (m), (p), (q) and (v) which have not been carried into Section 156 sub-sections (d) and (f) should be carried into those sub-sections. An example of what is in mind is the omission of "other frauds" in Section 191(m) in the Act from the provisions of Section 156 of the Bill.

It is noted that Sections 117 and 156 of the Bill have been reworded so as to involve the matter of intent in the act constituting the offence. Consequently it is not necessary in these Sections to include a statement requiring proof of intent. However, Section 117 (*f*) (disposition of property within previous year and (*g*) (Gifts and Settlements) do not appear to have been so worded as to provide for the proof of intent. Consequently, it would be possible for a bankrupt without fraudulent intent to come within the meaning of these sub-sections. To avoid any injustice, Section 117 sub-sections (*f*) and (*g*) should be revised as may be necessary to include the question of intent.

Also, attention is drawn to Section 157 (1) (c) of the English Act quoted opposite to page 95 of the Bill which makes it an offence for a bankrupt to fail to give a satisfactory explanation of the manner in which loss was incurred. It is considered that such a provision should be written into the bankruptcy offences under the Canadian legislation.

Undischarged Bankrupt Getting Credit—Section 157

Upon conviction the Court is only empowered to sentence to imprisonment. This appears unduly severe and it is considered that the Court should have an alternate penalty by fine which it could impose in cases where it felt the situation would be met better by a fine than by imprisonment.

Unlawful Transactions—Section 159 (3)

Section 159 (3) limits the Courts sentence on conviction to imprisonment. Here, too, the Court should have an alternate punishment by way of fine to impose in circumstances where it feels a fine would be preferable to imprisonment.

Sections of Present Act Not Included in Senate Bill N

The following provisions of the existing Act do not appear to have been specifically included in Bill N. While it may be that in some cases they are covered by the wording of new sections or are to be provided for in rules yet to be drafted, attention is drawn to them as provisions which it is important to retain.

Sections of Existing Act

Section 9 (7)—Assignments

The Act should contain a provision corresponding to Section 9 (7) of the present Act under which every assignment of property, other than an authorized assignment made by an insolvent debtor for the general benefit of creditors, shall be null and void. Such a section is needed to cope with assignments prejudicial to the interests of creditors.

Section 33—Correction of Mistakes by Court

The bankruptcy legislation should continue to retain provisions along the lines of those in Section 33 of the present Act which enable the Court to correct mistakes, defects or imperfections in authorized assignments or receiving orders or proceedings connected therewith and prevent any creditor taking advantage of mistakes, etc.

Section 80—Bankruptcy of Partner

Section 103 of the Bill applies where both partners of a partnership are in bankruptcy, but does not make a specific provision for the case where only one partner is bankrupt. Section 80 of the present Act, which covers the situation where only one partner is bankrupt, accordingly should be carried forward into the new Bill.

Section 149—Order of Discharge, Evidentiary Value

The Bill should contain a provision along the lines of Section 149 of the present Act settling the evidentiary value of an order of discharge and, in particular, covering the point that such an order shall be conclusive evidence of the bankruptcy and of the validity of the proceedings therein. The bankrupt can then plead the order of discharge in respect to proceedings founded on causes of action, which occurred before his discharge.

Section 153—Application of Winding-Up Act

Section 153 of the existing Act has apparently been omitted by mistake. Its continued retention is necessary to carry out the underlying intention that the Bankruptcy Act shall apply to all insolvent companies but that in special cases the Court can grant leave to take proceedings under the Winding-Up Act.

Supplementary Recommendations

In addition to the recommendations mentioned above, there are a number of further recommendations listed in the attached list of Supplementary Recommendations. They deal with matters of lesser importance, phraseology and legal clarification. While the Board feels that if adopted they would help improve the Bill, it does not consider that their import is great enough to justify taking up the time of the Senate Committee which would be required to present them verbally.

Respectfully submitted,

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President.

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General Manager.

LIST OF SUPPLEMENTARY RECOMMENDATIONS RESPECTING BANKRUPTCY LAW REVISION

Interpretation

Corporations—Section 2 (f)

Persons—Section 2 (m)

Section 2 *(f)*, which defines "Corporation" for the purpose of becoming a bankrupt, excludes from the Act building societies having capital stock, incorporated banks, savings banks, insurance companies, trust companies, loan companies or railway companies.

Section 2 *(m)*, which defines "Person" for the purpose of becoming a creditor, includes "corporation" without modification of the exclusion under Section 2 *(f)*. Consideration should be given to the danger of the exclusions in 2 *(f)* preventing the excluded corporations and companies from establishing their claims as creditors in bankruptcies under the Act. If it is considered that there is such a danger, appropriate revision should be made.

When Proposals Deemed to be Accepted—Section (2) (1) (t)

It is desirable that the present basis of voting on proposals, under which "majority of claims" means voting power exclusive of claims under $25.00, should be retained. In order to ensure the retention of this basis and to clarify wording, the words "in number" in the second line of Section 2 (*t*) should be replaced by the words "of votes as defined by Section 83."

Administrative Officials

Superintendent

Duties of Superintendent—Section 3 (3) (g)

The requirement in Section 3 (3) (*g*) for the Superintendent examining trustees' accounts of receipts and disbursements and final statements should be made permissive rather than mandatory, as presently stated in the section.

Superintendent May Intervene—Section 3 (4)

Under Section 3 (4) the Superintendent is given power to intervene in any matter or proceeding in Court. While it is recognized that such authority follows Section 3 (2), which charges the Superintendent with supervision of the administration of all estates to which the Act applies, it is considered that a Court should not be placed in a position in which it cannot control the proceedings

for which it is responsible. Consequently the Superintendent's intervention should be by leave of the Court. The words "or proceedings in Court as he may deem expedient" should be deleted and replaced by the words "by leave of the Court."

Duties and Powers of Trustees

Duties of Trustee—Section 8 (2)

Section 8 (2) adds to the duties of the trustee taking possession of "records" as distinguished from deeds, books and documents. It would appear that "the records" contemplated would include material sometimes of substantial bulk, but only used for a limited time. Consequently, care should be taken that the provisions of present Rule 128, which place a time limit on the obligation of the trustee to keep such material, should be carried forward. Otherwise, trustees will be under a legal obligation to provide a large amount of storage space for material which in most cases has not a long term value.

Moneys to be Deposited in Bank—Section 9 (4)

It is impractical as in Section 9 (4) to require the trustee to make all payments by cheque drawn on the estate account. Moreover, cheques are not legal tender and can be refused by a payee.

Books and Records—Section 9 (7)

Section 9 (7) as presently stated would oblige the trustee to surrender his original records on a change of trustee or on the administration being taken over by the Official Receiver, following which he would be without the means of answering enquiries or protecting himself. This subsection should be dropped as the situation it is intended to deal with is met under the present practice of trustees passing their accounts.

Duties of Trustee on Expiration of Licences or Renewal—Section 9 (13) Material to Official Receiver

There is concern lest the provision, that pending the appointment of a trustee, following expiration of the license of a former trustee or his removal, the property, books, records and documents be forwarded to the Official Receiver may result in a volume of material being sent to Official Receivers which they have not facilities to receive and handle. As the present procedure, which has not any such requirement, has worked satisfactorily for many years, it is suggested that the feature mentioned be eliminated by deleting from Section 9 (13) the words "or pending the appointment of a trustee to the Official Receiver", where they appear in lines 8 and 9.

Time Limit for Preparation of Statements

The ten-day period allowed the trustee in Section 9 (13) for preparing and forwarding to the Superintendent a detailed financial statement is inadequate and should be increased to thirty days.

Debts Deemed to be Debts of Estate—Section 11 (4)

Section 11 (3) provides for creditors or inspectors by resolution limiting the amount of obligations that may be incurred, the advances that may be made or money that may be borrowed by the Trustee and the period of time during which the business of the bankrupt may be carried on by the trustee. Section 11 (4) should be restricted to liabilities incurred in accordance with Section 11 (3) so that the Trustee will not be free of liability where he has not complied with Section 11 (3).

Trustee May Apply to Court for Direction—Section 12 (2)

Section 12 (2) provides that where an estate has not been fully administered within three years after the bankruptcy the Trustee shall so report to the Court within six months thereafter and the Court shall make such order as it may see fit to expedite the administration. In order to complete the effectiveness of this Section, it should be amplified to provide that if the Trustee does not so report any Inspector or creditor may so report to the Court.

Redirection of Bankrupt's Mail—Section 13

Section 13 makes the redirection of a bankrupt's mail to the trustee a matter for a Court order. It is considered unnecessary to go to this expense when the same object could be achieved by service on the Postmaster of a certified copy of the trustee's appointment. The Section should be revised on the basis of service of the certified copy being effective for a three months' period and only requiring a court order in those cases where it is considered necessary that the bankrupt's mail should be redirected to the trustee for more than such three months' period.

Discharge of Trustee

Disposal of Unrealizable Property—Section 18 (1)

Section 18 (1) provides for return to the bankrupts, with the permission of Inspectors, of property remaining and not considered realizable at the time of the trustee's discharge. It is appreciated that the intention of this Section is merely to return to the bankrupt small items of property of unrealizable value at the time the estate is closed. However, in practice numerous instances are encountered in which property, not realizable at the time of the trustee's discharge, is realized later at a substantial value. Examples of this are found in mines, real estate equities and in stocks and shares. Where such a development occurs, creditors should benefit. Also, there is some apprehension that introduction of a principle enabling return of property to the bankrupt will lead to abuse. Moreover, it would seem that any such return would be impractical as, if returned assets did acquire value, they would become after-acquired assets which the trustee should take back under his control.

If Section 18 (1) stands in its present form, assets vested in the trustee by the bankruptcy are returned to the bankrupt without any procedure for revesting title back in the bankrupt. Consequently a procedure to revest the title of such assets in the bankrupt should be provided so that the bankrupt will be in a position to make title to them.

Effect of Discharge of Trustee—Section 19 (8)

Section 19 (8) discharges the trustee from all liability respecting administration of the property of the bankrupt or his conduct as trustee on receiving his discharge, which may be revoked only on proof that it was obtained by fraud or by suppression or concealment of any material fact. This would not protect creditors against innocent errors of the trustee. In order to give creditors protection against material errors of trustees the words "or for any other sufficient reason" should be added at the end of the subsection.

Petition for Receiving Order

"File" and "Present"—Section 21

The word "file" should be changed to "present" throughout Section 21 as the word "present" more accurately describes the proceedings under the section.

Staying Proceedings Where Facts Alleged in Petition are Denied—Section 21 (10)

The wording of Section 21 (10) purports to authorize the Bankruptcy Court to deal with denials of the truth of any of the facts alleged in the petition. This carries the Bankruptcy Court beyond its jurisdiction in respect to determination of the debt in whole or in part. The wording of the subsection should be revised to state the Bankruptcy Court's jurisdiction correctly. This can be done by deleting the words "the truth of the facts alleged in the petition" and replacing them by the words "that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him". In conformity with this change the word "issue" in the last line should be changed to "question" and the words "disputed facts" in the same line changed to "debt".

Costs of Petition—Section 23

The benefits of the action taken by the petitioning creditor accrue to all creditors. Therefore, when a receiving order is made the costs of the petitioning creditor should in all cases be a charge against the estate and not against the petitioning creditor. Section 23 should be revised in conformity with this view by striking out the last five words in ss. (1) and deleting ss. (2).

Interim Receiver

Powers of Interim Receiver—Section 24 (2)

Section 24 (2) does not confer on an Interim Receiver the powers to carry on the business of a bankrupt conferred on him by Section 5 (2) of the present Act. This power to carry on business should be carried forward, particularly to enable the Interim Receiver to deal with cases where the business of the bankrupt should be carried on but the bankrupt is unwilling to carry it on. It would be preferable to replace Section 24 (2) by the words in Section 5 (2) of the present Act, with the closing words of the latter section revised to read—

> or carry on the business of the debtor for such period and on such terms as the Court may deem advisable.

Proposals

Creditor May Assent or Dissent by Letter—Section 30

In conformity with the recommendation that a subsection (*g*), to provide for a form of voting letter, be added to Section 28 (1), the word "voting" should be inserted before the word "letter" in line two of Section 30.

Priority of Claims—Section 48 (4)

The intention of Section 34 (4) would be expressed more clearly if the words following "which" in line seven were revised to read "any person other than the trustee is to collect and distribute".

Part IV

General Provisions

Effect of Bankruptcy on Seizure of Property for Rent and Taxes—Section 42 (4)

To avoid any confusion concerning Section 42 (4), Effect of Bankruptcy on Seizure of Property for Rent and Taxes, operating apart from the trustee initiating action under it, the words "at the request of the trustee and" should be inserted after the word "shall" in line two.

Persons Claiming Property in Possession of Bankrupt Must File Proof of Claim to Recover Section 50 (1)

To cover property which, while not in the possession of the bankrupt, is in his charge, the words "charge or" should be inserted before "possession" in line two. This retains the wording used in the corresponding section of the present Act.

How Claim Disposed of—Section 50 (2)

Subsection 50 (2) deals with the property of others which comes into the hands of the trustee. There would be circumstances in which it would be important to the owner to recover possession of his property sooner than the thirty day period allowed the trustee to admit the claim and deliver up possession or give notice of disputing the claim. The Court should have power to shorten the thirty day period in urgent circumstances. To provide the Court with such power the words "or within such time as the Court may direct" should be inserted after the word "later" in line 4.

Part VI

Duties of Bankrupt

Questionnaire

The form of the questionnaire which bankrupts are required to fill out should be revised to cover the particulars called for under Section 117 and to be applicable to corporations as well as individuals.

Examinations—Section 117(j)

Section 117 (j) should be clarified by the addition of the words "by the Trustee" at the end to clearly indicate who may examine.

Examination of Bankrupts and Others

Examination of Bankrupt by Official Receiver—Section 120 (1)

Section 120 (1) would appear to be impractial in requiring the Official Receiver to submit his report to the Superintendent, to the Trustee and to the Court at the first examination of the bankrupt. Where further investigation is required, an extended examination will be held subsequently. Accordingly, the following words in lines 8, 9 and 10 of the subsection should be deleted:—

> and a report of any facts or circumtances that in his opinion required special onsideration or further explanation or investigation

Arrest of Bankrupts—Section 126 (1)

Officers of Court

In order to provide for the rules defining the officers, such as sheriff to whom the Court may address a warrant, the word "prescribed" should be inserted before the word "officer" in line 2 of Section 120 (1).

Discharge of Bankrupt

Power of Court to Annul Bankruptcy—Section 138 (1)

Section 138 (1) omits the reference to the case of a debtor who had paid his debts in full which appears in Section 151 of the present Act and in Section 138 (3) of the Bill. This provision should be included in Section 138 (1).

Powers of Registrar

Action by Registrar—Section 149 (1) (L)

Section 149 (1) (L) should be amplified to enable the Registrar to act where the Inspectors failed to act as well as were there are no Inspectors.

Legal Costs

Limitation of Costs—Section 155 (7)

In computing the 10% of gross receipts to determine the maximum amount of legal costs under Section 155 (7) amounts paid to secured creditors should not be deducted. Frequently, the handling of secured creditors' claims causes legal work and consequently this item should not be deducted in computing the maximum of legal fees. As legal costs are always controlled by legal tariffs, protection is afforded by this control over legal costs.

Public Judicial Notice—Section 166 (4)

Public Judicial Notice—Section 166 (4)

Should not Section 166 (4) contain words to the effect "and shall have effect as being enacted by this Act" which appeared in Section 161 (3) of the existing Act?

Pending Proceedings

In order to provide for Pending Proceedings, consideration should be given to the need for including in the Canadian legislation provisions along the lines of Section 168 (2) and (3) of the United Kingdom Act:—

> 168 (2). This Act shall apply to proceedings under the Bankruptcy Acts, 1883 to 1913, pending at the commencement of this Act, as if commenced under this Act.
>
> (3)) Until revoked or altered under the powers of this Act, any fees prescribed and any general rules and orders made under the Bankruptcy Acts, 1883 to 1913, and the Bankruptcy (Discharge and Closure) Act, 1887, which are in force at the commencement of this Act, shall continue in force, and shall have effect as if made under this Act.

Sections of the Present Act Not Carried Forward in Senate Bill N

The following sections of the present Act do not appear to have been specifically included in the provisions of Senate Bill N. While it may be that in some cases they are covered by the wording of new sections, or are to be provided for in the rules yet to be drafted, attention is drawn to them with notations as to the advisability of their retention.

Sections of Existing Act—Section 2 (v) Definition of Judge

In the interest of certainty concerning reference to judges it is adviseable to retain a section similar to Section 2 (v) of the present Act which states "the 'Judge' means a judge of the Court which is by this Act invested with original jurisdiction in bankruptcy".

Section 18 (3)—Compositions, Extensions or Schemes of Arrangements

It is desirable that the Act continue to contain a section along the lines of Section 18 (3) of the present Act under which the acceptance by a creditor of a composition, extension or scheme shall not release any person who under the Act

would not be released by an order of discharge if the debtor had been adjudged bankrupt. This completes Section 37 (2) of the Bill by providing againts release of the person as well as against release of the debt or liability as stated in Section 37 (2).

Section 19 (4)—Debts Between Composition and Subsequent Ajudication of Bankruptcy

Section 38 of the Bill does not appear to provide for proving debts arising between the approval of the composition and a subsequent adjudication of bankruptcy. For this reason the provisions of Section 19 (4) of the present Act, which so provides, should be retained. Query—is this covered by Section 85 of the Bill?

Section 20 (7)—Secret Arrangements

It is advisable to retain in the Act specific provision that no secret arrangement shall be made with any creditors or shareholders to induce them to participate in a proposal. This offence does not appear to be specifically covered in Section 163 and it is desirable that it be specifically covered in view of the technical position taken by Courts in criminal prosecutions.

Section 30—Registration of Receiving Orders and Assignments

The provisions of Section 30 of the existing Act which enable a creditor to apply for registration and other necessary steps in connection with a receiving order and assignment, when the trustee has failed to make the necessary applications, should be carried forward into the new Bill.

Section 62 (3)—Definition of "Settlement"

At the present time a definition of a "settlement", in connection with the sections relating to Settlements and Preferences, does not appear in the Bill. Section 62 (3) of the present Act which states that for the purpose of the Sections concerned settlement shall include any conveyance or transfer of property should, therefore, be incorporated in the Bill.

Section 141 (6)—Reading Examination of Bankrupt in Court

The Bill does not appear to make provision for the Court reading the examination of a bankrupt or assignor at the hearing of applications and putting further questions to him and receiving further evidence as it thinks fit. Accordingly, Section 141 (6) of the present Act which so provides should be incorporated in the Bill.

Section 161 (2)—Application of Bankruptcy Rules re *Corporations and The Winding Up Act*

It is necessary to retain legislative provision, as in Section 161 (2) of the existing Act, making the bankruptcy rules applicable to proceedings under the Winding Up Act. Wording, however, should be clarified.

Section 163 (1), (3), (4), (5) and (6)—Bankruptcy Proceedings

Section 163 (1), (3), (4), (5) and (6) of the existing Act confers on Courts certain routine powers which courts should continue to have power to exercise.

Section 168—Proceedings by and against Partners, One of Whom is Bankrupt

The provisions of Section 168 of the present Act should be retained to provide a legal basis for proceedings by or against a partnership in its firm name.

Section 169—Contracts with Bankrupts

It is desirable to keep the provisions of Section 169 of the present Act so that where one of joint contractors is bankrupt the other joint contractor or contractors may sue or be sued without joining the bankrupt in the proceedings.

Section 181—Affidavits

The Act should continue to contain a statement of the legal basis for affidavits along the line of present Section 181.

Section 184—Computation of Time

It is desirable to keep provisions governing computation of time along the line provided for in present Section 184.

Section 185—Service of Notices and Documents

Without carrying Section 185 of the existing Act forward, there would not be a legal basis for service of notices and documents by registered mail.

Section 190—Power of Court to Permit Consent or Approve

There should continue to be provisions as in existing Section 190 for the Court to act when bodies with alternate authority do not act within a reasonable time.

Advertising of Proceedings under Bankruptcy Act

Attention is directed to a study now being made by the Law Society of Upper Canada of the possibility of arranging for the publication in one block of different types of notices of legal proceedings and to suggest that consideration might be given to developing the time limits prescribed under the various Sections of the Bankruptcy Act so that it would be possible to publish weekly in one block all notices of proceedings under the Bankruptcy Act required to be published in the press. The block of bankruptcy notices could then become one section of the block of legal notices contemplated by the Law Society. If such a scheme can be worked out, the effectiveness of publication will be greater as legal notices will then not be scattered throughout the paper but will be found regularly concentrated in one place.

APPENDIX "E"

TORONTO, February 25, 1949.

SUBMISSION OF THE CANADIAN CREDIT MEN'S TRUST ASSOCIATION LIMITED REGARDING SENATE BILL N, AN ACT RESPECTING BANKRUPTCY

The Canadian Credit Men's Trust Association Limited is an Association composed of Wholesale Merchants, Manufacturers and Financial Institutions interested in maintaining sound conditions in Mercantile Credit. It was incorporated by Dominion Charter in 1910 and operates throughout Canada with a membership of approximately 1,700.

The previous drafts of this Bill have received careful consideration by Committees composed of Wholesale Credit Managers. Representations have been received by the Association's Head Office from Committees at Vancouver, Calgary, Regina, Winnipeg, Toronto, Montreal and Saint John. Many of the proposals submitted have already been adopted in the bill now before the Senate.

It is desired to express appreciation of the consideration given by Mr. Robert Forsyth, K.C., Superintendent of Bankruptcy, and to congratulate him upon a number of features which if enacted will, it is believed, improve and expedite the administration of bankrupt estates.

The new Provisions contained in Part 3 of the Bill relating to Proposals should prove most helpful to deserving debtors who through circumstances beyond their control find it necessary to apply to their creditors for relief, either in the form of a general extension of time, a composition settlement, or a reorganization of their affairs. At present, except in the case of incorporated companies, such debtors, generally speaking, require to obtain the consent of *all* creditors to any such plan. The Association approves these Provisions and expresses the hope that they will be enacted.

The change in principle whereby the Custodian is eliminated and a Trustee appointed in the first instance is approved. This it is believed will tend to reduce costs and expedite administration.

The clarification of the priorities of the various classes of creditors as set out in Section 95, if enacted, will be of inestimable benefit.

The inclusion of a plan for summary administration of small estates, as provided in Sections 114-15-16, is considered to be desirable.

The Toronto Board of Trade is presenting its views on the Bill in considerable detail. Officials of The Credit Men's Association were privileged to be included in the personnel of the Board's Committee and took part in its deliberations. The recommendations made by the Board are all in accordance with the views of the Association and are endorsed by it. To avoid unnecessary repetition the Association refrains from commenting on most items, but does desire the privilege of touching briefly upon a few points which have not been dealt with and of placing emphasis on certain other features of the Bill.

Section 6—Sub-section (1): Substitution of Trustee by Creditors

This provides in effect that if the creditors desire to substitute another Trustee for the one appointed by the Court or the Official Receiver a "special resolution" is necessary. The definition of "special resolution"—Section 2 (*t*)—reads at follows: " 'Special resolutions' means a resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present personally or by proxy at a meeting of creditors and voting on the

resolution". It is hoped that this change from the present requirement of a simple majority of votes will be adopted. Trafficking in estates by Trustees is to be deplored. It is not practised generally but there are a limited number of Trustees who from observation appear to make a business of piracy. There are of course occasions when, for good and sufficient reasons, creditors desire to appoint a Trustee other than the party who under the present procedure is appointed Custodian. If the reasons are sufficiently strong it is probable that the majority required by a "special resolution" will be available to remove the Trustee and appoint another, but the necessity for a "special resolution" will tend to discourage those who for no good reason, except to secure business for themselves, attempt to take the business from those to whom it has been entrusted.

Section 8—Sub-sections (14) and (15): Duties of the Trustee regarding Returns: Trustee not required to make Returns

This is a new Provision and it is urged that it be enacted in justice to wage earner creditors, others ranking in priority to the Crown, and to ordinary creditors who do not have any preference or privilege in respect of their claims. Under the present procedure the Trustee is required to file all sorts of Returns which should have been filed by the bankrupt. This applies even if there is no possibility of funds being available to make any payment on Crown claims. The expense of making such Returns falls on the creditors mentioned. If the net realization is insufficient to pay wage earners or other prior creditors in full they suffer. In other cases dividends available for ordinary creditors are reduced. Trustees should only be required to make records available to representatives of Taxing Authorities to enable them to establish their claims. Unless these Sub-sections are enacted, and the Trustee is still required to file Returns, it is suggested that as an alternative there be a provision authorizing Trustees to deduct from amounts payable on claims established by the Returns the cost of preparing them.

Section 9—Sub-section (1): Trustees shall insure property

It is urged that in view of the many forms of insurance which may be considered as applicable to estate assets this Sub-section should definitely be clarified by restricting the requirement to Fire Insurance, except upon instructions of the Inspectors when appointed. This would seem to be most important for the protection of the Trustee.

Section 21—Sub-section (1) (a): Conditions under which Creditors may petition for a Receiving Order

At present if a debtor has committed an act of bankruptcy creditors having a claim of $500 or over may file a petition to have the debtor adjudged bankrupt. The Bill steps up this amount to $1,000. Section 26—Sub-section (1) of the Bill provides that an "insolvent person" may make an involuntary assignment. The definition of "insolvent person"—Section 2 (*j*) is one who among other things has total liabilities of not less than $1,000. The present Act sets the figure at $500. It seems reasonable that unless a debtor owes at least $1,000 all told he should not be permitted to make use of The Bankruptcy Act, but it does not seem appropriate that a single creditor must have a *claim* of $1,000 before he can petition his debtor into bankruptcy. The $500 minimum for the filing of a petition has applied since The Bankruptcy Act came into force. In latter years terms of sale have been shortened and liabilities to trade creditors do not accumulate to the same extent as formerly, so there does not seem to be any good reason for increasing the amount on which a petition may be filed. Creditors are usually very loth to file petitions until every other recourse has failed, and they do so only for the purpose of bringing about an equitable distribution of the debtor's assets. Debtors who are honestly trying to pay their debts and are

making any progress do not have anything to fear in this connection. It is, however, submitted that a creditor should not be deprived of the protection which The Bankruptcy Act affords him just because his debtor owes him less than $1,000. $500 seems to be a reasonable minimum and it is urged that this figure be retained.

Section 82—Sub-section (13): Duty of Inspectors

This Sub-section among other things requires the Inspectors to verify the Bank balance and audit the Trustee's accounts. It is agreed that every reasonable precaution should be taken to safeguard the interests of creditors, but it hardly seems necessary to impose upon the Inspectors the duties of auditors. Frequently Inspectors are appointed who do not reside in the locality of the Trustee. Even local Inspectors would be very loth to devote the time necessary to work of this nature, and it is felt that any such requirement will almost certainly be ignored in the majority of cases. Trustees are bonded in each estate in addition to the general bond which is held by the Superintendent. It is suggested that this particular feature be eliminated from Sub-section (13).

Section 82—Sub-section (15): Inspectors Fees

It is noted that the Bill provides a slight increase in the fees to be paid Inspectors. This is approved, but it is felt that the fee of $3 per meeting in estates realizing less than $10,000 is inadequate and should be raised to $5. Even this would not be adequate if Inspectors were called upon to perform the duties imposed by Sub-section (13) already discussed. A large percentage of estates do not realize as such as $10,000.

Section 95—Sub-section (1) (j): Scheme of Distribution: Claims of the Crown

This Sub-section provides that all claims of the Crown rank *pari passu* after all other preferred claims but before the claims of ordinary creditors. There can be little quarrel with this, but it is submitted that Crown claims arising more than two years prior to the bankruptcy should not be admissible. This provision applies to Municipal tax claims in Sub-section (1) (e). In some estates Crown claims extend back for years, and when after long delay the amounts are determined, payment of them takes all the remaining money in the estate. This means that trade creditors and others in the ordinary class get nothing. It is perhaps overlooked that it is the fact of trade creditors having supplied goods on credit which has made it possible for the debtor to carry on business and incur debt for taxes. This means that the Crown eventually receives tax money which would otherwise not exist. If the Crown claims were void beyond the two year period in the event of bankruptcy it is reasonable to suppose that greater efforts would be made to keep collections more nearly up to date.

Section 113: Unclaimed dividends

At present Trustees are allowed six months after distribution of the proceeds of the estate to forward to the Receiver General the proceeds of cheques which have not been cleared and any other unclaimed funds—Section 82 of the Act. Section 113 of the Bill requires that all such funds be sent to the Receiver General before the Trustee proceeds to his discharge. Sub-section (5) (c) of Section III of the Bill requires the setting of the date of Trustee's application for discharge when he issues the Final Statement and Notice of Dividend. It would hardly be practicable or desirable to set a date for discharge several months ahead. In practice it is found frequently that creditors do not cash their cheques for some time, and this of course applies in respect to creditors in other countries. Accordingly under the procedure proposed in Section 113 it is probable that there will be many outstanding cheques at the time of the discharge application, on which the Trustee will be required to stop payment and to forward the funds to the Receiver General. This will be the cause of annoyance to creditors and unnecessary trouble to the Trustee and the Department of the Receiver General.

The time at present allowed for clearing dividend cheques, six months, may be too long, but surely two or three months might be permitted under the same conditions as now apply. As previously mentioned, Trustees are amply bonded for the faithful performance of their duties.

Sections 127 and 128: Discharge of Bankrupt

These Sections establish a new principle which it is submitted should receive careful consideration. The provisions of Section 128 requiring the Trustee to prepare and file with the Court a report on the affairs of the bankrupt before he applies for his discharge is certainly a step in the right direction. Under the present procedure the report is not prepared until the bankrupt makes an application for his discharge. This may be years after the estate is closed and the Trustee may not be available, or a good deal may have been forgotten. It is, however, very questionable whether an application for discharge should in all cases other than corporations be made within twelve months after the bankruptcy. Many estates cannot be brought to a finality within that period, for various causes, such as litigation, disposal of fixed assets, collection of receivables, determination of Crown claims, etc. When the Trustee makes his report he should be in a position to report fully on the affairs of the bankrupt and on his conduct throughout the administration. This is in the interest of the bankrupt himself.

Another point which is worthy of consideration is that apart from the excepted cases referred to in Sub-sections (3) and (4) of Section 127, it would appear that all costs incurred in procuring a discharge for the debtor are to be paid out of the funds of the estate. This means that creditors pay. It may be ordinary trade creditors, the Crown, wage earners, or others, depending upon how far the funds of the estate will go in settling liabilities. It may even come out of the pocket of the Trustee, as some estates do not produce enough revenue after payment of secured claims to take care of the costs of administration. The duty of the Trustee, as described in these Sections, seems to be obligatory whether funds are available or not, and there is no provision for the payment of any special fee for their performance such as he now receives from the bankrupt upon an application made by him. It is submitted that if the principle of Sections 127 and 128 is adopted it should include a provision whereby the bankrupt will be required to pay the costs and a reasonable fee, subject to taxation.

Question arises as to what the procedure will be in respect to bankrupts whose estates have been administered prior to the revised Act coming into force and who have not made application for discharge.

Section 142: Assignment of Judges to Bankruptcy work by Chief Justice:

There does not appear to be any material change from the present procedure, which works in a very satisfactory manner in those provinces where Judges are assigned specifically to bankruptcy work. In certain provinces, however, this has not been done and the experience is that this is a serious disadvantage. Bankruptcy administration is specialized business and it is a great advantage if Court Cases can be brought before a Judge who through continuous experience becomes thoroughly familiar with it. Creditors and others in certain quarters feel rather strongly on the subject and it is hoped that it may be found desirable to bring about a change by a slight amendment to this Section or through other means.

Section 157: Failure of Bankrupt to disclose the fact of being undischarged

It is submitted that the penalty of imprisonment without the option of a fine is unnecessarily harsh and should be modified.

Respectfully submitted,

THE CANADIAN CREDIT MEN'S TRUST ASSOCIATION LIMITED.
137 Wellington Street W., Toronto

1949

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill N, intituled:
"An Act respecting Bankruptcy"

No. 2

WEDNESDAY, MARCH 16, 1949
THURSDAY, MARCH 17, 1949

CHAIRMAN

The Honourable Elie Beauregard, K.C.

WITNESSES

Mr. J. W. Pickup, K.C., the Canadian Bankers' Association.
Mr. T. Beausoleil, Secretary, Credit Bureau of Montreal.
Mr. R. W. Harris, Director of Public Relations, Household Finance Corporation.

APPENDICES

F. Additional Observations by the Honourable Mr. Justice Urquhart, Supreme Court of Ontario.
G. Memorandum of Recommendations of Committee on Bankruptcy Act Revision of the Canadian Bar Association.
H. Memorandum by Mr. J. W. Pickup, K.C., on behalf of the Canadian Bankers' Association.
I. Memorandum by Mr. T. Beausoleil, Secretary, Credit Bureau of Montreal.
J. Memorandum of Recommendations of the Legislation Committee of the Quebec Division of the Canadian Credit Men's Trust Association Limited.
K. Brief by Mr. R. Forsyth, Superintendent of Bankruptcy.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1949

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, 17th February, 1949.

Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (N), intituled: "An Act respecting Bankruptcy", be now read a second time.

After debate,
The said Bill was read the second time, and—
Referred to the Standing Committee on Banking and Commerce.

L. C. MOYER,
Clerk of the Senate.

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Elie Beauregard, K.C., Chairman.

The Honourable Senators Aseltine, Aylesworth, Sir Allen, Ballantyne, Beaubien, Beauregard, Buchanan, Burchill, Campbell, Copp, Crerar, Daigle, David, Dessureault, Duff, Euler, Fallis, Farris, Gershaw, Gouin, Haig. Hardy, Hayden, Horner, Howard, Hugessen, Jones, Kinley, Lambert, Leger, Mackenzie, Marcotte, McGuire, McKeen, McLean, Moraud, Murdock, Nicol, Paterson, Quinn, Raymond, Robertson, Sinclair, Vien and Wilson.—44.

MINUTES OF PROCEEDINGS

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators: Beauregard—Chairman, Aseltine, Buchanan, Burchill, Copp, Crerar, Fallis, Gouin, Haig, Hugessen, Lambert, Leger, Mackenzie, McGuire, McKeen, Moraud, Nicol, Paterson, Robertson, Sinclair and Wilson.—21.

In attendance: M. J. F. MacNeill, Law Clerk and Parliamentary Counsel.

The official reporters of the Senate.

The consideration of Bill N, "An Act respecting Bankruptcy", was resumed.

A letter dated March 14, 1949, from the Honourable Mr. Justice Urquhart, Supreme Court of Ontario, was read by the Chairman.

Ordered that the memorandum attached to the said letter be printed in the record. (See Appendix "F").

A letter dated March 15, 1949, from Messrs. Clark, Robertson and Company, barristers, Ottawa, representing the Committee on Bankruptcy Act Revision of the Canadian Bar Association, was read by the Chairman.

Ordered that the memorandum attached to the said letter be printed in the record. (See Appendix "G".)

Mr. J. W. Pickup, K.C., Toronto, Ontario, submitted a brief and was heard on behalf of the Canadian Bankers' Association. (See Appendix "H".)

Mr. T. Beausoleil, Secretary, Credit Bureau of Montreal, submitted a brief and was heard on behalf of his organization. (See Appendix "I".)

Mr. R. W. Harris, Director of Public Relations, Household Finance Corporation, was heard with respect to the brief submitted by the Credit Bureau of Montreal.

A memorandum of recommendations of the Legislation Committee of the Quebec Division of the Canadian Credit Men's Trust Association Limited, was ordered to be printed in the record. (See Appendix "J".)

Further consideration of the Bill was postponed.

At 12.45 p.m. the Committee adjourned to the call of the Chairman.

Attest.

JOHN A. HINDS,
Clerk of the Committee.

THURSDAY, March 17, 1949.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 a.m.

Present: The Honourable Senators: Beauregard—Chairman, Aseltine, Buchanan, Copp, Crerar, Dessureault, Gershaw, Haig, Horner, Hugessen, Lambert, Leger, Mackenzie, McGuire, McKeen, Moraud, Nicol, Vien and Wilson.—20.

In attendance: Mr. J. F. MacNeill, Law Clerk and Parliamentary Counsel.

The consideration of Bill N, "An Act respecting Bankruptcy", was resumed.

Resolved that the Honourable Senators Aseltine, Beauregard, Campbell, Fogo, Gouin, Hayden, Hugessen, Leger and Moraud be appointed a Sub-Committee to consider and report back to the Committee on the evidence adduced and the briefs filed, with respect to the provisions of the Bill.

A brief submitted by Mr. R. Forsyth, Superintendent of Bankruptcy, was considered by the Committee, and was ordered to be printed in the record. (See Appendix "K").

At 11.30 a.m. the Committee adjourned to the call of the Chairman.

Attest.

JOHN A. HINDS,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Wednesday, March 16, 1949.

The Standing Committee on Banking and Commerce, to whom was referred Bill N, an Act respecting Bankruptcy, met this day at 10.30 a.m.

Hon. Mr. BEAUREGARD in the Chair.

The CHAIRMAN: Will the committee please come to order? At my first sitting, may I express my thanks to the honourable senator who so ably presided over this committee while I was away (Hon. Mr. Hugessen).

With regard to the Bankruptcy Bill, I have a letter before me from Honourable Justice Urquhart who appeared before this committee last week. He has addressed his letter to the Chief Clerk of the committee stating that it is his desire to add certain suggestions to the memorandum he submitted on Thursday last. I have not time to read the short memorandum now. It seems to deal with Sections 83 and 95. Is it the pleasure of the committee to have the observations of Mr. Justice Urquhart printed so as to complete his record? (See Appendix "F")

Hon. Mr. MORAUD: I so move.

Some Hon. SENATORS: Carried.

The CHAIRMAN: I also have a letter before me from Clark, Robertson, Macdonald and Connolly of Ottawa. The letter reads as follows:

> The Canadian Bar Association appointed a Committee to deal with the matter of the Bankruptcy Act revision.
>
> At the request of Mr. W. J. Beaton, K.C., of Toronto, a member of that Committee, we are filing with you herewith a copy of a memorandum prepared by the Committee. A copy has already been sent to the Superintendent of Bankruptcy.

These gentlemen do not say whether they will appear before our committee, but they have set forth quite a substantial brief. Is it the pleasure of the committee to have this brief printed? (See Appendix "G")

Hon. Mr. MORAUD: Mr. Chairman, I, like you, was absent from the last meeting of this committee. I would like to know what we are going to do with all these suggestions. Will there be a sub-committee appointed to study these suggestions?

The CHAIRMAN: After we finish hearing all our witnesses and have filed our briefs in our records, I would suggest that our assistants work on the briefs and recommendations and bring each observation under one heading so that when we come to any specific article we will have the observations of everybody on that particular article.

Hon. Mr. MORAUD: What about appointing, as we have done in the past for other bills of this nature, a sub-committee of lawyers to work with our legal adviser?

The CHAIRMAN: I agree with the Honourable Senator Moraud that this is the right thing to do, but I suppose we should decide that later on. I do not think we are in a hurry to decide that.

Hon. Mr. HAIG: We would save a lot of time because unless you are an expert in bankruptcy matters the whole bill is just like Chinese.

The CHAIRMAN: We are not examining the bill now clause by clause. We are just hearing witnesses on the bill. When we are through with the witnesses we could have all this evidence digested in some form.

Hon. Mr. MORAUD: If you wait until the last minute to appoint this committee it will be composed of people who are rather busy otherwise and who may not have enough time to suggest proper amendments.

The CHAIRMAN: If it is the pleasure of the committee to proceed at once with the appointment of a committee I am ready for it, but I should not like to discharge the other members who will not be members of the sub-committee. I want to keep them around the table.

Hon. Mr. GOUIN: I think it is a good suggestion to appoint a sub-committee in the near future because they will be here at all our meetings and will study the suggestions as they are put forth.

The CHAIRMAN: You may think it over and at the end of this sitting you may make a suggestion to this effect.

Hon. Mr. MORAUD: I think we should think the matter over and make our suggestions for members of the sub-committee at the next sitting.

The CHAIRMAN: As to the memorandum submitted by the Bar Association, I suppose we should have it printed. Is it the pleasure of the committee to have this done?

Some Hon. SENATORS: Carried.

Hon. Mr. MORAUD: Is there anybody here to represent this Bar Association?

The CHAIRMAN: No.

Hon. Mr. MORAUD: I also understand that the Quebec Bar wants to make a representation but they are not ready to do so yet.

Hon. Mr. MCGUIRE: Mr. Pickup is here from Toronto.

Hon. Mr. HAIG: Yes, but he is representing the Bankers' Association.

The CHAIRMAN: Honourable senators, we have before us at this time Mr. J. W. Pickup, K.C., from the Canadian Bankers' Association. Is it your pleasure to hear him now?

Hon. Mr. HAIG: Might I just interrupt to suggest that we have a committee of five with Senator Robertson—

Hon. Mr. MORAUD: And yourself?

Hon. Mr. HAIG: All right, —to talk over the matter of choosing five names and to make a suggestion to this committee. The committee, of course, will not be bound by our suggestion. For instance, I should like Senator Campbell and Senator Hayden to be on this committee. I should also like Senator Leger to be on the committee. I think we should talk this over so as not to make any mistakes.

Hon. Mr. MCKEEN: I move that the two leaders consult and bring a recommendation of five members to the next committee.

Some Hon. SENATORS: Carried.

Mr. J. W. PICKUP, K.C., The Canadian Bankers' Association: Honourable senators, it is a privilege and a pleasure for me to be heard by you this morning on some representations I want to make to you on behalf of The Canadian Bankers' Association.

I propose to deal with matters of substantive law which I feel might be affected by certain sections of this bill. The bill is well drawn, if I may say so, particularly from an administrative standpoint, but in drawing a compli-

cated statute it is sometimes very easy, particularly from the point of view of administration, to tread on questions of substantive law and substantive rights which no one intended to disturb.

I have laid before the members of the committee a memorandum (see Appendix "H") which is intended to give you the numbers of the various sections that I propose to discuss and, in very short form, the objection which I see to each of these sections from the standpoint of credit and of banking; and in each case I have submitted a recommendation as to means of overcoming the objection which I make, if the committee agrees with the objection.

Hon. Mr. CRERAR: How many sections are discussed in your memorandum?

Mr. PICKUP: I think about twelve sections.

Hon. Mr. CRERAR: How many sections did the Law Society object to?

Hon. Mr. GOUIN: Mr. Pickup's memorandum refers to about twelve different subjects, but under the heading of some of these subjects a good many sections are referred to.

Mr. PICKUP: Yes. I was just making a guess when I said the memorandum discussed twelve sections.

The CHAIRMAN: The Law Society commented upon some twenty sections.

Hon. Mr. CRERAR: We have received memoranda from the Dominion Association of Chartered Accountants, the Canadian Manufacturers' Association, the Canadian Bankers' Association and possibly others, and the problem is to sort out and weigh the suggestions made in these various memoranda. As an ordinary layman it strikes me that perhaps it would be better for the committee to go on with the bill, having the representatives of these associations present while we do that, and then hear their discussions afterwards.

The CHAIRMAN: I think that we should hear Mr. Pickup today.

Hon. Mr. MORAUD: It seems to me that it would be practically impossible for a large committee like this to study the various proposed amendments. That is why I suggested that a subcommittee should be appointed to study each proposed amendment and bring in a report recommending those that it thinks should be incorporated in the bill.

Hon. Mr. HAIG: It is a complicated bill and it would take two or three weeks to deal with it in the way that Senator Crerar suggests.

The CHAIRMAN: If the committee agrees, I will ask Mr. Pickup to proceed.

Mr. PICKUP: I want to discuss first sections 64 and 65. They were referred to by Mr. Justice Urquhart. His recommendation, as well as that, I think, of the Canadian Manufacturers' Association, is that the present sections 64 and 65 should be retained in place of the proposed new sections 64 and 65. I concur in that, but I would like to state my reasons briefly, referring only to what I regard as the main difficulty in the proposed new section 64.

These are difficult sections. They deal with the complicated question of fraudulent preference of one creditor over another. As Mr. Justice Urquhart pointed out, the present sections have been in the Canadian Act for thirty years and in the English Act for nearly a century, and they are now in the best form that legal opinion has been able to devise. There is a wealth of judicial decisions upon these sections as they are, both here and in England, and on a complicated question of law such as this one hesitates very much to make a change, the effect of which might be very serious on credit.

I would like to call attention to one point in section 64. It provides:

> Every transaction, whether or not entered into voluntarily or under pressure, by an insolvent person who becomes bankrupt within three months thereafter and resulting in any person or any creditor or any per-

son in trust for such creditor or any surety or guarantor for the debt due to such creditor obtaining a preference, advantage or benefit over the creditors or any of them, is void as against the trustee.

What I wish particularly to stress is that the effect of the section is that every transaction within three months prior to the bankruptcy, if that transaction has the effect of giving one creditor an advantage over another, is void, regardless of the good faith of the parties, and regardless of the fact that full valuable consideration may have been given.

Let us look at it from the standpoint of the banks. The committee realizes that the business of a bank is to lend money, on security. Now the time when a person engaged in business most needs an advance from a bank is probably when he is being slightly pressed by creditors, and if he can get an advance at that time a bankruptcy may be prevented. Yet this proposed section would make that transaction void if the security is taken within three months of the bankruptcy. The effect of that, in my humble submission, would be that banks could not make a current advance to anyone without first making sure that the borrower is not going to go into bankruptcy within three months. That would have a serious effect upon credit. It would prevent a debtor obtaining an advance at a time when he most needs it, and the inevitable result, I think, would be that many business men who by means of a bank loan could save themselves from bankruptcy, would, because of being refused a bank loan, go into bankruptcy. That is not the effect of the present act, and I do not think it is the intention of parliament to put any borrower or lender in that position. I therefore suggest to the committee that the proposed section 64 be dropped and that the present section 64 of the Act be retained.

Complementary to that is section 65. That section was designed to ameliorate the rigorous effect of section 64. It is plainly intended to save some transactions which are entered into in good faith and for value. But if you look at the wording of the section you will see that it really does not have that effect. It says: "Except as provided in sections sixty to sixty-four, nothing in this Act shall be construed to invalidate, in the event of bankruptcy, any settlement", etc. It only purports to protect something which otherwise would be invalidated by the act. The sections of the act which purport to invalidate a transaction by way of fraudulent preference on any other transaction are sections 60 to 64, which are excluded from the beneficial action of section 65. Another matter which prevents the section from having any beneficial effect is that it is with respect only to transactions where a person has no reason to suspect insolvency that the section has any benefit at all. It is difficult to conceive a situation where a bank or lender would, within three months of bankrupty, not have reason to suspect that there might be an insolvency. That should not be the test where a bank or other lender is making a current advance, and when it is being made in good faith.

My submission, therefore, is that section 65 in its proposed form will not help the adverse effect of section 64. I would suggest that the remedy is to restore the present section 65, as it is designed to work in with the present section 64, and to take out of section 64 valid transactions made in good faith and for valuable consideration, which are specifically referred to in section 65.

When I ask that you restore section 65, do not overlook the fact that subsection 2 of the present section is all right and should stand. It is that provision which relates to the law of set-off, which is in the present act in another section. My suggestion is that you drop subsection 1 of section 65.

Hon. Mr. GOUIN: You are referring, Mr. Pickup, to what is presently in section 58, the second paragraph.

Mr. PICKUP: Yes, section 58 in the present act, relating to the law of set-off, and now is a part of section 65 of the bill. I did not wish to have anything I have said against section 65 relating to preference or unlawful transactions to affect in any way the incorporation of the provision of the present section 58.

There is one respect in which I suggest there should be an amendment to the present section 65, if it is retained as it is at the present time. You will observe that paragraph (*b*) of section 65 (1) protects any payment or delivery to the bankrupt. When you read on you see that the section is referring to a payment made to the bankrupt in good faith and for value. In practice it has been found that that does not cover the case of a cheque paid by a bank, issued by the bankrupt. It should. For the purposes of the record I shall give you the two main authorities on that section: Duncan and Reilley, "Bankruptcy in Canada", Second Edition, p. 452, and "Patchett's Law of Banking", Fifth Edition, p. 55. My suggestion for taking care of that point is a very simple one.

Right Hon. Mr. MACKENZIE: That is quite clear. Your recommendation is that the present section 65 be retained and that subsection 2 of the proposed amendment to 65 meets with your approval. Is that correct?

Mr. PICKUP: Yes, sir.

Hon. Mr. GOUIN: But in addition to that you suggest—

Mr. PICKUP: In addition to that I ask that you amend the present section 65....

Hon. Mr. GOUIN: That is as it would be restored in the bill?

Mr. PICKUP: Yes. I am referring to the present 65 as the present law: I probably should make that clear.

The CHAIRMAN: You want to delete section 65, but you wish to amend—

Mr. PICKUP: Yes, to be amended by adding the words "on the order of the bankrupt." The paragraph would then read "any payment or delivery to or on the order of the bankrupt." When the bank pays the customer's cheque that is not in law a payment to the bankrupt; it is a payment by the bank to someone else on the order of the bankrupt. True, it is a technical position, but it is the law, and I suggest that the change be made. That is what I have to say with regard to sections 64 and 65.

Hon. Mr. GOUIN: Mr. Chairman, with reference to section 64 as it now reads, in the fourth line these words appear, "with a view of . . . " That has to do with a view of giving such a creditor a preference. If Mr. Pickup will refer to the comments in the bill on the page opposite 47, he will see that the law officers in charge of the draft refer to a confusion which would result in our jurisprudence from the words just mentioned. I would be inclined to retain sections 64 and 65 as they appear in our present Bankruptcy Act, but at the same time I think we should take into consideration the remarks, which apparentry are well founded, that "with a view of giving such creditor a preference", are words which are a source of confusion. Is there any suggestion which could be made to meet that situation?

Mr. PICKUP: Senator Gouin, I feel that any other language one might substitute in the place of that presently used would probably be worse. I agree that those words have caused a good deal of trouble over the years. They are the words in the present Act, and we must infer from them the idea that someone has an intention of or the purpose of creating a preference of one creditor over another. Those words "with a view of" are about as good as any I can suggest, although I recognize that, no matter what words are put in, the courts will have difficulty in determining whether the transaction is or is not valid. I do think it is impossible to get around the difficulty.

May I say just a word about concurrent intent? Mr. Justice Urquhart mentioned the point, but he did not stress it. He would prefer to see the intent

not concurrent, that is that it would not be necessary to show any intent to create a preference on the part of the lender. With the greatest respect I must disagree with him there because having in view to do that should be the view of the lender. May I illustrate? A man in business comes into a bank and requests a loan; it is a current advance that is to be made. The bank makes the advance in good faith and has not the slightest thought that the man is going to use the money borrowed for improper purposes. Yet there might be on the part of the borrower an intention or he may have a view of, as the statute puts it, preferring some creditor over another. Now the bank or lender should not be penalized in that case. As it is, a presumption arises from the fact that it is made within a short time prior to the bankruptcy, but the lender has always been in the position that he could establish his good faith regardless of what may have been in the mind of the borrower. Subject to some differences of opinion, that have been expressed in one court or another, where the lender was acting in good faith, paid the money, gave valuable consideration for the security he got he was protected by the present section 65. I do suggest that you do not attempt to change those words "with a view to" for the simple reason that I cannot devise, and I do not know that anybody has yet been able to devise, words that would better express the intention which the section intends to effect.

Hon. Mr. NICOL: Are you speaking on behalf of the banks only or on behalf of the Trusts who lend money to a bankrupt?

Mr. PICKUP: I am here solely for The Canadian Bankers' Association, but I cannot help but cover also the matter of credit generally. You see, if a bank cannot make a loan under a given set of circumstances, the borrower is affected and credit is affected.

Hon. Mr. NICOL: But the banks cannot take mortgages.

Mr. PICKUP: No.

Hon. Mr. NICOL: And the Trusts can.

Mr. PICKUP: Yes.

Hon. Mr. NICOL: Now, if a Trust in good faith lends money to a bankrupt, the man becoming bankrupt in a few months. but the Trust has taken all possible precautions, it believes the man is solvent and it lends the money, it has no preference, according to the article you are now commenting on.

Mr. PICKUP: If you are dealing with a mortgage on land or a security on land, there is a section in this bill that protects that. I think it is section 44.

Hon. Mr. ASELTINE: That would be for a personal advance, not on security.

Mr. PICKUP: Section 44 protects. It says: "a deed, conveyance, tranfer, agreement for sale, mortgage, charge or hypothec made to or in favour of a bona fide purchaser or mortgagee for adequate valuable consideration and covering any real or immovable property," and so on, is valid and effective. But so far as banks are concerned, banks of course cannot lend money on the security of land, and therefore get no protection whatever from that section.

Right Hon. Mr. MACKENZIE: If you refer to page 47, in the marginal note across the page it states: "The result has been that there has been much confusion of thought and no unanimity not only as to the interpretation of the section but also as to the interrelating effect with section 65." Are you inclined to disagree with that comment?

Mr. PICKUP: No, I am not, Senator Mackenzie. There is a lack of unanimity, and it is a very difficult and complicated branch of law for any court to deal with. But what I am suggesting is that it is difficult to substitute any better language than we have used over all these years, and if you try to substitute something else you are going to have more difficulty, because as has been pointed out, you will then have new language substituted which has not

been subject to interpretation by the courts, and no one will quite know until it is tried out what effect it is going to have. You will still have difficulty so long as you are attempting to do two things. One is to make invalid a transaction which should not be allowed to stand; on the other hand trying to protect a transaction which should be allowed to stand. Just to draw that line is a difficult thing to do. It is my submission to you that I know of no better language to retain than the language which we have notwithstanding that the courts have found it difficult to interpret.

Hon. Mr. GOUIN: To sum up, it seems that the act as it now stands is intended to protect transactions made in good faith. It seems that the amendment proposed in this bill has the effect of rendering void transactions even made in good faith, and in reality it would be against the interest of the people who are in business and who need money to be able to carry on, and with the new section, as it was stated by Mr. Pickup, the man would be bankrupt and that would be the end of everything.

Mr. PICKUP: Yes. I am suggesting and submitting that if you put in the new section 64 you are going to cause bankruptcies instead of preventing them. That would be the net result.

May I leave sections 64 and 65 and deal with one matter that I do regard as very important, and that is, that section 189 of the present act has been omitted. I will read it: It is right at the end of the bill.

Hon. Mr. GOUIN: On what page?

Mr. PICKUP: It is opposite page 102 of the bill. It is the section which states:

> Nothing in the provisions of this act shall interfere with, or restrict the rights and privileges conferred on banks and banking corporations by the Bank Act.

Now, as this committee knows, the Bank Act is reviewed every ten years; and it has been your policy, and I think the policy of the House of Commons, to keep the Bank Act rather constant for ten year periods and thereby not to disturb credit; and one should not indirectly do that by amendments to a bankruptcy act or other administrative act, if the effect thereof be to take away rights or privileges which have been conferred on the banks by the Bank Act. Now, up to this time that section has been in the Bankruptcy Act in Canada, and the Bankruptcy Act being an administrative Act, and the Bank Act being more of what I would refer to as a substantive act, relating to credit and security, the provisions of the substantive act should not be overridden or annulled by a section which appears in a procedural act such as that of bankruptcy. In other words, the Bankruptcy Act should seize upon the situation as it exists at the time of the bankruptcy and should not take away any privilege or security or right which the bank has at that moment. In connection with that I want to discuss just two questions.

Right Hon. Mr. MACKENZIE: I would like to get more information on this before you leave it. What powers under the Bank Act are affected by the repeal mentioned on page 102?

Mr. PICKUP: The main one that I want to discuss, and I want to come to it under sections 48 and 50, is the effect it is going to have upon what we call "section 88 security". This committee knows and everyone knows that it is in practice the security that is most relied upon, and is the basis of a great deal of borrowing from banks, and it is a security that is created by the Bank Act; it is a new security that never existed as common law, but carries a certain property right and a charge on the subject-matter of the charge from its natural state through its changing forms until it gets into the manufactured state.

Right Hon. Mr. MACKENZIE: Does it interfere in any way with the provisions relating to the chartered banks and the Bank of Canada?

Mr. PICKUP: It is important as far as that security is concerned, and probably other securities you may think of, that the right given by the Bank Act to take possession of that security on default be not interfered with, because if you do interfere with that right to realize that security you are going to do one of two things: you are either going to compel the bank to devalue it for the purposes of loaning, because of the risk, which is one of delay entirely—because of that risk the bank must devalue the security—or you are going to put the bank in a position that if it is going to realize on that security it will have to take possession of the security before the bankruptcy, because if it takes possession of the security before the bankruptcy, as you will see, sections 48 and 50 will not come into play. The objection to section 48 is solely delay, and I do not think it was ever intended that section 48 should apply to a security of this kind. Generally 48 is all right. It reads:

> Where property of a bankrupt is held as a pledge, pawn, or other security, the trustee may give notice in writing of his intention to inspect the property, and the person so notified is not thereafter entitled to realize his security until he has given the trustee a reasonable opportunity of inspecting the property and of exercising his right of redemption.

Then you will find a later section in this Bankruptcy Bill that imposes a very heavy penalty if there is any possession taken within a period of thirty days. Now, while that is merely a right to have reasonable inspection, and a reasonable time for redemption, and while it is a good section to apply generally, it is a section that should not apply to section 88 security, because it takes away the right given by the Bank Act to take possession on default, and if you do that you are going to seriously affect the security. Look at what the delay might mean. I don't know how a trustee is going to inspect that property. It is not to inspect the security, which would be simply a matter for the trustee to go to the bank and see that the requisite notice had been given by the Bank Act, look at the security which is provided by special forms in the Bank Act, and see that it is given. That would not help him one bit unless he could inspect the property himself. First, he has got to follow it through from the form in which it was when the security was given; and who is going to say what that reasonable length of time is I do not know, and the court will have difficulty in saying. But whatever the length of time is, it is going to delay the bank and depreciate the value of the security.

Right Hon. Mr. MACKENZIE: How would the terms of this proposed act affect the application of the chartered banks for the renewal of the charter when the proper time comes?

Mr. PICKUP: Not at all that I can see. Now take the delay that I am referring to: and section 189 preserved that. Section 48 was in the bill as it was, and I have no objection to it, because the bill as it was had section 189, in which there has been preserved the right of the bank at the date of the bankruptcy.

Hon. Mr. BURCHILL: If the bank has security under section 88, as I understand it, with section 189 taken out, will that security under section 88 have to pass through the hands of the trustee?

Mr. PICKUP: No. These sections provide that after a certain period of delay the bank can realize. For instance, the section I now refer to says you cannot do anything until the trustee has had a reasonable time to inspect the property covered by the security. Then the next one you come to, section 50, is the section which goes on to say what the bank must do in such circumstances, and you will find that the first thing that a secured creditor under that section

is required to do is to give notice of his claim to the trustee. Then there is given a period of thirty days after that during which the bank's hands are completely tied. If the trustee does not take some action within thirty days the bank is at liberty to go ahead and take possession of the security and realize as if there had been no bankruptcy.

The next step under section 50 may be a dispute and you may have a law suit following. The delay will have the effect of the bank taking all these things into consideration in the initial stage when it goes to make a loan.

Right Hon. Mr. MACKENZIE: It seems to me that there is a possibility of all our rights and privileges being confiscated by the repeal of section 189.

Mr. PICKUP: I am afraid of that, senator. I do not know what the effect of the repeal of that section will be. It may be far-reaching.

Right Hon. Mr. MACKENZIE: I think it is a sweeping thing.

Mr. PICKUP: I submit so too.

Hon. Mr. NICOL: But delays under section 48, even if all the rights of a bank are preserved may make your security practically valueless at the present time.

Mr. PICKUP: I think not. My whole objection to sections 48 and 50 disappear if you put back section 189.

Hon. Mr. NICOL: Yes, but if section 189 is not put back then delays caused under section 48 may be very bad. In cases of advances made on lumber, anything could happen during the time an inspection was being made.

The CHAIRMAN: You mean the delay in section 48 is too short?

Hon. Mr. NICOL: There should be no inspection. There should be no delay under section 48.

Mr. PICKUP: There should be none at all. If you do cause such a delay or permit such a delay the result will be that from the time this bill goes into effect a bank will have to anticipate that delay. Instead of a borrower getting anything like the extent of a loan which he gets today it will have to be discounted to such an extent that he will say "What is the use of this security to me? It isn't what it was before". This is all caused by the risk of a delay.

Hon. Mr. BURCHILL: Who will interpret the words "a reasonable time"?

Mr. PICKUP: The courts, and until they interpret it we do not know what it means. May I call your attention to one other point about section 50. You will see that section 50 applies to property or interest therein in the possession of the bankrupt at the time of the bankruptcy. I mentioned before that if that section is passed in that form, in addition to having a bad effect in depreciation of security, it will have another effect just as bad, if not worse, because it will cause banks to take possession, or make it at least necessary in their own interest to take possession before the bankruptcy occurs. If they take possession before bankruptcy occurs they cannot be hurt by section 50. It will never apply. They can go ahead and exercise their rights under the Bank Act because if they take possession before bankruptcy they will not be affected by section 50. Realize the position that would put the borrower or the businessman in who is in a bit of a shaky situation. He will go into bankruptcy in a matter of time because of the necessity of the bank taking possession to protect its security. Again, it is a section which will increase the number of the bankruptcies where, if the section were left as it is—that is section 189—the banks' position would be safe and they would not have to take possession.

Right Hon. Mr. MACKENZIE: Without a long explanation what is the effect of the omission of the former section 54?

Mr. PICKUP: My thought is that the effect of section 54 is substantially the same apart from the change in procedure, as the present section 50. I would have

no objection to the old section 54 if you put in section 189. Again, I say, it brings us back to the position that I have no objection, from the standpoint of banking, to either section 48 or section 50 of the bill if you restore section 189. It has a serious effect if section 189 is not restored.

Hon. Mr. GOUIN: Is there anywhere in the remarks made by the law officer, a reason given for the deletion of section 189?

Hon. Mr. LEGER: It looks as though in the opinion of the reviser it had no importance. If you read opposite page 101 you will see the words "Former sections 181, 184, 185 and 187 are unnecessary and have been deleted". Then they delete those sections. Opposite page 102 they say "The former sections 189, 190, 196(1) and 197 have also been deleted". They do not say whether it is for the same reason, but apparently it is. No doubt section 189 will have to be brought back into the bill.

The CHAIRMAN: In the mind of the reviser, those sections were just surplus.

Hon. Mr. LEGER: Yes, and there is no doubt, in my opinion, that it will have to be brought back.

Right Hon. Mr. MACKENZIE: I agree with you entirely.

Mr. PICKUP: There is another point with regard to section 50, but it does not concern banks. If section 189 is restored you make my position from the viewpoint of banking and credit quite all right but there are other secured creditors who may be affected by section 50 as it is and who should be protected. If you look at sub-section five you will see that "No proceedings shall be instituted to establish a claim to, or to recover any right or interest in, any property in the possession of a bankrupt at the time of the bankruptcy, except as provided in this section". Forget banks for the moment and take another secured creditor whose rights should not be affected. He is going to be subjected to delays with a depreciating security. I do not think he should be so subjected. I doubt if it ever was the intention of this section to affect secured creditors at all because if you look back at the section which gives the right to secured creditors to realize their security, you will find that that section is subject to a number of other sections in this bill. Section 48 is one, but section 50 is not. It looks as if it never was the intention of section 50 to affect the rights of secured creditors, but any one reading the section will say that it is bound to do so because in both sub-sections 1 and 5 reference is made to a person having any right or interest in any property of the bankrupt. It would seem wide enough to include someone who has a mortgage or other security on the property. I suggest for the protection of ordinary secured creditors other than banks that there should be an express provision added at the end of this section, simply to the effect that nothing in the section will affect the rights of a secured creditor.

Hon. Mr. GOUIN: Your suggestion is that at the end of the section you would add a new paragraph 7, with the proposals that appear on page 2 of your memorandum?

Mr. PICKUP: Yes. May I now discuss a few sections in their numerical order? The first is section 3, sub-section 7 of the bill. That section is one which is designed to enable the superintendent, through his agents or anyone appointed by him for that purpose, with leave of the court to examine bank accounts. It reads: "To examine the bank accounts of a trustee or any other person". That is far too wide, and the suggestion which I make to the committee is a fairly simple one. This is a power that must be exercised with the leave of the court, and the matter will be before the court before any such leave is granted. My suggestion is that the court should designate whose account is to be examined. If I or you never had any dealings whatever with the bankrupt, there is no reason in the world why somebody should go through our bank account, yet the court will know whether there are dealings between this man and his wife or some other

relative or other person and whether there are some grounds to suspect they might have some property of the debtor. If that is the case let the court designate the account to be inspected. That can be done. The amendment I suggest is that after the word "person" the words "designated under the order granting such leave" should be added. The section would then enable the examination of a bank account of any person designated under the order of the court granting such leave. If the court decides that my account is to be examined that is all right, but this idea of thinking that you can go into a bank and examine anybody's account and see if you can find something there that might suggest he has some dealings with the bankrupt, I submit is wrong and is not in the interests of the bank or the public.

Hon. Mr. GOUIN: If you allow anybody to go into a bank and examine any account it becomes a fishing expedition.

Mr. PICKUP: Yes. Now, I would direct the attention of honourable senators to the end of the section. The last words are ". . . for such purpose may under a warrant from the court enter upon and search any premises". That gives the court power to issue a search warrant to go into premises that are occupied in the business of banking so as to go into the teller's cage or where the securities are or any other part of the banking premises. In the first place, such a power is quite unnecessary to the superintendent. Not only is it unnecessary but it is too wide and sweeping a power. That power does exist under the Criminal Code. Where a crime has been committed there is power to issue a search warrant to search any premises. That has always caused a good deal of difficulty so far as banks are concerned because magistrates, in issuing search warrants, usually follow the language of the statute and they just simply say, "Here you are, you are authorized to search the premises of so and so".

Right Hon. Mr. MACKENZIE: What is your suggestion?

Mr. PICKUP: My suggestion is that the court will deal with it in granting the leave, but that the court should not under this section be able to issue a general order for examining the accounts of anybody at all. It is quite all right to say that you may examine the account of John Jones or Tom Brown or whoever it is, but not that accounts of customers in general may be gone through.

Then I make a recommendation that the provision for a search warrant of bank premises be left in the subsection, but that there be added at the end of the subsection these words: "Nothing in this subsection shall authorize any search under warrant of premises occupied by a bank in the conduct of banking business." That is, there is no objection to a search under warrant of any other premises that are occupied by a bank, but what is objected to is a search of the premises that are occupied by the bank in the conduct of banking business—the tellers' cages, and such places. There will be no difficulty with banks if the court says that it wants to see the account of John Jones or anyone else. That can always be arranged very easily, but in my submission it is unnecessary to have somebody on behalf of the Superintendent go browsing through the bank's ledgers or going through the tellers' cages or doing anything of that kind.

Then I refer to subsection 9 of section 3. The purpose of this subsection is quite proper, to enable the Superintendent to require a bank to transfer to the Superintendent for deposit with the Receiver General funds to the credit of an estate, pending appointment of a trustee where the estate is left without a trustee by death, removal or incapacity or by non-renewal of the trustee's licence. The committee will see the conditions under which that power may be exercised by the Superintendent. The bank cannot act on the requisition of the Superintendent unless the trustee has died, or has been removed for incapacity or if the trustee has failed to renew his licence. But the bank would have no means of knowing whether or not the trustee has renewed his licence, for instance, and

my suggestion is that the subsection should require that the Superintendent, in making his requisition, shall state the fact as to whether the trustee has died, or whatever the fact is, and that the subsection should then provide that the bank is protected if it acts upon any such fact as stated by the Superintendent. At the end of the subsection it is provided that the funds to the credit of the estate may be required to be remitted to the Superintendent for deposit with he Receiver General. My submission is that there should be a provision to the effect that upon transfer of the funds to the Receiver General the bank or other depository acting upon the Superintendent's requisition is relieved from all liability in respect of the funds transferred. A similar provision will be found in section 92 of the Bank Act, which says that funds in accounts that have been unused for a long time shall be transferred to the Bank of Canada, but that section expressly provides that when any such transfer is made by a chartered bank to the Bank of Canada the chartered bank is relieved from all liability in respect of the account. That same protection should be given to the chartered banks under this subsection 9, so that a bank would not be open to action by anyone because of its having acted under the directions of the Superintendent.

My recommendation is that subsection 9 should be amended by adding thereto the following:

> The requisition of the Superintendent shall state the fact as to death, removal, incapacity or non-renewal of licence referred to in this subsection and shall be conclusive evidence thereof in favour of the bank or other depository acting thereon and upon remission to the Receiver General of monies in this section referred to, the liability of the bank or other depository in respect of the debt represented by the monies so on deposit and remitted shall cease and determine.

I have there taken the language of section 92 of the Bank Act.

Hon. Mr. GOUIN: Mr. Chairman, that seems to be very reasonable, because if some such amendment were not made the banks might be subject to action against them.

Mr. PICKUP: I pass on to section 8 of the bill, and my objection here can be briefly stated. Subsection 4, in my submission, fails to preserve a banker's lien upon its customer's paper, and this surely was never intended. It says:

> No person is, as against the trustee, entitled to withhold possession of the books of account belonging to the bankrupt or any papers or documents relating to the accounts or to any trade dealings of the bankrupt or to set up any lien thereon.

That would in effect take away a banker's lien, which has always existed, and that this was not the intention of the bill is at once apparent from subsection 5, which says:

> Where a person has in his possession or power any property of the bankrupt that he is not by law entitled to retain as against the bankrupt or the trustee, he shall deliver the property to the trustee.

Subsection 5 recognizes a legal right to retain the documents, a right such as would be given by a lien, but subsection 4 does not, and I suggest that these two subsections be reconciled. Therefore I recommend that subsection 4 be amended to read as follows:

> No person is, as against the trustee, entitled to withhold possession of the books of account belonging to the bankrupt or any papers or documents relating to the accounts or to any trade dealings of the bankrupt.

So far that is the same wording as is in the bill, but the amendment comes in these words:

> unless he is by law entitled to a lien thereon.

Then, honourable senators, I turn to sections 10 and 11. These sections relate to the trustee's borrowing powers before and after appointment of inspectors. Section 10 sets out the powers of the trustee after appointment of inspectors, and clause (*g*) of subsection (1) says that the trustee may:

> borrow money or incur obligations and give security therefor on the property of the bankrupt by mortgage, hypothec, charge, assignment, pledge or otherwise.

There is no provision there for repayment out of the estate of the money borrowed, and when you look at section 95, which provides a complete scheme of distribution of the proceeds realized from the bankrupt's property, you will see that it does not provide for repayment of the money borrowed by the trustee. Subsection 1 of section 11, however, does provide for repayment of money borrowed. It says that money advanced "on such terms and upon such property as may be authorized by the court . . . shall be repaid out of the property of the debtor in priority to the claims of the creditors". I submit that manifestly the same should follow in both cases.

Hon. Mr. LEGER: Is there any need to make any such provision with respect to money borrowed after the bankruptcy has occurred? Surely the money is to be repaid out of the assets of the estate.

Mr. PICKUP: But I would call attention to the wording of section 95, senator. It says:

> Subject to the rights of secured creditors, the proceeds realized from the property of a bankrupt shall be applied in priority of payment as follows:

Then follow a number of clauses, providing for payment of various things, but there is not a word about the repayment of money borrowed by the trustee.

Hon. Mr. LEGER: If in order to carry on the business of the bankrupt the trustee has borrowed money from a bank, surely that money is one of the first things that must be repaid.

Mr. PICKUP: I should have thought so, but it is not so provided in the bill.

The CHAIRMAN: There is a provision in section 11, but not in section 10.

Mr. PICKUP: If the provision was left out of section 11 as well it might be inferred that repayment is to be made from the estate; but there might be a practical difficulty, for the trustee would be afraid to borrow money in case he would not be allowed to repay it out of the property of the debtor, and a lender would be afraid to lend money without security on the property of the debtor.

Right Hon. Mr. MACKENZIE: Who appoints the inspectors?

Mr. PICKUP: The creditors, at a meeting.

Hon. Mr. GOUIN: I think that the trustee would be unable to obtain money under those circumstances.

Hon. Mr. BURCHILL: Section 10 (1) (*g*) says that the trustee may borrow money and give security therefor. Does that imply authority to make repayment?

Mr. PICKUP: It might imply that, sir, but I am afraid there would still remain this practical difficulty, that the trustee would not feel safe in borrowing and a lender would not feel safe in lending.

In both these sections 10 and 11 there is one other point that I think should be changed. It will be noticed that each section authorizes the giving of security on the property of the debtor. The language used in section 10 (1) (*g*) is "security therefor on the property of the bankrupt", and section 11 (1) says "such advances, obligations and money borrowed shall be repaid out of the property of

the debtor". In carrying on the business of the estate the trustee may be replacing property, and I submit that the language of these sections should be more comprehensive, to authorize the giving of security on the property of the estate.

Right Hon. Mr. MACKENZIE: The explanatory note to section 11 (1) says:

> This was formerly section 51 (1) to which has been added the first part of the former subsection (2).

Have any difficulties been encountered in the administration of the former section 51 (1)?

Mr. PICKUP: Not so far as I know. That may illustrate a point made by another senator; perhaps the inference is so strong that it may be all right, yet if one is to go by the language of the statute I do not think it is. We are at the stage now where new legislation is being enacted, and if I am correct in my submission, then let us make it clear and have no doubt about it.

There is a third matter in connection with borrowing that I should like to draw attention to. I refer to section 11, subsection 2. Again, we are dealing with borrowing before the appointment of inspectors. The intention there is plainly to put the trustee in the position of the borrower under section 88 of the Bank Act. As you know, section 88 of the Bank Act is available only to persons carrying on certain types of business, such as manufacturing, and unless one comes within the description of the borrower under section 88, the section does not apply. Ordinarily a trustee would not come within the description; therefore, subsection 2 has been provided for the purpose of giving security under section 88 of the Bank Act. That subsection reads:

> For the purpose of giving security under section eighty-eight of the Bank Act the trustee or interim receiver if authorized to carry on the business of the *bankrupt is* deemed to be a person engaged in the class of business previously carried on by the *bankrupt.*

I am afraid the effect of that subsection may be to enable the trustee to borrow under section 88 before the appointment of inspectors, but not to borrow under section 10 after the appointment of inspectors.

Right Hon. Mr. MACKENZIE: What is the difference? This was formerly section 51 (2), and the words deleted have been transferred to subsection (1).

Mr. PICKUP: I do not know the difference; I have not checked that.

Right Hon. Mr. MACKENZIE: It seems to me to be the same, though I may be wrong.

Mr. PICKUP: My point is that when a provision of that kind is put in one section of the act, having to do with borrowing, and it is not put in another section which also deals with borrowing and is of kindred character, it could be interpreted to mean that the trustee borrowing under section 11 would be in the position of a borrower under section 88 of the Bank Act, but not under section 10. To remedy it I would simply suggest than in subsection 2, following the words "Bank Act" you add the words "in respect of borrowing under section 10 or this section". Then you get it both ways.

Now my next point may be regarded as rather technical, but I am sure that it is not. Subsection 2 of this section places the trustee in the position of one who can give security under section 88 of the Bank Act.

Right Hon. Mr. MACKENZIE: What is the difference with respect to the old act?

Mr. PICKUP: I do not know, except by a recasting of the section. Some of these provisions I have not attempted to follow through where I thought on the reading of them they were manifest. I do find, however, that sections have been changed from one position to another.

Right Hon. Mr. MACKENZIE: Transposed.

Mr. PICKUP: Where we have a provision in one section and not in another, the same objection applies, whereas it would not if there was just a change in the setting. I am suggesting that in addition to being a trustee in a business which can borrow under section 88, that the section contain express language giving the trustee power to borrow under the provisions of the Bank Act. That may be inferred, but I think it would be better if it were made more explicit. On page 3 of my memorandum I summarize the amendment to the section, covering the objection I have made. I say:

> Incur obligations, borrow money and give security on any property of the *Estate* by mortgage, hypothec, charge, assignment, pledge or otherwise *including security under the provisions of the Bank Act, such obligations and money borrowed to be discharged or repaid with interest out of the property of the Estate in priority to the claims of the creditors.*

That gathers up all the objections I have endeavoured to lay before you, and I suggest that section 11 be amended to conform with that.

I come now to subsection 4 of section 11, which reads:

> All debts incurred and credit received in carrying on the business of a bankrupt are deemed to be debts incurred and credit received by the estate.

That reverses the position which has existed throughout the years. Ordinarily a trustee who borrows from a bank or other lender must assume personal liability for the debt. A bank or other lender ordinarily has not the means to ascertain just what is the position of the estate, and one does not find a lender inclined to lend money on the security of what he may get out of the estate. Trustees invariably have to give their personal undertaking to repay advances made to the debtor, and they must look to the estate. This subsection is designed to change that position around, and make it a borrowing by the estate and not a personal borrowing by the trustee. That may be all right with regard to indirect borrowing for the carrying on of business, and creating trade liabilities; it may be that trade creditors should not look to the trustee personally, and that may be what the draftsmen had in mind, but it should not apply to the trustee on borrowings for the purpose of carrying on the business. My suggestion is that there be added to that section these words:

> But this subsection does not apply to monies borrowed from banks or others for the purpose of carrying on the business of the bankrupt.

In such cases the bankrupt would look to the trustee to see that he could protect himself out of the estate, but the trustee would be personally liable. The effect would have to be the same in the end, because the person who lends money for the purpose of carrying on a business is going to see that he gets the personal liability of the trustee, otherwise there will be no advance. Otherwise it will put the lender in a different position than he has been in heretofore, that of making the advance knowing that the trustee was personally liable. We will have to see that personal liability is obtained yet perhaps that should not be necessary where the money is being borrowed for the purpose of carrying on the business and where a lump borrowing is made for that purpose.

We now go to subsections 6 and 7 of section 11. I fear that the rights of the secured creditors are being taken away. I admit it is doubtful.

By subsection 7, where the estate is insufficient the property is vested in the trustee, yet it does not say a word about secured creditors; I do not suppose they are intended to be included, but the language is probably wide enough to cover them. Subsection 7 is probably the worse. It reads:

> If no bid is received for the assets sufficient to reimburse the trustee, the court may make an order vesting in the trustee personally all assets

> of the estate and upon the making of the order the rights and interests of the creditors and of the bankrupt to the assets shall be determined and ended.

It may be stretching that language a bit for me to suggest that it takes away the rights of the secured creditor. I do not think that is the intention, but the section says "the creditors", and a secured creditor is as much a creditor as anybody else. Here I would suggest that the subsection be amended by adding at the end thereof the words "saving always the rights of secured creditors". I am sure that would overcome the difficulty.

Hon. Mr. NICOL: There is no time limit in which the trustee may carry on a business, covered by subsection 7?

Mr. PICKUP: Apparently not.

Hon. Mr. NICOL: Supposing he carries it on for ten years, then what is the position of the lender?

The CHAIRMAN: I think that point is covered in the law somewhere; I believe there is a limit of three years.

Hon. Mr. NICOL: But even three years—

Mr. PICKUP: There is a provision later on, I think, that if bankruptcy is not wound up within a limited period something may be done about it.

The CHAIRMAN: I think it is three years.

Mr. PICKUP: Yes, three years. But I think that would be a matter of agreement so far as the borrowing is concerned. The money would have to be paid back within a limited time; money is not lent forever, and the lender wants to know when it is going to be repaid.

May I go now to section 63, at page 46 of the bill. This provides that a general assignment of book debts is void unless registered in accordance with the provincial law relating to registration. There is in all the provinces of Canada, except the new province of Newfoundland, a law providing for the registration of assignment of book debts. If this bill comes into force the result will be that in Newfoundland it will make void all general assignments of book debts in that province, with no means of protection by registration. That may cause some difficulty. The suggestion I have made in my memorandum may not be the right one, but I propose at the end of the bill, where it says that it shall come into force on the first day of January, 1950, we might add these words:

> Except that section 63 of this act shall not apply to Newfoundland until proclaimed by order of the Governor General in Council.

It may well happen that between the time this bill is passed by parliament and the first of January, 1950, that the province of Newfoundland may have passed a statute covering this point. If that is done there will be no difficulty, but some action should be taken until the matter has been dealt with by the province.

May I pass now to section 77? This relates to voting. I do not know why this change is proposed, but it does make a rather peculiar situation with respect to voting on a bill current at the date of bankruptcy. You will see by the language of the section that the holder of the bill, who may have proved his claim, has to value the liability of everyone on the bill. Of course, if the liability of anyone on the bill is equal to the amount of the bill, naturally there is going to be no voting with respect to it. The old section 96, for which this section 77 is substituted, is in my opinion the correct section. Section 96 provided that the holder of the bill must value the liability of persons whose liability is antecedant to that of the debtor. Take for instance endorsements on the bill. Those who endorsed the bill prior to the bankrupt are liable to the bankrupt, and those who endorsed the bill after the bankrupt are not liable to the bankrupt. This reverses

the situation—the bankrupt is liable to them, and if the holder should call upon a person subsequent to the endorsement of the bankrupt, to pay the bill, that person would have recourse against the bankrupt. But we are dealing here with voting, and until a person secondarily liable is called upon to pay I do not think, subject to correction, that he had any right to recover from anybody. The old section makes it quite plain that what you value is the liability of those antecedant to the liability of the bankrupt. I submit to this committee that that section should be retained.

Right Hon. Mr. MACKENZIE: What is the significance of the alteration in phraseology from the former section 96 to the present section 77. The wording formerly, as you will see in the marginal note on opposite page 54, was "to deduct it from his proof." The present section used the words " to deduct it from his claim".

Mr. PICKUP: The note I see here just opposite section 77 is that "this was formerly section 96 and read as follows:"

Right Hon. Mr. MACKENZIE: The last five words were "to deduct it from his proof", and in the new section it is "to deduct it from his claim."

Mr. PICKUP: I thought that was just a change in language. There has been a good deal of improvement in this bill in a general way, by changing language and adopting a better phraseology throughout the bill. For instance "debtor" has been, usually, dropped. I must confess I had supposed that that was just a matter of language and not an intention to change anything. But I did feel that probably there was the intention somewhere to change that one principal thought of making no distinction between an antecedent liability and a subsequent liability. If that was the intention, I submit it is wrong: if it has got in by inadvertence or anything of that kind, I think it should be put back. But so far as the other language of the section is concerned, I am quite satisfied with the language which conforms with what the draftsmen may have seen fit to use generally throughout the bill.

Then I come to section 95, to which I have already referred. The first thing is that I think that section 95 should in its very first priority provide for the repayment of borrowed moneys with interest, and not leave that to inference, even if the inference be there. I note that the section is under the heading which deals with distribution, and it might be thought that that is distribution among creditors, but when you read the language of the section you will find it goes a great way beyond distribution among creditors and provides for payment of costs and other things. To make it clear I suggest that the very first priority there be the repayment of borrowed moneys with interest.

Subsection 4 thereof I do object to from the standpoint of the banks. This raises the question which was raised by Senator Mackenzie a little while ago, that is the general effect of dropping section 189. You will see what subsection 4 does:

> Nothing in this section shall be deemed to prejudice any preferential lien or charge against any real property of the bankrupt for taxes assessed and levied against the property by any municipality, school board or other local taxing authority, but any other preferential lien or charge against the property of the bankrupt created by statute is null and void and is entitled to rank only as provided by this Act.

Now, what is the effect of making void any other security or preferential lien or charge, by that subsection? I look at once to section 88 of the Bank Act. The security created by the Bank Act is a new one. No security of that type existed before. Is it a security created by statute? Some people would argue that it is not a security created by statute, it is created by the giving of the security in pursuance of the statute. But the statute creates the security;

it creates certain rights in the property by virtue of giving a certain document or security. It might be more accurate to say that the security is created by the combined action of the statute and going through the procedure under the Bank Act. But you cannot create section 88 security without the aid of the Bank Act. I could not go and give a security in the form of section 88 to someone other than a bank, and think I had created a security. It gets its force and effect from the Bank Act. It is just another illustration of what may result from the dropping of section 189 from the Bankruptcy Act. Again, the remedy which I seek is, leave the section as it is, but put back section 189 of the present act.

Right Hon. Mr. MACKENZIE: You would be satisfied with this section if we restored section 189?

Mr. PICKUP: Yes, Mr. Senator.

I have only one other section to refer to, Section 106, that is the levy for the purpose of carrying on the expenses of the superintendent's office. As it was, it did not refer to payments made to secured creditors. As it is now, you notice language there which imposes "a levy on all payments except costs referred to in section 41 made by the trustee by way of dividend or otherwise on account of the claims of creditors, whether unsecured, preferred or secured creditors." Now, that plainly applies to the levy against payments to secured creditors. It is convenient in winding up bankrupt estates, and it has been so found, that a secured creditor can on his own behalf authorize the trustee to realize his security along with the assets of the debtor. It may be found better to sell en bloc or together, instead of the secured creditor actually taking possession and doing the selling on his own account. That is done by special arrangement made between the secured creditor and the trustee. The trustee in such circumstances is not acting qua trustee, he is acting really as agent or trustee for the particular secured creditor. It is not part of his duties as trustee. Any remuneration to which he is entitled should be paid by the secured creditor; it has nothing to do with the maintenance of the superintendent's office; and I fail to see any reason why the levy to defray expenses of the superintendent's office should apply where the trustee acts for and realizes moneys for a secured creditor. My submission is to make a slight change there to omit the words "secured creditors", and I have given on the last page of my memorandum the language which will do it.

I am sorry to have taken up so much time, but I thought the committee would wish me to explain the matter in some detail.

The CHAIRMAN: I think the committee has appreciated the enlightenment it has received from your remarks. We have a little time before 12.30, when we shall take up Bill 12. Would Mr. Beausoleil be ready to go on now?

Mr. THEODORE BEAUSOLEIL: Yes, sir.

The CHAIRMAN: I understand you represent the Credit Bureau of Montreal.

Mr. BEAUSOLEIL: Yes, sir.

The CHAIRMAN: Will you state briefly what is the Credit Bureau of Montreal and what is your connection with it?

Mr. BEAUSOLEIL: I am Vice-President of the Credit Bureau of Montreal, and we represent the merchants, retail merchants, loan companies and bankers who make private loans to individuals. I would like to read a short memorandum here, which is self-explanatory. (See Appendix "I".)

The Montreal Credit Relations Committee was organized about one year ago as a defensive measure against certain abuses of the Bankruptcy Act and for the purpose of examining the effect of increasing numbers of so-called "wage-earner" bankruptcies in this city.

It is our understanding that the Bankruptcy Act is primarily intended for the orderly liquidation of bankrupt businesses, yet half the assignments in bankruptcy made in this city are made by persons who are not in business and whose only income, or principal source of income, is from salary or wages.

In many cases the applicant had no assets and was apparently using the Bankruptcy Act to escape from the pressure of unsecured creditors whose individual claims were too small to justify contesting either assignment or discharge.

It was found that most creditors who offered credit facilities to wage-earners on personal security had been the victims of such bankruptcies, and while the losses in individual cases were small the aggregate losses of such creditors in the course of a year amounted to a considerable sum.

We respectfully submit that the frequent use of the Bankruptcy Act by debtors whose assets consist chiefly or wholly of future income is not in accordance with the intent of the Act, and that such practice may hamper the efficient administration of the estates of insolvent business enterprises.

We, therefore, suggest that the restrictions on "Petitions for Receiving Order" in Section 25 of Bill N shall be made applicable to Section 26, "Assignments".

We suggest that present Section 26 shall become Section 25, and that present Section 25 shall become Section 26 and shall be amended by substituting "twenty-five" for "twenty-four" in the first line of this Section.

We believe that such amendment would restrict present abuses of the Bankruptcy Act in Montreal and relieve the administrators of the Act from many Assignments in Bankruptcy which should properly be dealt with under the Lacombe Law.

The CHAIRMAN: Have you any other comments to make?

Mr. BEAUSOLEIL: In studying this matter we have found that the wage-earner has been availing himself of the Bankruptcy Act more than ever in the past. We find that over 50 per cent of the bankruptcies registered, especially in the province of Quebec and in Montreal in particular, are individual wage-earners who are not in business. It is our opinion that the wage-earners, particularly those who are earning $2,500 or less, should avail themselves of the Lacombe Law which is in existence in the province of Quebec.

The CHAIRMAN: Do you suggest that they should not be entitled to take advantage or disadvantage of this law here?

Mr. BEAUSOLEIL: Yes, because in many instances they could enter into bankruptcy with small amounts of $1,000, $1,500 or $2,000.

The CHAIRMAN: I suppose you know that under this law there is no bankruptcy unless there is a claim of $1,000 or an aggregated amount totalling $1,000? Would that take care of your problems?

Mr. BEAUSOLEIL: No, not altogether. The amount of $1,000 owed today by an individual is very small and I would say that very many of the wage-earners today owe $1,000 or more.

The CHAIRMAN: What is your suggestion as to these wage-earners?

Mr. BEAUSOLEIL: They should not be permitted to make a voluntary assignment and should avail themselves of the Lacombe law.

Hon. Mr. NICOL: They would not get any discharge then?

Mr. BEAUSOLEIL: Yes, after they pay a sizable portion of their salary.

The CHAIRMAN: Experience shows that this lasts for years and years under the Lacombe law.

Hon. Mr. NICOL: Yes, and under this Bankruptcy Act they get a discharge.

The CHAIRMAN: If a man is a wage-earner he would be disbarred from this Bankruptcy law.

Mr. BEAUSOLEIL: To a certain extent.

Hon. Mr. NICOL: Is it your experience that there are more bankruptcies in the province of Quebec than in any other province?

Mr. BEAUSOLEIL: Yes, sir.

Hon. Mr. NICOL: And you say that over half the bankruptcies in Montreal are wage-earners?

Mr. BEAUSOLEIL: Yes.

Right Hon. Mr. MACKENZIE: Are you satisfied with the law which now exists or are you definitely opposed to some provisions of it?

Mr. BEAUSOLEIL: Well, we suggest, for instance, that the restrictions on "Petition for Receiving Order" in section 25 of Bill N should be made applicable to section 26, "Assignments." There is a breach between the petition of bankruptcy and the assignment.

The CHAIRMAN: You are opposed to assignments but are not opposed to petitions?

Mr. BEAUSOLEIL: No. We suggest that the present section 26 should become section 25, and that present section 25 should become section 26 and should be amended by substituting "twenty-five" for "twenty-four" in the first line of this section.

The CHAIRMAN: What would be the result of this change?

Mr. BEAUSOLEIL: I should like to have Mr. Harris explain this. I think he can do so better than I.

R. W. HARRIS, *Director of Public Relations for Household Finance Corporation of Canada:* Honourable senators, I am here on behalf of the Committee of Creditors in Montreal. The point we have to make, as Mr. Beausoleil has explained, is this: We have found within the city of Montreal an increasing number of these wage-earner bankruptcies so-called, where there are no assets to be disposed of by the trustee. The debts have been acquired on personal security. There are no tangible assets established. The difficulty is that when they enter into bankruptcy there is no estate to be administered and as a result a discharge is applied for and granted before there is anything to be distributed to the creditors whatever. We feel that a number of these cases are unduly hampering the proper administration of the Bankruptcy Act, which we understand is for the orderly liquidation of the assets of a bankrupt business.

Under the revision of the Act we know that it will be increasingly difficult to find a trustee to administer these very small wage-earner estates where there are no assets. The result will be that these wage-earner bankruptcies will flow back to the official receiver who, I understand, has not the adequate machinery or help to handle such cases. Now, the Act provides that no wage-earner earning $2,500 per year or less is liable to a petition for a receiving order from his creditors. However, it does permit the wage-earner, without any tangible assets, to make an assignment under the Bankruptcy Act. That is the point we have in mind. The creditor cannot now take action under the Bankruptcy Act against a wage-earner who earns $2,500 or less, but he may use the Bankruptcy Act to make an assignment. We feel this should be corrected. We recommend that the order of the sections should be changed. The present section 25 should be made section 26, and the assignment section, which is now 26, should be made section 25. We thought this would be fair to both the receiving order and the assignment and would eliminate much of the present hampering of the administration of the Act in the city of Montreal. That is our thought.

The CHAIRMAN: Thank you, Mr. Harris.

The committee then adjourned, to resume at the call of the Chair.

Appendix "F"

SENATE BILL N

AN ACT RESPECTING BANKRUPTCY

ADDITIONAL OBSERVATIONS BY MR. JUSTICE URQUHART

Section 83 (1). I do not favour the suggestion put forward by The Law Society of Upper Canada that cases of tort be tried by a jury. If the clause is to be left in, in my opinion it should be in the present form and all unliquidated claims against a bankrupt should be tried without a jury.

As the scheme of the section and of the Act is to relieve the debtor of his liabilities after his discharge and to re-establish him, it could make no difference to him whether such a claim was tried with or without a jury.

The trustee would, I should think, favour a non-jury trial as being quicker and less expensive.

As to the claimant, the potential creditor if he has a good case, it would be better to have it tried by a judge without a jury. There would be less likelihood of failure, and the award of damages secured would be higher, as has been my experience. It is only if he has a poor case that having a jury would be likely to help him. As he would only, if successful, be getting a dividend (and in the vast majority of cases an extremely small one) I cannot see that it would make a great deal of difference.

While I am opposed to the inclusion of unliquidated claims, if they are to be included I respectfully recommend that the section remain unchanged and that all such claims be tried by a judge without a jury if they cannot be settled between trustee and creditor.

Section 95. Priorities. Since giving my evidence before the Banking Committee I have been turning over in my mind again the whole question of priorities. My object in saying that the taxes mentioned in clause (1) sub-clause (*e*) should be put in sub-clause (*j*) with Dominion and Provincial taxes *pari passu*, was that they seemed to me to be on the same footing, i.e. taxes not being a lien upon the assets, as are the municipal land taxes.

I would re-arrange the sub-clauses of subsection (1) in the following order: (*a*) (*b*) (*c*) (*d*) (*f*) (*h*) (*l*) (*j* and *e* combined) and (*g*).

The trustee for his costs of administration should enjoy a very high priority as he is put to expense, and there would be numerous cases where no trustee would take hold if he did not have such priority, so it is right that his claim should be the second in order. As to sub-clause (*g*) I see no reason why these claims should be ahead of any of the others mentioned in the section, and as I have pointed out above, sub-clauses (*j*) and (*e*) should be combined and kept in approximately their present position.

Appendix "G"

BANKRUPTCY ACT REVISION

Memorandum of Recommendations of Committee on Bankruptcy Act Revision of the Canadian Bar Association

The studies from which the following recommendations were developed were based on the original Bill A-5 submitted to the Senate of Canada in 1946, and on Senate Bill L-11—an Act respecting bankruptcy, as reprinted. In the following recommendations the sections referred to are those in Bill L-11.

The committee, in considering its recommendations, has endeavoured to obtain information and the views of members of the legal profession particularly concerned with bankruptcy law, and also from liquidators, trustees and representatives of business who are concerned with these particular matters.

The members of the committee are: Chairman, Mr. T. E. H. Ellis, of Vancouver, B.C., Mr. W. J. Beaton, K.C., of Toronto, Ontario, Mr. Terrance Sheard, of Toronto, Ontario.

While not wishing to mention any names in particular, the Chairman feels that reference should be made to the assistance received by the committee from Mr. D. S. Montgomery, of Vancouver, who has had long and considerable experience in bankruptcy matters.

The committee has had the advantage also of considering a memorandum of recommendations prepared by a committee of the Toronto Board of Trade, and joins with that committee in congratulating the Superintendent in Bankruptcy on the successful manner in which he has revised Bill A-5.

The recommendations of this committee now follow:

1. Generally, this committee is in agreement with and approves all of the recommendations contained in the memorandum of the Toronto Board of Trade Committee, dated the 6th January, 1949. This committee, however, wishes to add certain recommendations and also to suggest certain changes in a few of the recommendations made by the Toronto Board of Trade Committee.

2. With the exception of the additions and changes which this committee is suggesting, a great number of the suggestions or changes set out in the memorandum of the Toronto Board of Trade Committee were received by this committee and similar conclusions arrived at.

3. *Corporations—Section 2(f)*—It is our opinion that the definition of a "corporation" should include societies and similar legal entities which are given a status similar to that of a limited liability company or corporation.

There are quite a number of societies and other such organizations which are given a similar standing as a company or corporation and who, to all intents and purposes, are carrying on business. We have in mind mutual benefit societies and so on. When these organizations get into financial difficulties there does not appear to be any process or proceeding by which they can be properly wound up or placed in bankruptcy. As they are to a large extent carrying on business, it is felt that they should be brought within the purview of the "Bankruptcy Act."

4. *Duties of Superintendent—Section 3(8) (b)*—It is suggested that consideration should be given to providing that a trustee whose license has been suspended or cancelled should have the right to appeal to the Court.

Section 3 Generally:—It is recommended for consideration that the Superintendent be empowered to investigate the conduct and actions of a debtor prior to bankruptcy. In many cases where such an investigation should have been made the creditors, by reason of lack of assets in the estate, were unwilling to undertake the expense themselves, and official receivers have not the facilities for doing so. It is therefore thought by some that provision should be included in this section to provide such power to the Superintendent.

5. *Divesting of Property by a Trustee—Section 8(12)*—The present subsection only gives the trustee power to divest himself of title to real-estate. The trustee should also have power to disclaim onerous contracts of the bankrupt with the consent of the inspectors or with the approval of the Court.

6. *Powers Exercisable by Trustee—Section 11(1) (c)*—Consideration should be given to whether this sub-section affects the right of set-off, and if it does it is suggested that the provisions of the sub-section be made subject to the right of set-off.

7. *Stay of Proceedings—Section 42(2)*—While admitting that the position of a secured creditor should be interfered with as little as possible, it does seem that, from the point of view of the estate of the bankrupt generally, the present provisions in the bill do not give the trustee an adequate opportunity to realize on the equity of the bankrupt, whatever it might be. It is therefore suggested that this sub-section should be amended to provide that before any secured creditor realizes or deals with his security, he should give written notice to the trustee of his intention so to do. This notice should be limited from fifteen to thirty days.

8. *General Provisions, Costs—Section 43(2)*—"One solicitor's bill of costs" should be defined and it should be made clear that it is limited to the costs of execution or attachment and Land Registry fees and that it does not include the whole costs of an action. There are decisions to the effect under the old Act that these words means the whole costs of the action and it seems most unfair that one creditor should have all his costs preferred.

9. *Preferences—Section 66(1)*—The time of three months should be extended to six months. In many cases where a preference has been given it has been easy to conceal it for at least three months, and in some cases a bankrupt and a person receiving a preference have deliberately delayed matters until the three months' period was up in order to avoid the provisions of Section 64 in the present "Bankruptcy Act" which they would not have been able to do for a period of six months. While the time during which such transactions can be attacked should not be unduly prolonged, trustees and others have found on a great many instances that this limitation of three months has protected an obvious preference which would have come to light and could have been successfully attacked if the six months' period was in effect.

10. *Preferences—Section 67*—The word "preference" should be eliminated from the third line of this subsection. To refer to a preference being made in good faith and for valuable consideration is an abvious contradiction in terms as a preference very obviously cannot be made in good faith in any event.

11. *Set-Off—Section 67 (2)*—It is suggested that this subsection should be set up in the Act as a separate section. If left as at present it is too difficult to find and it is too closely aligned to the question of preference.

It has also been suggested that consideration should be given to the question of set-off between various Crown Departments. There have been instances in the past where the right of set-off, as interpreted by the law officers of the Crown, has resulted in a detriment to the bankrupt estate, and to what is felt to be an

unfair advantage to the Crown. For instance, moneys may be owing to the bankrupt by one Crown Department, e.g., the Department of Public Works, whereas the debtor may be indebted to the Department of National Revenue for income tax. It has been maintained by the Crown that these claims can be set-off one against the other, and on occasions moneys owing by one Department or by a Crown Corporation or Board to the bankrupt have been appropriated and paid over to another Department on the basis that the Crown has a right to do so as a set-off. This puts the trustee in a very awkward position as he has no chance whatever to adjudicate on the claims or rights of either claim in such circumstances and is more or less met with a "fait accompli". It would seem desirable to provide that there shall be no set-off or allowance of mutual credits in such cases and thit if any set-off is to be allowed, it should be limited to set-off or mutual credits between the particular Crown Department or corporation and the debtor.

12. *Meetings of Creditors—Section 70(1) and (2)*—There is some doubt as to whether or not notice of the first meeting of creditors should be sent to shareholders of a bankrupt corporation, and in the past we do not believe it has been the general practice to send any such notice to shareholders. In most estates it is pretty obvious from the start that there will be no surplus for distribution among shareholders and it would be a needless expense to prepare and send out notices and statements to the shareholders. However, in order to make the matter clear some provision should be inserted in this section as to whether or not notices are to be sent to shareholders, and it is suggested that on the application for a receiving order, or by application on the making of an assignment, an order should be obtained to appoint one or more of the shareholders to represent all the shareholders and that notices sent to such representative shareholders would be binding on all the shareholders.

13. *Procedure at Meetings and Voting—Section 81(3)*—A further sub-section should be added to Subsection 3 to provide that in the case of companies and subsidiary or associated companies, or those with interlocking directorates should not have any vote on the appointment of a trustee or inspectors for any of the inter-related companies which may have been adjudged bankrupt or may have made an assignment.

It has been found in several instances in the past that in the case of associated or subsidiary companies particularly, a substantial claim will be filed by the parent company, and by reason of the amount of the claim a trustee and inspectors will be elected at the behest of the parent company who then proceeds to control the administration of the bankrupt estate, very often to the detriment of other creditors and the administration of the estate generally.

14. *Inspectors—Section 84*—It has been suggested that a further sub-section be added to Section 84 to provide that where the creditor is an incorporated company and a member of its staff has been appointed an inspector the creditor company have the right to substitute another member of its staff as inspector if the inspector elected leaves the employ of the particular company or is transferred, or other circumstances make it inconvenient and difficult for him to act as an inspector.

As is well known, inspectors are very often chosen because they represent the larger creditors, or a particular group of creditors. In such cases these creditors are generally corporations. In a great many instances after the inspector has been appointed he either leaves the employ of the particular firm, or is transferred to another branch of the firm, or for a number of reasons and circumstances is no longer particularly concerned with the position of his firm as a creditor or with the affairs of the debtor generally. It is therefore suggested that the corporation itself and the creditors generally would be better served by having somebody take his place who would be active in the interests of the

creditors and the administration of the estate and that as the original inspector was appointed because he was an employee of the particular company in question, it would seem proper that such company should have the right to appoint or substitute someone else to take his place in the circumstances outlined. In order to simplify the matter it might be best in cases where inspectors are employees of corporations that instead of being appointed personally, the creditor firm be appointed to act by its representative.

15. *Admission of Claims—Section 96(3)*—The time limit of three months in this sub-section should be increased to six months.

In view of the complications involved in many estates and especially if the estate concerned was one of a deceased person, it is often very difficult for the trustee to obtain the necessary information and particulars on various claims, and the limitation of three months would hardly seem sufficient for this purpose. This is particularly so with respect to many Government Departments as there is often quite a delay before all their records can be checked and audited to make sure that their claim as filed is a proper one.

16. *Priorities and Scheme of Distribution—Section 97*—Provision should be made in this section to limit the amount of any claim of any Crown Department, or the Crown itself, to one year or two years at the most. We particularly have in mind Workmen's Compensation claims, Unemployment Insurance Claims, income tax deduction claims and so on. With the special rights and preferences granted to these claims it is suggested that the Crown is in a much different position than an ordinary creditor to enforce its claims and should not allow a debtor to pile up arrears on this type of claims. This would also be in the interest of efficient administration of these particular departments.

Subsection (*d*) of Section 97 and Section 101 provide that there shall be no priority for wages et cetera for directors or officers of companies. However, these sections do not seem to have cleared up the contentious matter of the claim of a person who is an officer or a director of a company but who is also doing regular work or holding a regular position with the Company. For instance, very often a person who is the accountant of a company may also be the treasurer and a director. In some of the decisions claims for his work as an accountant would be disallowed, while under other decisions such claims have been allowed. Any doubt should be removed, and there is no reason why a director or an officer of a company who is performing ordinary functions for the company, either in an executive capacity or otherwise, should not rank in the ordinary way. It should therefore be made clear that it is only wages, et cetera, in his capacity as a director or officer for which no priority is accorded. If, on the other hand, it is desired to eliminate priority for any wages, et cetera, for such people entirely it should be more clearly provided in these sections than it is at present.

In Subsection 4 there is a reference to a preferential lien or charge. It is not clear whether the word "preferential" refers to lien, or to both the words "lien" and "charge". It should be made clear whether the word "charge" means a preferential charge or an ordinary charge, and it is suggested that it should be both.

The present wording of Subsection 4 is too wide as it would include mechanics' liens and other such charges created by Statute. It should be made clear by this section, or by definition of a secured creditor that such charges are not included.

We agree with the general idea, however, of including statutory charges as there has been a tendency on the part of the Crown Departments particularly to try to avoid the priorities granted under the "Bankruptcy Act" by creating their claims a security on the assets of the debtor. This is, of course, followed by a claim that they are entitled to rank as a secured creditor outside of any priority at all, and that the "Bankruptcy Act" in effect preserves their position

as a secured creditor. It should be made quite clear that any such claims should not be treated as a secured claim. We have particular reference to the recent amendments to the "Workmen's Compensation Act" of British Columbia and the Dominion "Income Tax Act", and no doubt there are many others of a similar character. See "Workmen's Compensation Act", R.S.B.C. 1948, Chapter 370, Section 48. See also Subsection 7A, Section 92 "Income War Tax Act" as enacted by Chapter 23 Dominion Statutes, 1945-46, Section 6.

17. *Summary Administration—Section 116*—This Committee particularly endorses the recommendations of the Toronto Board of Trade Committee. In our opinion it is not at all advisable for the official receive and his staff to administer bankrupt estates, even small ones.

18. *Examination of Bankrupts and Others—Section 123 (1)*—Provision should be made in Subsection 1, as in Subsection 2, that any person being examined should produce books, documents and so on.

While Section 124 would seem to cover such a situation, it would put the matter beyond doubt if a similar provision was included in Subsection 1 of Section 123.

It is also suggested that a trustee should have the right to examine not only the agent, clerk and so on of the bankrupt but also the agent, clerk and so on of any person reasonably thought to have knowledge of the affairs of the bankrupt.

It is also suggested that provision should be made in Section 123 that a bankrupt be examined before a Judge if required by the trustee and approved by a resolution of the creditors, or a majority of the inspectors.

This power would not be used extensively but is very necessary in certain cases. At the present time the examination takes place before an official stenographer or the Registrar, and if any objection is taken to any of the questions and the bankrupt refuses to answer the same the delay and expense of a Court application are necessary. By the time the order is obtained the advantage of having an instant answer and the continuity of the examination is broken. It would therefore be desirable that in important cases the bankrupt be examined before a Judge so that if there are objections to any of the questions an immediate ruling would be obtained and the examination proceed at that time. It is also felt that if it was known that a bankrupt was likely to be examined before a Judge, it might have a deterrent effect on some of the preferential and other transactions that are indulged in by bankrupts prior to bankruptcy.

19. *Discharge of Bankrupt—Section 129*—This Committee endorses the views of the Toronto Board of Trade Committee and agrees that the trustee should not be put to the expense and costs of obtaining the discharge of the bankrupt. There is, however, something to be said for the point of view that some arrangement should be made whereby bankrupts, particularly individuals, are discharged eventually. It is therefore suggested that provision might be included in Section 129 that the bankrupt is to be given notice by the trustee of his right to apply for a discharge, and that if the trustee is to take charge of the matter the bankrupt be required to first furnish the costs of the application.

20. *Legal Costs—Section 158 (3)*—The last nine words of Subsection 3 should be struck out as the trustee should not be responsible for costs unless he has acted unreasonably or mala fide. The reason for this suggestion is that it has been held on several occasions that a trustee is personally liable for costs if there are not sufficient assets in the estate to pay the same, despite the wording of present Rule 54. If the last nine words of the Subsection were deleted we would be agreeable to some provision being included that the trustee would be personally liable for costs if he had acted unreasonably or improperly. There

are a great many instances where a claim should be defended or an action brought for the benefit of the estate but owing to lack of assets a trustee is very loath to do so because of the fear that he will make himself personally liable for the costs when, in the interests of justice, and for the investigation of the bankrupt's affairs, and other reasons, such proceedings should be taken or defended.

21. *General Provision*—Some provision should be made in the Act for the widest degree of substituted service of all proceedings and notices provided for under the Act either on the bankrupt or on any other person to be served with any such proceedings or notices under the Act. Provision should also be made to give the Court power to dispense with any steps or proceedings of a procedural nature where the circumstances of the case so warrant.

While there is at present under the "Bankruptcy Act" and rules some provision for substituted service, the same is not wide enough, and it is felt that this provision should be in the Act itself rather than in the rules. It is therefore suggested that a section be inserted in the Act to give the Court the widest powers to grant substituted service of all proceedings and notices on all parties concerned where the circumstances so warrant. It is also suggested that the Court have power to dispense with any steps or proceedings of a procedural nature where the facts would so warrant. We have in mind a particular instance where a debtor absconded and had to be served with a bankruptcy petition by advertising. However, after the receiving order was made there was no way of complying with the requirements of the Act as to the completion of Forms 50, 53 and 54 and there does not seem to be any provision in the present Act to dispense with them or to direct that some other person complete them on behalf of the bankrupt. It is therefore suggested that there should be a section in the Act giving the Court power to dispense with this sort of requirements where it is either impossible to carry them out or the facts and circumstances of the case make it proper for them to be dispensed with, or to provide that someone else furnish them or carry out the requirements of the Act on behalf of the bankrupt.

All of which is respectfully submitted.

T. E. H. ELLIS,
Chairman, Committee on Bankruptcy Act Revision.

Vancouver, B.C. 5th March, 1949.

Appendix "H"

Submission by Mr. J. W. Pickup, K.C.

MEMORANDUM AS TO SECTIONS OF BILL N (being an Act respecting Bankruptcy) showing the Sections to be referred to in representations on behalf of The Canadian Bankers' Association before the Senate Committee on Banking and Commerce and Recommendations of the Association in respect thereof.

SECTIONS 64 AND 65

Section 64 will prevent a bank making a current loan on security within three months prior to bankruptcy regardless of good faith. This is the time when such an advance is most needed. The probable result will be to cause many bankruptcies which otherwise might not have occurred.

Recommendation: Retain present Section 64 and present Section 65. The present Section 65, however, needs a slight amendment to protect payment by a bank of cheques issued by a customer within three months prior to bankruptcy. The present Section 65, Sub-clause (*b*) protects any payment or delivery to the bankrupt. This should be changed to read "any payment or delivery to *or on the order of the bankrupt.*"

SECTIONS 48 AND 50

These Sections would not be objectionable from the standpoint of banking if present Section 189 were retained. Present Section 189 provides that nothing in the Bankruptcy Act shall interfere with or restrict the rights and privileges conferred on banks by the Bank Act. Without Section 189, Sections 48 and 50 may seriously interfere with realization of security given under the Bank Act by delaying the remedy which the Bank Act gives to banks on default in payment. The result would be either devaluation of security for loaning purposes because of the risks and delays involved, or make it necessary for banks to take possession before bankruptcy which might have been avoided.

Recommendations: (1) Restore Section 189.

(2) For the protection of secured creditors generally, and to Section 50 a Subsection saying that *nothing in the Section shall affect the rights of secured creditors.*

SECTION 3

Subsection 7. This Subsection might permit examination of bank accounts which are in no way related to the debtor and authorizes a search warrant of bank premises which is quite unnecessary and undesirable.

Recommendation: This Section might be amended to require the Court by the order granting leave to designate the person whose account is to be examined. This could be done by adding after the word "person" in line 4, the words "*designated under the order granting such leave.*" There should also be added at the end of the Subsection a sentence as follows: "*Nothing in this Subsection shall authorize any search under warrant of premises occupied by a bank in the conduct of banking business.*"

Subsection 9. This Subsection is not sufficient to protect a bank in transferring funds to the Receiver General.

Recommendation: This Subsection should be amended by adding thereto the following: *"The requisition of the Superintendent shall state the fact as to death, removal, incapacity or non-renewal of licence referred to in this Subsection and shall be conclusive evidence thereof in favour of the bank or other depository acting thereon and upon remission to the Receiver General of moneys in this Section referred to, the liability of the bank or other depository in respect of the debt represented by the moneys so on deposit and remitted shall cease and determine."*

SECTION 8

Subsection 4 and 5. Subsection 4 fails to preserve a banker's lien upon the documents of its customer.

Recommendation: This Subsection should be limited as is Subsection 5 so as to preserve any lien. It might be amended to read as follows:

> (4) No person is as against the Trustee entitled to withold possession of the books of account belonging to the bankrupt or any papers or documents relating to the accounts or to any trade dealings of the bankrupt *unless he is by law entitled to a lien thereon.*

SECTIONS 10 AND 11

Section 10 (1) (g) and Section 11 (1). These Sections relate to borrowing of money before and after appointment of inspectors. There is no provision for repayment of the money borrowed, in Section 10 (1) (*g*), although there is in Section 11 (1).

Subsection 2 of Section 11, contemplates giving security under Section 88 of the Bank Act, but otherwise the authority to give security under the Bank Act is not referred to. The power as to giving security should not be limited to giving security on *property of the bankrupt.*

Recommendations: (1) Amend Subsection (*g*) of Section 10 (1) to read as follows:

> Incur obligations, borrow money and give security on any property of the *Estate* by mortgage, hypothec, charge, assignment, pledge or otherwise *including security under the provisions of the Bank Act, such obligations and money borrowed to be discharged or repayed with interest out of the property of the Estate in priority to the claims of the creditors.*

(2) Amend Section 11 (1) by substituting the word *"Estate"* for the word "debtor" in lines 5 and 8, and add after the word "Estate" as substituted for the word "debtor" in line 5 the words *"including security under the provisions of the Bank Act."*

(3) Amend Subsection 2 of Section 11 to make it clear that it applies not only to borrowing under Section 11, but to borrowing under Section 10. This could be done by adding after the words "Bank Act" in line 2, the words *"in respect of borrowing under Section 10 or this Section."*

Section 11 (4). The principle of this Section should not apply to moneys borrowed from a bank or other lender for the purpose of carrying on the business of the bankrupt. It should be amended by adding at the end thereof the words *"but this Subsection does not apply to moneys borrowed from banks or others for the purpose of carrying on the business of the bankrupt".*

Section 11 (6) and (7). These Subsections raise the question as to whether or not they take away the rights of a secured creditor. They cannot be intended to but the point should be made clear. This might be done by adding as Subsection 8 the words *"This section shall not affect the rights of secured creditors"*. If this be not done at least Subsection 7 should be amended by adding at the end thereof *"saving always the rights of secured creditors."*

Section 63.

Subsection 2. There is no Statute of Newfoundland providing for the registration of an assignment of book debts. The effect of the Section would, therefore, be to render void all assignments of book debts made in Newfoundland unless and until there is a provincial law for registration.

Recommendation: Amend Section 172 by adding thereto the following: *except that Section 63 of this Act shall not apply to Newfoundland until proclaimed by Order of the Governor General in Council.*

Section 77

This Section requires a creditor for purposes of voting to treat as security in his hands the liability on a current bill of persons liable on the bill both before and after the liability of the debtor. It should be limited to persons liable on the bill whose liability is antecedent to that of the debtor.

Recommendation: Restore the present Section 96.

Section 95

Subsection 1. While this Section is under the heading "Scheme of Distribution" its language is wide enough to cover payments which are not distribution among creditors of the bankrupt. The first priority should be *repayment of moneys borrowed by the Trustee with interest.*

Subsection 4. This Subsection voids any preferential lien or charge created by Statute and may affect security given under the Bank Act.

Recommendation: No change needed if Section 189 of the present Act is restored. Otherwise there should be an amendment to Subsection 4 providing that *nothing in this Subsection shall prejudice or affect any security given under the Bank Act.*

Section 106

This Section imposes the levy to defray expenses of the Superintendent's Office upon moneys paid to secured creditors. In practice for convenience and for the benefit of all concerned the Trustee frequently acts for a secured creditor and accounts to him. He does not do this as Trustee for the creditors but as agent or Trustee for the particular secured creditor.

Recommendation: Substitute for the words "creditors whether unsecured, preferred or secured creditors" in lines 7 and 8, the words "unsecured or preferred creditors".

Section 189 of the Present Act

This should be restored as Section 171, renumbering Sections 171 and 172 in the Bill as 172 and 173.

Appendix "I"

MARCH 8th, 1949.

Memorandum to the Banking and Commerce Committee of the Senate, with reference to Bill "N" of the Senate (1949), entitled "An Act respecting Bankruptcy". Submitted on behalf of the Montreal Credit Relations Committee.

Honourable Gentlemen: The Montreal Credit Relations Committee was organized about one year ago as a defensive measure against certain abuses of the Bankruptcy Act and for the purpose of examining the effect of increasing numbers of so-called "wage-earner" Brankruptcies in this city.

It is our understanding that the Bankruptcy Act is primarily intended for the orderly liquidation of bankrupt *businesses*, yet half the assignments in bankruptcy made in this city are made by persons who are not in business and whose only income, or principal source of income, is from salary or wages.

In many cases the applicant had no assets and was apparently using the Bankruptcy Act to ecsape from the pressure of unsecured creditors whose individual claims were too small to justify contesting either assignment or discharge.

It was found that most creditors who offered credit facilities to wage-earners on personal security had been the victims of such bankruptcies, and while the losses in individual cases were small the aggregate losses of such creditors in the course of a year amounted to a considerable sum.

We respectfully submit that the frequent use of the Bankruptcy Act by debtors whose assets consist chiefly or wholly of future income is not in accordance with the intent of the Act, and that such practice may hamper the efficient administration of the estates of insolvent business enterprises.

We, therefore, suggest that the restrictions on "Petitions for Receiving Order" in Section 25 of Bill N shall be made applicable to Section 26, "Assignments".

We suggest that present Section 26 shall become Section 25, and that present Section 25 shall become Section 26 and shall be amended by substituting "twenty-five" for "twenty-four" in the first line of this Section.

We believe that such amendment would restrict present abuses of the Bankruptcy Act in Montreal and relieve the Administrators of the Act from many Assignments in Bankruptcy which should properly be dealt with under the Lacombe Law.

Respectfully submitted,

T. BEAUSOLEIL,
Secretary, Montreal Credit Relations Committee.

33005—3½

Appendix "J"

Memorandum of Recommendations of the Legislation Committee of the Quebec Division of the Canadian Credit Men's Trust Association Limited. This Division representing 360 credit men actively engaged in all types of business and industry in the Province of Quebec.

This Committee has made a very careful study of the existing Legislation and the proposed amendments and wish to take this opportunity of expressing their appreciation for the very thorough study of the existing Legislation which has culminated in the proposed amendments as represented by Bill N.

Our Committee are of the opinion, however that certain further changes not given effect to in the proposed Legislation are deserving of consideration and the following changes set forth our views and recommendations. For clarity, suggested changes, additions, or deletions in the wording of various sections of the proposed Act are set forth at the left of the page with the reasons for these suggested changes on the opposite side of the page.

Suggested Changes	Reasons
1. *Section 2,* paragraph "i" might read: Debtor includes "insolvent person" and any person who, at the time any act of bankruptcy was committed by him, had a place of business or carried on business in Canada; and, where the context requires a "bankrupt".	1. It is the opinion of the Committee that the Bankruptcy Act should be available only to people and firms in business, or who have been in business within a year of an authorized assignment or a petition in bankruptcy. Such is the interpretation of the wording of the Act in some of the Provinces. However, any wage earner may make an authorized assignment.
Section 2, paragraph "j" might read: "Insolvent person" means a person not bankrupt, having a place of business or carrying on business in Canada".	Statistics reveal that a good number of all bankruptcies in the Province of Quebec are by individuals who are not in business, but merely wage-earners, salesmen, commission agents, civic employees, civil servants, teachers and professional people. For this reason, Quebec Province has comparatively three times as many bankruptcies as other Provinces. This is a situation which could be remedied by limiting the use of the Bankruptcy Act to persons actually in business, or recently in business.
	Most provinces have some statute to cover cases of this kind, for example in Quebec the Lacombe Law, and it is felt that action taken should be under the provisions of legislation specially provided for these cases rather than have recourse to the Bankruptcy Act.

The fact that Section 25 provides that no petition in Bankruptcy can be taken against any person who works for wages, salary, commission or hire earning less than $2,000 per year seems to uphold the principle that the Bankruptcy Act should not be available to such persons.

2. In paragraph (4) of Section 82, the following words be added "such a vacancy may be caused by the death, resignation or removal of one or more inspectors."

2. Section 82 concerns the appointment of inspectors. It stipulates that the creditors or the inspectors may fill any vacancy on the Board of Inspectors. Such a vacancy could conceivably occur through death or resignation, but the proposed Act is not very clear. According to paragraph (5) of this Section, the only instance where a vacancy can occur would seem to be through removal at the instigation of the Trustee or creditors.

3. Sub paragraph "j" of paragraph (1) of Section 95 might read as follows: "all claims of the Crown in the right of Canada or of any Province thereof, assessed or levied against the bankrupt within two years next preceding the bankruptcy, pari passu notwithstanding any statutory preference to the contrary".

3. Section 95 deals with the scheme of distribution and the order suggested seems to be satisfactory. It is noted that all claims of the Crown shall rank immediately before the unsecured or ordinary creditors, but there is no limitation as to the period of time over which these may extend. As it is now, claims are filed extending over a number of years with the result that often most of the proceeds of the assets go to the Crown towards its claims.

For example: Income Tax auditors revise the returns of the debtor at the time of his bankruptcy and file new or additional claims which frequently extend over periods as long as ten or twelve years. Sub paragraph "e" of paragraph (1) of Section 95 stipulates that municipal taxes assessed within *two years* of the bankruptcy will be privileged. If the preference for municipal taxes is limited to two years, it is felt that the same principle should apply to the claims of the Crown.

4. To Section 127 might be added an additional paragraph as follows: (7) "Such disbursements as may be necessary in connection with the performance of the duties imposed upon the trustee by sections 127-128-129 and any fee or remuneration to the trustee for these services shall be payable by the debtor".

4. Section 127 refers to the discharge of bankrupts and provides that bankruptcy will operate as an application for discharge. The onus of going through the motions is placed upon the trustee, although no additional remuneration for these extra services is provided for. Your Committee, however, would like to

point out that the disbursements and expenses involved will have to be paid out of the assets of the estate and indirectly by the creditors. There seems to be no objection to the obligation imposed upon the trustee to file a report to the court on the conduct of the debtor, but serious doubts have been expressed as to the wisdom of imposing a series of tasks to be performed by the trustee for the *benefit of the debtor,* and *at the expense of the creditors.*

5. Section 135 sub paragraph (a) (b) (c) (d) and (e) of paragraph (1) might be deleted and sub paragraphs (a) to (d) inclusive of paragraph (1) of Section 147 of the present Act substituted. Sub paragraph (f) of paragraph (1) of Section 135 of the proposed Act being retained as sub paragraph (e).

5. It is the opinion of your committee that the sub paragraphs of Section 147 of the present Act referred to are much more specific and extensive; and with particular reference to sub paragraph (a) of paragraph (1) of Section 135 of the proposed Act, the position of a bankrupt going into business again is not clearly stated and does not afford protection to the creditors when any liability of Canada, a province of Canada, or a municipality of Canada for taxes may suddenly be brought to light and undoubtedly satisfied at the expense of unsuspecting creditors who had not previously known of its existence.

In the course of our study of this Bill representatives of the Montreal Board of Trade, the Chamber of Commerce of Montreal and the Retail Credit Relations Committee were invited to meet with us and discuss the proposed Legislation. Complete agreement was reached on several points such as:

1. The Bankruptcy Act should be available to persons in business only.
2. The preference of the Crown should be limited in the same manner as municipal taxes.
3. Debtor discharges should be at their own expense.
4. An order of discharge should release from all debts except those indicated in the present Act.

The deliberations of your Committee touched upon every section of the new Act. A number of other recommendations of a minor nature were also made, but for the sake of brevity and clearness, these have been left out of this report. The Committee would like to have the privilege of further discussion, if necessary.

In connection with this, it feels that a number of the points touched upon, while having a bearing in most provinces, are particularly important to those of us operating in the Province of Quebec.

Your serious consideration of the recommendations set forth in this memorandum is earnestly requested.

Respectfully submitted,

LEGISLATION COMMITTEE THE CANADIAN CREDIT MEN'S TRUST ASSOCIATION LTD.
QUEBEC DIVISION
760 Victoria Square,
Montreal, Que.

Appendix "K"

DEPARTMENT OF JUSTICE

BRIEF *RE* BILL N, AN ACT RESPECTING BANKRUPTCY

Submitted by Mr. R. Forsyth, Superintendent of Bankruptcy.

The Bankruptcy Act, 1946, drafted by the late Mr. Reilley and known as Bill A-5, was discussed at some length by the Standing Committee on Banking and Commerce after second reading before the Senate on May 13, 1946. The objections taken and points raised by the Committee as well as by the various witnesses have been carefully examined and effect has been given in Bill N to most, if not all, of the suggestions.

The Brief submitted by the Comittee on Bankruptcy Law Revision of the Board of Trade of the city of Toronto states: "The Comittee approves Senate Bill L-11 (now Bill N) in principle and to a large extent in detail; it considers that the Superintendent in Bankruptcy is to be congratulated on the successful manner in which he has revised Senate Bill A-5—An Act respecting Bankruptcy (1946), in the light of the representations made to the Sanding Comittee of the Senate on Banking and Commerce, in accordance with the recommendation of that Committee."

Judge Urquhart writes: "The Superintendent of Bankruptcy, I consider, has done a splendid job in revising the bill which was discussed by me in committee at a former session in 1946".

Hugh E. O'Donnell, K.C., in his letter of November 18, 1948, advises: "Personally, I have no suggestions to make on what appears to me to be an excellent piece of work".

Richard Beaudry, Joint Registrar in Bankruptcy, Montreal, comments December 14, 1948: "I have examined carefully your Bill respecting Bankruptcy, and I have great pleasure in congratulating you for this splendid work. This new law will improve the present Bankruptcy Act on numerous points, some of them of great importance. Moreover we shall have at least classification and order in the Bankruptcy Act."

The Canadian Credit Men's Trust Association Limited: "It is desired to express appreciation of the consideration given by Mr. Robert Forsyth, K.C., Superintendent of Bankruptcy, and to congratulate him upon a number of features which if enacted will, it is believed, improve and expedite the administration of bankrupt estates."

There follows a detailed consideration of the suggestions made subsequent to the incorporation of the previous recommendations relating to the original Bill A-5. Unless otherwise indicated, the references are to the sections as they are now numbered in the new Bill N. The designation "Act" when used is intended to mean the Bankruptcy Act, 1919, as amended and as now embodied in the 1935 Office Consolidation. The advisability of retaining sections of the Act which had been deleted are considered separately at the end.

Section 2(f)—"Corporation".

Section 2(m)—"Person"

Suggested by Toronto Board of Trade that, if deemed necessary, revision be made to insure that corporations excluded by sec. 2(f) be not prevented, in view of definition in sec. 2(m), from proving as creditors.

Recommended. The definition of "creditor" might be amended to read: "(h) 'creditor' means any one having a claim, preferred, secured or unsecured, provable as a claim under this Act;"

Section 2 (g)—"Court"

Suggested by Judge Urquhart that the word "original" be inserted before "juisdiction".

Not recommended. Section 2(1) of the Act defines "court" as "the court which is invested with *original* jurisdiction in bankruptcy under this Act". But section 140(1) of the Bill which in its wording is similar to the introduction of section 152(1) of the act reads in part "The following named courts are invested with such jurisdiction at law and in equity as will enable them to exercise *original, auxiliary and ancillary* jurisdiction in bankruptcy" etc. It will be noted that the jurisdiction is not limited to "original" jurisdicton.

Secton 2 (i)—"Debtor".

Suggested by Judge Urquhart that the definition is over-simplified and that it would be better to revert to section 2 (*p*) of the Act.

Not recommended. Section 2(i) contains all the essential requirements of 2(*p*). The words "whether a British subject or not" have been deleted. They add absolutely nothing. The phrase "or any authorized assignment was made by him" has also been dropped as in itself the making of an assignment constitutes an act of bankruptcy. Clause (i)—"was personally present in Canada" is of very doubtful value and meaning. Clauses (ii) and (iii) are provided for by the words "resided or carried on business in Canada". Clause (iv) is unnecessary in view of the definition of "person".

Section 2 (k)—"Locality of a Debtor"

Suggested by Judge Uruquhart that section 2(*y*) of the Act be restored as he claims no improvement.

Not recommended. Section 2(*y*) has been simplified, without however any change in the meaning. Needless repetition of words has been avoided.

Questioned by Richard Beaudry as to the explanatory note concerning changes and referring to the decision in In *re* Boily & McNulty.

Adopted: There is no change in the meaning and the note has been deleted.

Section 2(t)—"Special resolution"

Suggested by Toronto Board of Trade that definition read "a resolution decided by a majority of votes as defined by section 81" etc., so as to exclude creditors with claims of less than $25.00 in the case of a proposal.

Not adopted. Why should these creditors be excluded. They have legitimate claims and an interest in the proceedings. Moreover a proposal once accepted is binding on *all* the creditors. Therefore all should have a vote.

Section 3(3) (g)—Duties of Superintendent.

Suggested by Toronto Board of Trade that examination of trustee's accounts and final statements by the Superintendent be made permissive rather than mandatory.

Not adopted. It is the duty of the Superintendent to "supervise the administration of all estates to which this Act applies". (Sec. 3 (2)). How can a complete and thorough supervision be maintained unless the accounts and statements of the trustee are examined. They are the culmination of his management and one of the most important reports received by this office. There is no doubt that in the past the knowledge that their accounts would be carefully scrutinized has ensured that trustees have refrained from making improper charges. It has had a salutary effect. Also there is the fact that in many instances the examination made by the Superintendent has resulted in an increase in the receipts through

disclosure of assets which had been overlooked or through errors in bookkeeping and in a decrease in the administrative expenses where unwarranted items had been inserted or where they were exceedingly high or not calculated on a proper basis.

Section 3(4)—Superintendent may intervene

Suggested by Toronto Board of Trade that Superintendent be required to obtain leave of court.

Not adopted. To obtain leave of the court in each case would mean delay and involve costs. Then, too, this would to some extent negative the intention of the section and interfere with the proper exercise of his functions by the Superintendent.

Section 3(9)—Superintendent may require estate funds to be remitted for safekeeping.

Suggested by Dominion Association of Chartered Accountants that Superintendent be required to obtain court order.

Not recommended. No reasons have been given for the suggestion that the Superintendent be required to obtain an order from the court before the provisions of section 3(9) should become applicable to a particular case. As the section itself indicates, it is intended as a protective measure. The benefits could quite conceivably be lost through the delay occasioned by the necessity of making application to the court for authority to proceed.

Section 4 (2)—Official receivers

Suggested by Judge Urquhart that section 160 (2) of Act be restored as he questions use of the words "or more".

Not recommended. The Governor in Council "shall" appoint at least one official receiver for every division but he may appoint more if he sees fit. Joint appointments in the province of Quebec have occurred fairly often in the past as joint prothonotaries are often named in that province. (At the present time we have 5 cases in Quebec, notably Montreal, where joint registrars are in office.) The prothonotary, official receiver and registrar are frequently the same.

Section 6 (1)—Appointment of trustee by creditors.

Suggested by David Grobstein and Canadian Credit Men's Trust Association, Limited that 65 per cent or 75 per cent of votes of creditors be required for removal and substitution of trustees.

Adopted.

Section 6 (6)—No trustee bound to act.

Suggested by Toronto Board of Trade that trustee be not bound to act until his acceptance of the appointment (after investigation) has been confirmed by the creditors at their first meeting.

Not adopted. The matter cannot be left in suspense and the trustee may at the first meeting ask the creditors to appoint a substitute. The duties and expense involved during the interval are not considerable. While it is true that in the case of a receiving order the trustee is not afforded an opportunity of making an investigation yet he is protected by sec. 23 (2) which provides that "when the proceeds of the estate are not sufficient for the payment of any costs incurred by the trustee, the court may order such costs to be paid by the petitioner." Where an assignment is concerned, the trustee is not indemnified by the creditors but rather does he, for his own protection, in doubtful cases require the debtor to make a deposit or produce a satisfactory guarantee. A further safeguard is afforded by section 26 (6) which provides that summary administration shall apply where the realizable assets do not exceed $500 in the opinion of the official receiver.

The revesting of the assets in the debtor does not present any particular problem. If substitution of trustees occurs, it is provided by section 41 (5) that "the property shall pass from trustee to trustee without any conveyance, assignment or transfer". In cases where the assignment is cancelled everything would revert to the status quo as though no assignment had ever been made.

Section 8 (1)—Security to be furnished by trustee.

Suggested by Toronto Board of Trade that increase or decrease in security be left to the discretion of the official receiver and that a resolution of the inspectors be not made a prerequisite condition. Adopted.

Suggested by Toronto Board of Trade that official receiver be authorized to dispense with security where the assets are of nominal value only.

Not adopted. It would not seem advisable to incorporate such a provision. Too many dispensations might be given. Actually, the subsection requires trustees to give security "satisfactory to the official receiver". The wording of section 37 (8) of the Act is in this respect identical. Whether or not this empowers official receivers to dispense with security, the fact remains that many do so at present where the circumstances, in their opinion, warrant such a step. This is true more especially in the case of custodians and is based primarily upon two factors: (1) the short duration of their appointment, and (2) the nature of their duties which are strictly conservatory except where perishable goods are concerned or where they are authorized by the court to continue the debtor's business. But the position of custodian has been abolished. It will be noted that the Bill (section 114 (*b*)) specifically states that the security shall not be required for summary administration. This would appear to imply that in all other instances security should be given. I am in favour of such an interpretation.

Section 8 (2)—Duties of trustee.

Suggested by Toronto Board of Trade that Rule 128 of Act be retained, particularly since the trustee is required by the Bill to take possession of the "records" of the bankrupt. Adopted.

Section 8 (7)—Conservatory measures.

Suggested by Toronto Board of Trade that the trustee be required to obtain an order of the court to carry on the business until the first meeting of the creditors.

Not adopted. There isn't time. Section 68 (1) of the Bill obliges the trustee, within 5 days from the date of his appointment, to send the notices to the creditors and the meeting must be held not later than 15 days from the mailing of the notices.

Section 8 (11)—Divesting of property by trustee.

Suggested by Toronto Board of Trade that the consent of the inspectors or of the court be required.

Adopted in part to read "with the permission of the inspectors".

Section 8 (13)—When trustee may initiate criminal proceedings.

Suggested by Dominion Association of Chartered Accountants that the decision to initiate criminal proceedings be left to the inspectors or the Superintendent.

Not recommended. Section 163 (4) of the Bill reads "Where a trustee is authorized or directed by the creditors, the inspectors or the court to initiate proceedings . . ." The creditors should not be deprived of this right. They are the ones affected by the offence and the ones primarily concerned (although the community at large and general business morals are involved). Then, too, it is they who must provide the funds to cover the cost of the intended prosecution.

They may also overrule any resolution which the inspectors might make with regard to the advisability of proceeding, etc. As far as the trustee is concerned, he is protected by section 169. I do not think the Superintendent is the proper person to decide if a prosecution should be launched. To some extent, this implies substituting the Superintendent for the court. That is not good policy and similar suggestions in the past met with strong objection.

Section 8 (14)—Duties of trustee regarding returns.

Suggested by David Grobstein, Toronto Board of Trade and The Canadian Credit Men's Trust Association, Limited, that trustees be not obliged to make returns (notably Income Tax), even for the one year immediately preceding the day of the bankruptcy. Adopted.

Suggested by Income Tax Department that trustees be required to file returns for the year in which the bankruptcy took place and for the two years preceding and that they be granted a fee and their disbursements out of the estate.

Not adopted. "The Income Tax return for the last year will in some cases necessitate completely posting the bankrupt's books, where proper records have not been made, for the last several years of the bankrupt's operation before the return for the last year can be made. The trustee should not be obligated to make income tax returns which the bankrupt has not made and he should only be required to make available the books and records of the bankrupt to officials of the Income Tax Department to enable them to ascertain the bankrupt's income tax liability. In such case the considerable costs of completing the books and records and making the return will be borne at the public expense and not at the expense of the creditors as at present. Also, such costs will no longer, as they sometimes do now, reduce settlement of wage claims in estates which have only a small amount of property available for realization and distribution to creditors."

Suggested by Income Tax Department that trustees be obliged to file all requisite returns where they continue with the business.

Adopted. There is no suggestion that section 8 (14) relieves them of this obligation and there is no such intention on our part.

Section 9 (1)—Trustee shall insure property.

Suggested by Toronto Board of Trade and The Canadian Credit Men's Trust Association, Limited, that section 40 (1) of the Act be retained but limited to fire insurance.

Not adopted. The type of insurance required will vary according to the particular circumstances of each case, as will the amount of coverage needed. If theft insurance is called for in addition to or instead of fire insurance, then the trustee should be obliged to see to it that the estate (i.e. the creditors) are amply protected against loss of any kind. The matter is one for the discretion of the trustee who may be relied upon to use sound business judgment founded upon his own knowledge and experience and should not be based upon a court order or a resolution of the inspectors. The latter are not appointed until the first meeting of the creditors and similarly there would be a time lag if application had to be made to the court. Such delays are dangerous and to be avoided.

Section 9 (4)—Moneys to be deposited in bank.

Suggested by Toronto Board of Trade that it is impractical to require the trustee to make all payments by cheque.

Not adopted. This may be so in the case of small items which are generally paid out of petty cash and certain other expenses which by their very nature do not lend themselves to such treatment. Nevertheless the trustee can for the former issue a cheque payable to petty cash for postage, etc. and (as many do now) pay the latter out of his own pocket and then issue a cheque to reimburse

himself. Moreover the new provision guarantees more effective control over, and check on, the disposal of the funds of an estate. Attention is drawn to section 140 of the Australian Act which is more precise and goes even further. It reads:—

> 140. (1) All payments by the trustee out of any banking account shall be made by cheque payable to order, with the name of the estate printed or written on the face thereof.
>
> (2) If the creditors by resolution so direct, the cheque in addition to being signed by the trustee shall, if there is a committee of inspection, be countersigned by at least one member thereof.

See also section 47 (*a*) (4) of the United States Act.

Section 9 (7)—Trustee's records to be property of estate.

Suggested by Toronto Board of Trade that the subsection be deleted as a trustee upon his removal is deprived of the means of "answering enquiries or protecting himself".

Not adopted. It is claimed that the present practice of having trustees pass their accounts is sufficient. While such a provision has been incorporated in section 14 (1) of the Bill, yet that is not enough as the substituted trustee not only might but would undoubtedly need the complete records of the estate. As for his predecessor, he could always consult them if the occasion arose where he felt he had to have recourse to them. Any inquiries concerning the administration would be dealt with by the substituted trustee, and his predecessor would be protected by the fact that his accounts had been passed by the court. Finally, if, as stipulated by the subsection, "the estate books, records and documents relating to the administration of an estate shall be deemed to be the property of the estate", it follows that they must be delivered to the substituted trustee.

Section 9 (8)—Records may be inspected.

Suggested by Toronto Board of Trade that the provision requiring the trustee to forward the books, records and documents to the Superintendent is impractical and be deleted.—Adopted.

Suggested by Dominion Association of Chartered Accountants that the right to inspect the books and records be limited to the Superintendent and the inspectors.

Not recommended. Section 130 (2) of the Act reads in part "Any person stating himself in writing to be a creditor of the bankrupt or assignor may personally or by agent inspect the statement (i.e. the debtor's sworn statement of affairs) at all reasonable times and take any copy or extract therefrom . . ." Section 55 of the Act goes even further: "The trustee of a bankrupt or assignor shall keep, in manner prescribed, proper books in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor of the bankrupt or authorized assignor may, subject to the control of the court, personally or by his agent inspect any such books". The creditors should not be deprived of this right. It is true that the inspectors are the creditors' representatives but nevertheless the individual creditor (particularly if none of the inspectors is his personal appointee) may desire, during the administration of an estate, to look into some aspect of the proceedings or of the trustee's management: this he should be entitled to do. Not only does the idea of inspection by the creditors go hand in hand with that of creditor control but it is a further safeguard against maladministration and a guarantee that trustees, knowing their books and records can be examined at any time, will "toe the mark". However, I would have no objection if this privilege were withdrawn from the bankrupt. A disgruntled debtor could make life unbearable for an honest trustee by repeated requests serving no real or useful purpose.

Section 9 (13)—Duty of trustee on expiration of licence or removal.

Suggested by Toronto Board of Trade that the provision be deleted which requires that the remaining property, the books, records and documents of every incompleted estate be forwarded to the official receiver pending the appointment of a substituted trustee.

Not adopted. It is claimed that this would result in a volume of material being sent to official receivers which they have not the facilities to handle. As far as I am aware, the official receivers themselves have not complained. The objection to the alternative is that it is not advisable that the books and assets be allowed to remain in the hands of the trustee who is being replaced. Moreover, nowadays, there are not so many cases to which this subsection would apply so that, in all probability, the official receiver would not often be affected by its provisions. Then again, pursuant to section 6 (3) of the Bill, the official receiver is obliged to "perform the duties of trustee until a trustee is duly appointed."

Suggested by Toronto Board of Trade that the ten-day period allowed for the preparation of the financial statement is inadequate and should be increased to thirty days.

Not adopted. There may be the odd case where the trustee has not had much forewarning but these would be few and far between. Where his licence is cancelled or suspended pursuant to section 6 (2) of the Bill, he has had advance notice of the possibility that such a step was imminent. If he is removed by the creditors at a general meeting he undoubtedly is aware in advance of the proposed action.

Suggested by Toronto Board of Trade that the words "on the expiration of his licence" be deleted as confusing inasmuch as no annual accounting is required. Adopted.

Section 9 (14)—Trustee to file report before discharge.

Suggested by Toronto Board of Trade that corporations be excepted as very few corporations ever apply for a discharge.

Not adopted. Admittedly not many corporations do apply. However the preparation of the report is not a very onerous duty and it contains information which may be of value and which will be available to the court in any future proceeding.

Section 10 of Senate Bill L-11: Powers of trustee to deal with property

Suggested by Toronto Board of Trade that this section when considered in conjunction with the following section (i.e. sec. 11 of Bill L-11) raises the question of the status of those powers not specifically mentioned in both sections.

Adopted. Section 10 of Bill L-11 has been deleted.

Section 10 (1) (a)—Powers exercisable by trustee with permission of inspectors.

Suggested by Dominion Association of Chartered Accountants that the subsection be amended to read *"sell or otherwise dispose of for such price or other consideration as the inspectors may approve all or any part of the property,"* etc.

Recommended in part. There would appear to be no objection to the addition of the words "for such price or other consideration as the inspectors may approve", although they would hardly seem necessary as this is implicitly contained in the power granted to the inspectors, and the permission given by them to the trustee usually specifies the details. However it is not clear what is intended by the expression "or otherwise dispose of". Presumably it is meant to cover deeds of quit claim (dations en paiement in Quebec) and, if so, it is in order as trustees are advised to attempt to obtain some consideration for the estate for the giving of such a deed. In Quebec, the costs are paid and the trustee generally receives a fee. On the other hand, "dispose" has a broader interpretation and cannot be limited to the quit claiming of realty (nor is the

subsection itself restricted to immovables). Also there is the possible danger of confusion with the stipulations dealing with secured creditors and perhaps also with sections 10 (1) (j) and 18 (1). Probably a condition would have to be inserted saying "subject to the provisions of the Act" if the suggestion is adopted.

Section 10 (1) (c)—Powers exercisable by trustee with permission of inspectors.

Suggested by Toronto Board of Trade that the words "which does not otherwise provide for cancellation or termination thereof by reason of the bankruptcy" be inserted after "executory contract".

Not adopted. Such a clause would thereafter be written into all contracts. The amendment would nullify the intention of the provision although the Board approves generally the principle contained in the subsection. A case in point is that of Diamond Truck Limited (in liquidation) and The Bell Telephone Company of Canada reported at 25 C.B.R. 99.

Section 11 (1)—Borrowing powers with permission of court.

Suggested by Toronto Board of Trade and Richard Beaudry that provision be made for the period prior to the first meeting of the creditors by empowering the trustee to borrow with the approval of the court. Adopted.

Section 11 (4)—Debts deemed to be debts of estate

Suggested by Toronto Board of Trade that the subsection be modified so as to make trustee personally liable in the event of his non-compliance with the requirements of subsection (3).

Not adopted. Further clarification not deemed necessary in view of the specific requirements of subsections (1) and (3) and the limitations thereby imposed on the obligations which may be incurred and moneys that may be borrowed by the trustee. Failure to comply with these two subsections would be grounds for the removal of the trustee by the creditors or the court.

Section 12 (2)—To report to court after three years.

Suggested by Toronto Board of Trade and Judge Urquhart that, to render the subsection fully effective, a provision be added to the effect that "if the trustee does not so report any inspector or creditor may so report to the court".

Not adopted. It is claimed that this will make it more effective. Judge Urquhart supports this recommendation, claiming that Rule 123 lacks teeth. This is not quite true although the creditors may not have availed themselves of the provisions of R.123(2). However, section 160 (*d*) makes it an offence where a trustee "without reasonable excuse, fails to observe or to comply with any of the provisions of this Act". Fairly stiff penalties may be imposed. In addition, failure to comply with any requirement of the Bill would warrant cancellation of the trustee's licence.

Section 13—Redirection of bankrupt's mail.

Suggested by Toronto Board of Trade and Dominion Association of Chartered Accountants that the section be revised to provide that a certified copy of the trustee's appointment be deemed sufficient for three months and that a court order be required for longer periods.

Recommended. This section is the same as section 14 of the Act and corresponds to section 24 of the English Act. The matter was taken up some years ago with the Post Office Department but as they pointed out, supported by a ruling of the Department of Justice, they were bound by the provisions of section 140 and accordingly an order of the court was required in each case for redirection of the debtor's mail to the trustee. As the Deputy Postmaster General wrote on March 7, 1933, "In the circumstances it would seem that, if you desire any change in the present procedure respecting the delivery of mail,

steps should be taken to amend the Bankruptcy Act accordingly". Mr. Reilley did not consider this advisable as the section provides protection for the debtor who, on becoming bankrupt, does not lose all his civil rights. On the other hand I am not aware of a single instance where the application to the court was refused. Moreover the cost in each case is approximately $25 (at least in the province of Quebec), a fair amount particularly in a small estate. I am rather inclined, therefore, to agree, in part, with the proposal made concerning section 13. The cost of a certified copy of the trustee's appointment is only $1. However the Association suggests that three months is not always sufficient but to the best of my recollection it hasn't happened more than once (if that) in Quebec that a further application had to be made. In England, I understand that "in practice, the Order has spent itself long before the expiration of three months, and rarely, if ever, has the trustee, his successor or the Official Receiver applied for a further Order". In addition, there is the fact that the debtor may apply for his discharge three months after the date of his bankruptcy. I understand too, according to a letter from Fred H. Pope (a trustee that prior to the amendments of 1932 "all that was necessary was to serve on the Post Office a copy of the (custodian's or trustee's) appointment". Then there is the matter of the delay involved in obtaining an order from the court. At the present time I think I can safely say that any questionable element among the trustees has been eliminated and the reliability of the trustees is further guaranteed by the various protective and punitive provisions of the Bill.

For all these reasons, I approve the adoption of the recommendation made by the Association and I feel sure that the trustees would unanimously endorse it.

Section 14 (1)—Duty of former trustee on substitution.

Suggested by Toronto Board of Trade that former trustee be not required to deliver his own books to the substitute trustee.

Not adopted. See remarks on section 9 (7). The books, records and documents (defined in subsection (6)) relating to the administration of an estate are deemed to be the property of the estate.

Suggested by Toronto Board of Trade that former trustee be not required to surrender his vouchers to the substitute trustee. Adopted.

Suggested by Toronto Board of Trade that former trustee pass his accounts. Adopted.

Section 14 (2) (d)—Duty of substitute trustee.

Suggested by Toronto Board of Trade and Judge Urquhart that the following subsection be added: "Upon the registration of the said notice as aforesaid all the property and estate of the bankrupt shall forthwith vest in the substituted trustee without any conveyance or transfer."

Not adopted. The provision is unnecessary. It is claimed that the Bill has nothing to correspond to section 37 (3) and (4) of the Act. However, see section 41 (5) of the Bill which concludes, "and in any case of change of trustee the property shall pass from trustee to trustee without any conveyance, assignment or transfer".

Section 16 (1)—Proceeding by creditor when trustee refuses to act.

Suggested by Toronto Board of Trade that the subsection be revamped so as to vest in the creditor the right of the trustee to take the proceeding.

Not adopted. Instead, section 69 of the Act has been restored.

Section 16 (2)—Benefits belong to creditor.

Suggested by Toronto Board of Trade and Judge Urquhart that the words "and the surplus, if any, shall belong to the trustee" be added at the end.

Not adopted. Since the Board's brief was prepared, section 69 of the Act has been reinstated. While there is something to be said for the point which

they have raised, yet no difficulty of this nature appears to have been experienced in the past. The fact that the proceedings are to be taken in the name of the trustee seems to indicate clearly, when considered in conjunction with subsection (2), that the surplus, if any, belongs to the estate. According to subsection (2) the creditor taking the proceeding benefits only to the extent of his claim and costs.

Section 17—Remuneration of trustee.

Suggested by The Canadian Credit Men's Trust Association Limited, E. G. Clarkson, F. M. Moffatt, R. R. Grant, Kris A. Mapp and George F. Glatt that

1. The remuneration be increased to 7½ per cent. This had also been suggested by David Grobstein and is included in the Brief of the Toronto Board of Trade.

2. Creditor control be restored.

3. Where the business has been carried on, the inspectors (as well as the creditors) be empowered to authorize a special remuneration. This is also suggested by the Toronto Board of Trade.

4. In the case of a proposal, the court be empowered to determine the remuneration when the trustee and the debtor are unable to agree. This is also suggested by the Toronto Board of Trade.

5. The court apportion the remuneration as between trustees in the event of disagreement.

6. The court be empowered to increase or reduce the remuneration. This is also suggested by the Toronto Board of Trade. Adopted.

Suggested by Toronto Board of Trade that the amount paid to secured creditors be not deducted in computing the basis for the remuneration.

Not adopted. The Board would have us revert to the use of the words "cash receipts" as found in section 85 (3) of the Act. These are of course modified by subsection (6) of the same section. Moreover the court has defined "cash receipts" in In re Johnston estate (7 C.B.R. 203) as "cash realized by a trustee from the debtor's assets for distribution in dividends to the unsecured creditors" and not cash received and paid to secured creditors. (See also section 82 (1) of the English Act.) It is on the basis of this definition that section 17 (2) of the Bill has been drafted. Then, too, subsection (5) authorizes the court, on application, to increase the remuneration.

Suggested by Toronto Board of Trade that trustees be afforded some relief in their remuneration in the case of small estates.

Not adopted. It is to be noted, however, that subsection (1) gives the creditors the power to fix the trustee's remuneration. If none is fixed, he is entitled to 7½ per cent. In addition, subsection (5) enables him to apply to the court for an increase. As a matter of fact, there are altogether too many so-called wage-earner cases and it is these which constitute the major portion of small estates. Summary administration will apply to those whose assets do not exceed $500.

Section 18 (1)—Disposal of unrealizable property.

Suggested by Toronto Board of Trade that this should not apply to property which may later acquire value.

Not adopted. An estate cannot be held open indefinitely in the hope that property at present of no realizable value will eventually be worth something. Section 86 (7) of the Act provides that "Upon the discharge of the trustee, assets, if any, not realized or distributed shall vest in the Receiver General for the benefit of the creditors". But the Receiver General has not the necessary facilities.—

It is claimed that the principle will lead to abuse but the return of the property is to be made only "with the permission of the inspectors" and section 15 gives an aggrieved creditor or other person the right to appeal to the court from any act or decision of the trustee.

Suggested by Toronto Board of Trade that there should be provided a procedure whereby title to assets of unrealizable value can be revested in the bankrupt.

Not adopted. This would apply only to realty and section 8 (11) seems to cover the situation.

Section 19 (5)—Objections to be filed with court and trustee.

Suggested by Toronto Board of Trade that the reasons for the objection be filed. Adopted.

Section 19 (8)—Effect of discharge of trustee.

Suggested by Toronto Board of Trade that words "or of any other sufficient reason" be added at the end to protect creditors against innocent errors of the trustee.

Not adopted. If such a provision were enacted, the discharge of the trustee would be more or less meaningless. The creditors can always file objections when the application for the trustee's discharge is made. Nor would it seem to be necessary, in any event, to adopt the Board's suggestion in view of subsections (10) and (11).

Section 21—Bankruptcy petition.

Suggested by Toronto Board of Trade that the word "file" be changed to "present".

Not adopted. "File" is more accurate although the petition is presented to the court for adjudication. The word "file" is used elsewhere in a similar sense, as in the case of an assignment, for example.

Section 21 (1) (a)—Conditions on which creditor may petition.

Suggested by the Canadian Credit Men's Trust Association, Limited that a debt of $500 be sufficient for the filing of a petition.

Not recommended. The change was made for the very reason mentioned by the Association, namely that of uniformity. If a debtor must have liabilities of $1000 before he can make an assignment (which the Association admits to be reasonable), why then should not the same requirement apply in the case of a receiving order? As now, if the debt owing to one creditor is not enough to support a petition, he seeks others who will join him for the purpose.

Section 21 (6)—Proof of facts, etc.

Suggested by Toronto Board of Trade and Judge Urquhart that the words "adjudge the debtor a bankrupt" be retained.

Not adopted. The necessity of an "adjudication" is not apparent here in Canada. In England a distinction is made between a receiving order and an adjudication of bankruptcy. Under the English Act, the court, if satisfied with the proof, makes a receiving order upon the petition of a creditor or of the debtor. The adjudication is a distinct matter which comes later. When the court adjudges the debtor bankrupt the property of the bankrupt thereupon vests in the trustee. In the words of Duncan and Reilley, "Under The Bankruptcy Act, on the other hand, it is the receiving order which vests the property of the debtor in the trustee, and the adjudication does little more than attach the label of bankrupt to the debtor". Attention is also drawn to section 41 (4) of the Bill which reads: "The *bankruptcy* shall be deemed to have relation back to and to commence at the time of the filing of the petition on which a receiving order is made...." Moreover, "bankrupt" is defined in section 2 (c) of the Bill as "a

person who has made an assignment or against whom a receiving order has been made or the legal status of such a person".

Section 21 (9)—Appointment of trustee.

Suggested by Toronto Board of Trade that the words "for the protection of the estate" be deleted. Adopted.

Section 21 (10)—Stay of proceedings where facts alleged in petition denied.

Suggested by Toronto Board of Trade that the jurisdiction of the court be restricted to "determination of the debt".

Not adopted. As stated by Judge Urquhart: "The Bankruptcy Court can not only determine whether there is a debt, but also if there is a bona fide dispute, or where there is a doubt about the matter, require the creditor to bring an action to establish his debt before the petition is disposed of".

Suggested by Judge Urquhart that we revert to section 4 (8) of the Act.

Not recommended. What is the advantage? Judge Urquhart stresses the jurisdiction of the court to determine the indebtedness of the debtor as previously provided but the new section is not limited solely to matters touching upon the debt or its amount. In part, it states that "Where the debtor appears on the petition and denies *the truth of the facts alleged in the petition* ....the court may.....stay all proceedings on the petition..... ....for such time as may be required for trial of the *issue relating to the disputed facts.*"

Section 21 (13)—Receiving order on another petition.

Suggested by Toronto Board of Trade that the words after "Act" be replaced by the following: "or may consolidate all petitions against the same debtor and make a receiving order on any petition or the consolidated petitions and may thereupon dismiss on such terms as it may deem just the petition or petitions in respect of which a receiving order has not been made."

Not adopted. Lengthier and more involved, this hardly seems an improvement.

Section 22 (1)—Petition against estate of deceased debtor.

Suggested by Toronto Board of Trade that the wording of the English Act be followed.

Not adopted. It is claimed that the subsection is defective in that proceedings must always be taken against a person and that consequently a petition cannot be filed against the estate of a deceased debtor. Is this not "splitting hairs"? Sec. 130 (1) of the English Act reads: "Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor, according to the law of bankruptcy".

Section 23—Costs of petition.

Suggested by Toronto Board of Trade that the last five words of subsection (1) and the whole of subsection (2) be deleted.

Not adopted. The trustee should not be made to suffer in the event of an insufficiency of assets. In the case of a receiving order he has no alternative but to accept the appointment. As in other proceedings, the petitioning creditor takes a risk and should bear the consequences.

Section 24—Appointment and powers of interim receiver.

Judge Urquhart: "The added protection seems to be very good and in my opinion should be adopted."

Section 24 (2)—Powers of interim receiver.

Suggested by Toronto Board of Trade that the interim receiver be empowered to carry on the business.

Not adopted. The explanatory notes in the Bill itself are sufficient reason. "The appointment of an interim receiver is perhaps the most arbitrary proceeding known in civil law." The interim receiver should act in a supervisory capacity only.

Section 25—Application of sections twenty-one and seq.

Suggested by Toronto Board of Trade, Association of Canadian Small Loan Companies, The Canadian Credit Men's Trust Association, Limited and the Credit Bureau of Montreal that the section be amended so that section 26 also shall not apply to the excepted categories of farmers and wage-earners.

Not adopted. No person with sufficient liabilities to warrant the description of "insolvent" should be denied the right to make an assignment and avail himself of the benefits of the Bankruptcy Act and notably the provisions leading to a discharge. Moreover the Bankruptcy Act offers the best control over the affairs of the debtor and the distribution of the funds to the creditors.

Suggested by Judge Urquhart that the $2,500 maximum is too high and that we should retain the present definition of a wage-earner.

Not recommended. It is of course a matter of opinion. The former amount of $1,500.00 is the original figure which has never been revised despite the changed conditions brought about by the passage of the years and notwithstanding the increased wages paid today. It is true that a recession may occur but we are dealing with realities and any serious adjustments which might later be required could always be effected.

Section 26 (1)—Assignment for general benefit of creditors

Suggested by Toronto Board of Trade that subsection be clarified as "debtor" includes "an insolvent person" but does not exclude others. Adopted.

Section 26 (4)—Appointment of trustee Canadian Credit Men's

"The change in principle whereby the Custodian is eliminated and a Trustee appointed in the first instance is approved. This it is believed will tend to reduce costs and expedite administration."

Section 27—Proposals

The Canadian Credit Men's Trust Association, Limited: "The new Provisions contained in Part 3 of the Bill relating to Proposals should prove most helpful to deserving debtors who through circumstances beyond their control find it necessary to apply to their creditors for relief, either in the form of a general extension of time, a composition settlement, or a reorganization of their affairs. At present, except in the case of incorporated companies, such debtors, generally speaking, require to obtain the consent of *all* creditors to any such plan. The Association approves these Provisions and expresses the hope that they will be enacted."

Section 27—Proposals

Suggested by Dominion Association of Chartered Accountants that the trustee be given control over the property of the debtor in the case of a proposal by an insolvent person.

Not recommended. An insolvent person, at this point, is not in bankruptcy. It is different in the case of a petition for a receiving order and the appointment of an interim receiver as, if the petition is granted, "the bankruptcy is deemed to have relation back to and to commence at the time of the filing of the petition". Moreover the possibility of abuse is not so very great as the delays obtained are not substantial. It will be noted that section 28 (1) of the Bill

requires the trustee to call a meeting of the creditors *forthwith* and similarly section 33 of the Bill stipulates that "upon acceptance of the proposal by the creditors, the trustee shall apply to the court *forthwith* for its approval.

Section 27 (2)—Documents to be filed

Suggested by Toronto Board of Trade that the terms of the proposal be filed. Adopted.

Section 28 (1) (b)—Documents to be mailed to creditors with notice of meeting

Suggested by Toronto Board of Trade that the words "as estimated by the trustee" be deleted. Adopted.

Section 28 (1) (c)—Documents to be mailed to creditors with notice of meeting

Suggested by Toronto Board of Trade that court be empowered to relieve trustee of necessity of sending a list of the creditors.

Adopted in part. The words "with claims amounting to twenty-five dollars or more" have been added. However no provision has been made for a reference of the matter to the court as the cost of the application would nullify any possible benefit.

Section 28 (1) (d)—Documents to be mailed to creditors with notice of meeting.

Suggested by Toronto Board of Trade that the consent of a majority of the inspectors be required before a proposal made by a bankrupt could be submitted to the creditors.

Adopted. The words "which after bankruptcy may be included in the notice of the first meeting of creditors if the proposal is submitted before the notice of the first meeting is sent" have been deleted and subsection 27 (3) has been inserted in the Bill.

Section 28 (1) (f)—Documents to be mailed to creditors with notice of meeting.

Suggested by Toronto Board of Trade that provision be made for a form of voting letter. Adopted.

Section 30—Creditor may assent or dissent by letter.

Suggested by Toronto Board of Trade that the word "voting" be inserted before "letter"

Not adopted Is it necessary to be so specific and to limit it to a "voting letter" in the prescribed form?

Section 31—When proposal deemed to be accepted

Suggested by Toronto Board of Trade that creditors with claims of less than $25 be excluded in computing the required majority.

Not adopted. *See* comments *re* section 2 *(t)*.

Section 34 (3) of Senate Bill L-11: Court may correct error or omission.

Suggested by Toronto Board of Trade that the court be not empowered to make material changes in a proposal.

Adopted. Section 34 (3) of Bill L-11 has been deleted

Section 34 (4)—Priority of claims.

Suggested by Toronto Board of Trade that the words "any person other than the trustee is to collect and distribute" be used instead of "any other person is substituted for the trustee to collect and distribute."

Not adopted. This would not appear to be an improvement. There is no danger of confusion as it stands.

Section 34 (6)—Annulment of bankruptcy and revesting of property.

Suggested by Toronto Board of Trade that the words "or the court otherwise orders" be deleted. Adopted.

Section 36—Proceedings in case of default, etc.

Suggested by Toronto Board of Trade that the expression "approved proposal" be used wherever applicable.

Not adopted. The wording of the section does not seem to lend itself to misinterpretation.

Section 36 (1)—Proceedings in case of default.

Suggested by Dominion Association of Chartered Accountants that the right given to the trustee and the creditors be extended to the debtor.

Not recommended. If, as provided by section 27(4) of the Bill, "No proposal or any security or guarantee tendered therewith may be withdrawn pending the decision of the creditors and the court", why, then, should the debtor *after* the proposal has been approved by the court, be given the right to apply to have it set aside?

Section 36 (3)—Proposal may be annulled.

Suggested by Dominion Association of Chartered Accountants that the words "by the court" be inserted after "annulled".

Recommended (?). It hardly seems possible that there could be any doubt on the matter, particularly as all the proceedings are before the court. It is the court that finally approves the proposal (and annuls the bankruptcy). Then, too, subsection (1) of the same section (i.e., sec. 36) provides that "the court may, on application by the trustee or by any creditor, set aside the proposal and make such order as it deems proper in the circumstances". It seems to follow that the annulment could only be by court order. However, if there is any question on this score I would approve the insertion of the words "by the court" to prevent any possibility of confusion.

Section 38 (2)—Companies Creditors Arrangement Act not affected.

Suggested by Dominion Association of Chartered Accountants that the Companies Creditors Arrangement Act be amended simultaneously.

Not recommended. It is generally agreed that the Companies' Creditors Arrangement Act is defective and opens the way to abuses. It will be recalled that this was admitted at the time Bill A5 was under consideration by the Senate Committee on Banking and Commerce in 1946. As a matter of fact, a brief incorporating suggested amendments to the Companies' Creditors Arrangement Act was submitted by The Dominion Mortgage and Investments Association along with a draft bill. However, the administration of this Act does not come under our control and any amending legislation would have to be introduced at the instance of the proper authorities.

Section 40 (1)—Stay of proceedings.

Suggested by Toronto Board of Trade, David Grobstein and Richard Beaudry, that the word "approval" in the first line be changed to "filing" (of a proposal). Adopted.

Suggested by Judge Urquhart that the words "until the trustee has been discharged" be deleted.

Not recommended. The reason for their addition is contained in the explanatory notes. The point at issue is whether or not a creditor should be allowed, after the discharge of the trustee, to proceed against an undischarged debtor without leave of the court. However the argument may be more or less academic in view of the automatic discharge feature of the Bill.

Section 41(6)—Application of other substantive law.

Suggested by Toronto Board of Trade that the subsection be reworded for clarification. Adopted.

Section 42(4)—Effect of bankruptcy on seizure of property for rent or taxes.

Suggested by Toronto Board of Trade that the words "at the request of the trustee and" be inserted in the second line after "shall".

Not adopted. Why should there be any distinction between seizures for rent or taxes and all other seizures?

Section 43(6) of Senate Bill L-11: Subsequent bankruptcies.

Suggested by Toronto Board of Trade that the word "or" in the second last line be changed to "and".

Not adopted. Instead, the whole subsection (6) of section 43 of Bill L-11 has been deleted.

Section 46—Contributory shareholders.

Suggested by Toronto Board of Trade that sections 70(3) and (4), 71, 72 and 73 be retained in this connection.

Not adopted. The collection of this, as of any other debt, is a matter for the discretion of the trustee (and inspectors).

Section 50(1)—Persons claiming property in possesion of bankrupt.

Suggested by Toronto Board of Trade that the words "charge or" be inserted before "possession" in the second line.

Not adopted. While these words are in the Act, what do they add to the meaning? The property is in the "possession" of the bankrupt in any event.

Section 50(2)—How claim disposed of.

Suggested by Toronto Board of Trade and Judge Urquhart that the court be given the power to shorten the thirty day period.

Not adopted. The trustee should have sufficient time (sec. 50(2) of the Bill) to investigate the matter thoroughly. There may be simple cases which can be dealt with expeditiously but others might require lengthier research.

Section 50(4)—Trustee may require proof of claim.

Suggested by Judge Urquhart that thirty days is too long.

Not recommended. The claimant should not be deprived arbitrarily of his rights and that is what an abbreviated delay would amount to. It may be necessary for him to obtain documentary proof, the evidence may not be immediately available or he himself may for one reason or another not receive the trustee's notice within thirty days of its mailing.

Section 60 (1)—Avoidance of certain settlements.

Section 60 (2)—If bankrupt within five years.

Suggested by Toronto Board of Trade that subsection (1) be deleted and that the five-year rule apply to all settlements.

Not adopted. These provisions were contained in the original Act of 1919. The English Act (section 42 (1) covers settlements made within two years and ten years, respectively.

Section 64—Avoidance of preference in certain cases, etc.

Section 65—Protected transactions.

Suggested by Toronto Board of Trade that section 64 and 65 of the Act be restored subject to an amendment to the former "to clearly state that there is no need to prove concurrent intent".

Not adopted. These sections follow sections 44 and 45 of the English Act. Subsection (1) of the former uses the expression *"with a view* of giving such creditor.....a preference over the other creditors". The Board admits that there has been "difficulty in the application of these sections in Canada".

"Intent" is the stumbling block and is difficult to establish, whether concurrent or unilateral. The explanatory notes contained in the Bill sum up the argument very well.

Suggested by Judge Urquhart that sections 64 and 65 of the Act be restored without any change.

Not recommended. It is true that a considerable jurisprudence has accumulated over a period of years but it is of a conflicting nature. One of the main points on which there has been so much disagreement and litigation in the past has been that of "intent". It is a most contentious issue. Always a difficult thing to prove, it has been held in some cases that "concurrent" intent must be proved while in other "unilateral" intent has been deemed sufficient. The Bill seeks to avoid such confusion.

Section 68 (2)—Documents to accompany notice.

Suggested by Toronto Board of Trade that the subsection be limited to creditors with claims of $25.00 or more. Adopted.

Section 69—Meetings during administration, etc.

Suggested by Judge Urquhart that a new subsection be added to read: "The Court may at any time if satisfied upon the application of a creditor that the trustee is not diligently performing his duties, order the trustee to call a meeting and such meeting shall be called within seven days of the date of the order".

Not recommended. In the first place a majority of the inspectors may convene a meeting of the creditors (section 69 (2) of the Bill). Moreover not only does section 6 (1) of the Bill provide that the creditors may name a substitute trustee at any meeting by special resolution but subsection (4) further states that any interested person may apply to the court for the removal of a trustee. Finally, by virtue of section 3 (8) of the Bill the Superintendent may report to the Minister if a license has not performed his duties properly and the Minister may thereupon pursuant to section 6 (2) of the Bill cancel the trustee's licence, etc. According to Judge Urquhart, the object of the new subsection is to supplement section 12 (2) of the Bill but this should not be necessary. See earlier remarks regarding the latter.

Section 69 (2)—Meetings convened by inspectors.

Suggested by David Grobstein that this provision "could lead to serious trouble".

Not adopted. The danger was rather to be found in section 84 (6) of Senate Bill L-11 to which Mr. Grobstein had objected at the same time and which has since been deleted.

Section 75 (1)—Right of creditor to vote.

Suggested by Toronto Board of Trade that the words "duly lodged with the trustee before the time appointed for the meeting" be added. Adopted.

Section 75 (3)—Form of proxy.

Suggested by Judge Urquhart that it be stated positively that a proxy by telegram or cable is valid.

Not recommended. This subsection has been retained from the Act. This is the first objection that I can recall on this score. It might be better to leave things as they are and thereby to stress (and this is perhaps the idea) the fact that preferably proxies should be on the prescribed form referred to in section 68 (2).

Section 79 (1)—Trustee may vote.

Suggested by Toronto Board of Trade that there is a typographical error and that the words "the trustee, if" should be deleted. Adopted.

Section 82 (2)—Certain persons not eligible.

Suggested by Toronto Board of Trade that the word "disputed" be inserted before "action" in the second line.

Adopted. However, the word "contested" was used instead.

Section 82 (3)—Powers of inspectors.

Suggested by Toronto Board of Trade that the words "present at any meeting" be deleted and replaced by the words "of them". Adopted.

Section 82 (8)—If no inspectors appointed.

Suggested by Toronto Board of Trade that the last four lines be deleted. Adopted. The subsection has since been still further amended.

Section 82 (13)—Duty of inspectors.

Suggested by Toronto Board of Trade that the subsection be made enabling rather than mandatory by substituting "may" for "shall".

Not adopted. Acceptance of the proposed change would defeat the whole purpose of the subsection. The inspectors are appointed to safeguard the interests of the creditors which are frequently their own. To perform the task thoroughly requires the fulfilment of the duties imposed. Moreover it is but a form of creditor control extended to the creditors' representatives, the inspectors.

Suggested by the Canadian Credit Men's Trust Association, Limited, that the inspectors be relieved of the duty of verifying the bank balances and auditing the trustee's accounts.

Not recommended. The explanatory notes in the Bill contain the reasons for these provisions. See also the remarks in the preceding paragraph. Attention is drawn to Rules 362, 363 and 337 of the English Act which read as follows:

> Rule 362—The trustee shall submit the Record Book and Cash Book, together with any other requisite books and vouchers, to the Committee of Inspection (if any) when required, and not less than once every three months.
>
> Rule 363—The Committee of Inspection shall not less than once every three months audit the Cash Book and certify therein under their hands the day on which the said book was audited.
>
> Rule 337—Where the trustee carries on the business of the debtor, he shall keep a distinct account of the trading and shall incorporate in the Cash Book the total weekly amount of the receipts and payments on such trading account.
>
> The trading account shall from time to time, and not less than once in every month, be verified by affidavit and the Trustee shall thereupon submit such account to the Committee of Inspection (if any) or such member thereof as may be appointed by the Committee for that purpose, who shall examine and certify the same.

Section 82 (15)—Inspectors' fees.

Suggested by Toronto Board of Trade that the scale be doubled, coupled with authority for an increase by the court.

Adopted in part. The fees have been increased in the lower brackets, that is in the smaller estates. Subsection (16) also authorizes a fee for special services. The combination is deemed sufficient compensation. The fees are only intended to be nominal and not necessarily based upon the services rendered, for after all the inspectors are the creditors' representatives and frequently creditors themselves.

Suggested by the Canadian Credit Men's Trust Association, Limited, that the fee of $3.00 for estates with net receipts below $10,000.00 be increased to $5.00.

Not recommended. In addition to the reasons previously given, there is the fact that as the Association points out "A large percentage of estates do not realize as much as $10,000." In the smaller estates, therefore, the fees might be out of proportion.

Section 84(6) of Senate Bill L-11: Trustee or inspector may call meeting.

Suggested by David Grobstein and Toronto Board of Trade that inspectors be not empowered to call meetings of inspectors. Adopted.

Suggested by Toronto Board of Trade that it be made mandatory for the trustee to call a meeting of inspectors when so requested by a majority of the inspectors.

Adopted. See Section 82(6) of Bill N.

Section 85(1)—Creditors shall prove claims.

Suggested by Judge Urquhart that non-filing creditors be not deprived or right to participate in the dividend.

Not recommended. Distribution can only be made on the basis of proved claims. Whether the failure to file is accidental or due to the non-existence or non-validity of the debt is immaterial. What matters is that as far as the trustee is concerned there is no claim. However under Section 108(1) of the Bill the trustee may give notice to every person with a claim of which the trustee has notice or knowledge but whose claim has not been proved requiring such person to prove his claim within thirty days or be ignored in the declaration of the dividend. Subsection (2) thereof follows from this and is similar to Section 85(1) of the Bill in its effect. Section 109 of the Bill alleviates the position of a creditor who has not proved and allows him to share in subsequent dividends "upon proof of his claim".

Section 85(4)—Shall refer to account.

Suggested by Toronto Board of Trade that the words "mutual credit" be clarified.

Adopted. It is to be noted, however, that the expression "mutual credit" is employed in Section 31 of the English Act, Section 68 of the United States Act and Section 82 of the Australian Act.

Section 85(6)—Penalty for filing false claim.

Suggested by Judge Urquhart that the penalties are too harsh.

Not recommended. This is a matter of opinion but the explanatory notes indicate the desirablity of Section 85(6) of the Bill. The honest creditor has nothing to fear, or at least should not. *However it has occurred to me that perhaps the wording is defective.* It refers to a proof of claim containing a "false" statement. On the other hand, Section 159(1) of the Bill constitutes it an offence where anyone makes any false claim or any proof that is untrue in any material particular "wilfully and with intent to defraud". This distinction, it seems to me, should also be incorporated in Section 85(6) which, while it speaks of "wilful misrepresentation", fails to qualify "false statement".

Section 87—Secured creditor to value securities, etc.

Suggested by Dominion Association of Chartered Accountants that a Subsection be added whereby the trustee may require the creditor holding security on movable property and having valued same to remove the property from the premises, failing which the trustee may sell the property for the account of the secured creditor.

Not recommended. If the valuation placed on his security by a secured creditor has been accepted by the trustee and the latter has not redeemed the security, the creditor may then dispose of it as he sees fit. If, in the case of movable property, he fails to remove it from the premises, the responsibility

no longer lies with the trustee. It is up to the creditor to look after it himself. I do not imagine that the anticipated difficulty would often arise and in any event I am not in favour of the suggestion for the above reasons.

Section 93—No creditor to receive more than 100 cents on dollar.

Suggested by Toronto Board of Trade that the last five lines be deleted. Adopted.

Section 94(3)—Creditor may require trustee to admit claim.

Suggested by David Grobstein that the subsection be deleted.

Adopted. The procedure provided by the Act has been restored.

Section 95—Priority of claims.

American Credit Indemnity Company: "It is greatly to be hoped that you will be able to carry through the Scheme of Distribution as proposed in Section 95 of the Bankruptcy Bill. The latter, if it can be set up, will bring order out of chaos, providing an exceedingly fair and reasonable order of priority."

The Canadian Credit Men's Trust Association Limited: "The clarification of the priorities of the various classes of creditors as set out in Section 95, if enacted, will be of inestimable benefit".

Judge Urquhart: "The idea behind this section appears to be good".

Section 95(1)(b)—Priority of claims (costs of administration).

Suggested by Toronto Board of Trade that sub-paragraph (*i*) read "the expenses and disbursements and fees of the trustee" and that there be added a subparagraph "(iii) inspectors' fees".

Adopted in part. Expenses includes disbursements and inspectors' fees.

Section 95(1)(d)—Priority of claims (wages, salaries, etc.).

Suggested by Dominion Association of Chartered Accountants that this be amended to give priority to an employee's portion of a provision for vacation with pay not to exceed $100 for any employee.

Not recommended. The explanatory note to Section 95(1)(*d*) of the Bill contains the following: "The effect of the change is to give them priority for three months' arrears over municipal taxes, the landlord and government claims. With this added advantage it is considered not unreasonable that such claims be limited to $500.00". In addition, there is the fact that provincial legislation varies. How then could we ever expect to obtain uniformity? A further argument could be based upon the advisability of refraining from opening the way to the multiplicity of similar modifications: there might be no end to it.

Section 95 (1) (e)—Priority of claims (municipal taxes).

Suggested by Judge Urquhart that these taxes have been accorded too high a priority and should rank last in the scale.

Not recommended. The notes explain the reasons for the rankings. I have nothing to add to them. However, on looking into the matter, I find a discrepancy not heretofore discovered. The note to (*e*) states that "This is the order in which the claims of municipalities rank under Section 84 (*h*) of the Australian Act...." and, in direct contradiction, the note to our (*h*) reads "Under the Australian system, claims of Workmen's Compensation Boards rank *before municipal taxes* and the landlord" (This statement is correct). The same thing occurs where (*f*) is concerned.

Judge Urquhart refers to (*g*) as representing "the fees and costs of the trustee". These are covered by (*b*). What is meant are the costs of the first seizing creditor.

Section 95(1) (i)—Priority of claims (claims resulting from injuries to employees).

Suggested By Toronto Board of Trade that these claims be given fourth priority and merged with wages, salaries, etc.

Not adopted. They can hardly be classed in the same category. Moreover, the case of the Workmen's Compensation Act (*h*) would then also have to be reconsidered. It is stated that the injury claims now rank fourth. This is not quite true. While they come fourth in the listings under Section 121 of the Act, this does not interfere with the priority created by Section 125B. Then there are also Sections 125 and 126.

Section 95 (1) (j)—Priority of claims (claims of the Crown).

Suggested by Department of National Revenue that "To be consistent with the Income Tax Act, the Bill should provide for the payment of the claim for taxes deducted at source immediately after item (*c*)".

Not adopted. As pointed out in the memorandum on Section 95, "the ordinary law with respect to trust funds should apply".

Section 112 (4) of the Income Tax Act, which corresponds to Section 92 (6) of the Income War Tax Act, reads: "Every person who deducts or withholds any amount under this Act shall be deemed to hold the amount so deducted or withheld *in trust for* His Majesty."

Mr. McEntyre admitted before the Senate Committee on July 24, 1946, that the funds representing tax deductions at the source were "in the nature of trust funds". To quote Mr. Reilley: "The point is .... if there is a trust fund and there is no money in that fund then it is only a debt....Unless it can be traced in its identical fund it becomes only an ordinary debt. The principle is that is must be traceable." In In *re* Workmen's Compensation Board *vs* Graham Barrow and Dominion Government (reported in Canadian Chartered Accountant of April, 1945), W. B. Farris, C.J., ruled December 16, 1944, that: "The Act does not contemplate giving the Dominion Government any greater right than any person would have against a trustee handling trust funds and that its priority was limited to the funds in the trust account or which could be followed as having come from the funds which should have been paid into the trust account or which had been improperly paid out of the trust account".

To sum up, if the trust fund actually exists or if the funds can be traced and identified, then these funds do not constitute property of the bankrupt. (Section 39). Otherwise, the Crown has only an ordinary claim, subject to its prerogative.

Suggested by Toronto Board of Trade and The Canadian Credit Men's Trust Association Limited that the claims of the Crown should be limited to two years as in the case of municipal taxes.

Not adopted. A very good argument has been presented by the proponents of this plan (see their respective Briefs), but, as all claims of the Crown would be deprived of the priority which they enjoy at present and would retain only their prerogative right to be ranked just ahead of the ordinary creditors, it would hardly seem fair to impose further limitations.

Section 95(4)—Preferential lien or charge for taxes against realty not affected.

Suggested by Toronto Board of Trade that this might be interpreted to render null and void the preference accorded mechanics' liens (and others) by statute and that the definition of "secured creditor" be clarified.

Not adopted. There does not appear to be any difficulty. "Secured creditor" is defined (Section 2(*r*)) to mean "a person holding a mortgage, hypothec, pledge, *charge, lien or privilege* on or against the property of the debtor or any part thereof" etc.

Section 101(4)—Different properties.

Suggested by Toronto Board of Trade that the subsection be clarified by inserting the words "of the other or others" after "property".

Not adopted. The meaning seems clear enough as it is.

Section 105—Application of provincial law to landlords' rights.

Suggested by Dominion Association of Chartered Accountants that the right of the trustee under Section 42(4) be excepted.

Recommended. It is suggested that Section 105 be amended in view of the provisions of Section 42(4). The latter also affects the rights of landlords but Section 105 does not take it into account. This might conceivably lead to difficulties. The matter should be clarified.

Section 107—Trustee to pay dividends as required, etc.

Suggested by Judge Urquhart that provision be made in this section for the failure of the trustee to complete promptly his administration of an estate and that Section 74 of the Act be restored.

Not recommended. The first suggestion presumably has reference to Section 12(3) of the Bill which he had previously questioned. However, there is a distinction. The former is limited to the declaration of dividends while the latter deals with the administration generally and involves factors which might have nothing to do with dividends (as a matter of fact there might conceivably be no funds to distribute but Section 12(2) would still apply). Section 74(1) of the Act provided that the trustee should "with all convenient speed" declare and disribute dividends. What was meant by this? A variety of interpretations could be given. Now there is no doubt and the inspectors, as the creditors' representatives, determine when a dividend shall be distributed. They are or should be thoroughly familiar with all the aspects of the individual case and in a good position to reach a decision and instruct the trustee accordingly. The idea actually was contained, to some extent at least, in Subsection (2) of Section 74 but I think it will be found that on the whole its provisions were more honoured in the breach than in the observance. The same remark applies to Section 74(3). Placing the control in the hands of the inspectors is a good idea. I might add that Section 74(4) raised a question in that the clause "if the trustee refuses to pay any dividend" did not specifically refer to the inspectors. This has been clarified and I favour the new arrangement of the section.

Section 108(1)—Notice that if claim not proved within 30 days final dividend will be made.

Suggested by Toronto Board of Trade that the subsection be made permissive rather than mandatory. Adopted.

Section 108(2)—Court may extend time.

Suggested by Department of National Revenue that a further extension of time be granted in the case of taxes. Adopted.

Section 111(3)—Copy to be sent to Superintendent 30 days before issue.
Section 111(4)—Superintendent may comment.

Suggested by Judge Urquhart that these subsections be deleted.

Not recommended. It is claimed that they are unnecessary and will cause delay. Apart from the time element, the procedure is somewhat similar to the present practice except that now the approval of the inspectors is obtained "after" the examination of the statement by this office. The allowance of thirty days is to insure that all questions raised are satisfactorily answered. If the statement is found in order, no delay will ensue and the accounts can immediately be taxed. The taxing officer should have the benefit of our comments. It is

possible that we may be aware of certain factors that he ignores or again some points might occur to us and not to him. As indicated in the explanatory notes, this plan enables the Superintendent to review the trustee's administration before it is too late for effective action.

Section 113—Unclaimed dividends and undistributed funds.

Suggested by Toronto Board of Trade, The Canadian Credit Men's Trust Association Limited and David Grobstein, that Section 82 of the Act be restored but that the period be reduced from six months to sixty days.

Not adopted. As indicated in Section 111(5)(*c*), the trustee should allow at least thirty days between the distribution of the dividend cheques and his application for discharge. A longer delay may be provided at the discretion of the trustee if he deems it advisable according to the particular circumstances of the individual case. When he applies for his discharge the administration is presumed to be at an end but it certainly cannot be said to be complete if there are any matters still outstanding. Moreover, the trustee's application must be accompanied by a supporting affidavit (see Rule 124 and Forms 43 and 44) to the effect that the statement of receipts and disbursements is an accurate and correct statement and that all moneys have been disbursed. This he cannot do if all cheques issued have not been cashed and there remains a balance in the bank to the credit of the estate account. The experience of this office in the past has amply demonstrated the need of a provision such as that contained in this section. To cite just one case, there is the instance where unclaimed dividends and undistributed funds totalling approximately $4,000 were reported covering several estates some of which had been closed seven years previously. For all these reasons, the suggestion made by the Board of Trade et al is most strenuously opposed.

Sections 114-116—Summary Administration

The Canadian Credit Men's Trust Association Limited: "The inclusion of a plan for summary administration of small estates, as provided in Sections 114-15-16, is considered to be desirable".

Sections 114-116—Summary Administration.

Suggested by Toronto Board of Trade and the Official Receiver at London that the administration of estates under these provisions be placed in the hands of the trustees rather than of the Official Receivers. (The Official Receiver at Windsor expressed his doubts about the difficulties presented by summary administration and I understand that the official Receiver at Toronto has indicated that he would resign if no change was made.) Adopted.

Section 117(f)—Disposition of property within previous year.

Section 117(g)—Gifts and settlements.

Suggested by Toronto Board of Trade that these Subsections be revised so as to include the question of intent.

Not Adopted. Reference is made to Section 156 but it is only in Subsection (*e*) thereof that intent is mentioned at all. As far as Subsection (*f*) and (*g*) of Section 117 are concerned, the matter of intent should not enter into the picture. The idea is that the bankrupt will disclose all relevant transactions to the trustee. Those dealings which are evidently bona fide will be passed over but where good faith is doubted, the trustee will give them further attention and may refer the questionable transactions to the creditors or inspectors for their instructions and take whatever action may be required.

Section 117(i)—Attend other meetings.

Suggested by Toronto Board of Trade that the bankrupt be also required to provide the trustee with income tax returns.

Not adopted. The trustee is not responsible. See Section 8(14).

Section 117(j)—Submit to other examinations.

Suggested by Toronto Board of Trade that this be clarified by the addition of the words "by the trustee" at the end.

Not adopted. This is not limited to the trustee. See Section 121(2).

Section 120(l)—Examination of bankrupt by Official Receiver.

Suggested by Toronto Board of Trade and Judge Urquhart that Official Receivers be not required to report to the court, the Superintendent and the trustee.

Not adopted. In the first place, the Official Receiver should probe deeply into the causes of the debtor's insolvency, the disposition of his assets, etc. Unfortunately at present this is done in very cursory fashion by all too many and considered more as a mere formality. The report would indicate to the trustee a probable course of action and at least suggest questionable aspects of the bankruptcy which might call for further investigation. The filing of the report in court would make it a matter of record and available in connection with future proceedings such as the debtor's application for discharge. Forwarding a copy to the Superintendent would keep him advised and this step would also fit in with the somewhat similar obligation contained in Section 163 of the Bill. As a matter of fact Section 120 of the Bill only confirms the present practice and makes it obligatory. In Australia the Official Receiver is required to give his personal attention to the examination of the debtor and to report to the court thereon.

Section 121 (3)—Examination to be filed.

Suggested by Toronto Board of Trade that there be restored the provisions of Section 138 of the Act requiring any person to answer questions even though the answers might incriminate him or expose him to civil liability.

Not adopted. It is felt that this is an undue infringement of rights.

Section 122 (4) of Senate Bill L-11: Examination of bankrupt at meeting.

Suggested by Toronto Board of Trade that this be deleted. Adopted.

Section 124—Penalty for failure to attend for examination.

Suggested by Toronto Board of Trade that the wording of Section 135 (1) and (2) of the Act be restored.

Not adopted. The appropriate penalties in the case of the bankrupt are contained in Section 156. Note the duties imposed by Subsections (*a*) and (*c*) thereof. As far as any other person liable to be examined is concerned, it will be observed that Section 122 (3) provides "the same consequences of neglecting to attend or refusing to disclose the matters in respect of which he may be examined, *as would apply to a bankrupt*".

Section 126 (1)—Arrest of bankrupts.

Suggested by Toronto Board of Trade that the word "prescribed" be inserted before "officer".

Not adopted. The warrant would hardly be addressed to any but a proper officer. Moreover, the expression "prescribed" could not be used in any event in view of its definition.

Section 127 (1)—Bankruptcy to operate as application for discharge.

Suggested by Toronto Board of Trade and Dominion Association of Chartered Accountants that the onus should not be on the trustee. The Association further suggests that it should be sufficient for the trustee to notify the bankrupt of his rights and the procedure.

Not adopted. True, the onus is on the trustee. However, the procedure established by Section 127 (1) of the Bill does not apply to all bankruptcies. Corporations are excepted and bankrupts who file notice of waiver. The only

obligation imposed upon the trustee in such cases is that of filing his report in court, which he must do in every instance. Moreover, even if no notice of waiver is filed, unless the trustee's costs are paid or guaranteed, he may, pursuant to Subsection (4), apply to the court for an order to this effect, and failure to comply would simply mean that no date would be set for the hearing and there would be no application for discharge. Whether or not a discharge is necessary in all cases depends upon different factors which vary with the individual debtor. It must be admitted, though, that it is at least advisable. It is doubtful if full effect could be given to the intention of this provision in the Act by merely notifying the bankrupt of his right to a discharge and the steps to be taken to obtain it. To the explanatory notes on this section I might add that in Australia the court may, on the application of the Official Receiver or the trustee or a creditor who has proved his debt, order a bankrupt to apply for his discharge.

Suggested by Toronto Board of Trade and the Canadian Credit Men's Trust Association Limited that the estate should not bear the cost of the application.

Not adopted. At the present time many debtors do not apply for their discharge because of the cost. In one case $400.00 was demanded. There is nothing in the Act specifying what the trustee's charges should be and what would be considered a reasonable fee. The result is that in many instances deserving debtors are prevented from making application to the court owing to the prohibitive and entirely unwarranted bills submitted by some trustees. The charges, not being fixed, are a matter of mutual agreement between the debtor and the trustee but as so often happens agreement is impossible because of the fee claimed which is out of all proportion to the services which the trustee is required to render. The procedure is not unduly complicated and should not impose a grave burden on the estate. Apart from any remuneration voted or allowed to the trustee, the only other expense involved is the cost of mailing the notices to the creditors and the court costs on the application. The bankrupt is responsible for the publication of the statutory notice in the Canada Gazette. Attention might be drawn to Subsections (3) and (4) with regard to the payment of the costs. (See also, of course, the explanatory note opposite page 79).

Suggested by Toronto Board of Trade that corporations be excepted from the operation of this section.

Adopted. They are—by subsection (1).

Suggested by Toronto Board of Trade and The Canadian Credit Men's Trust Association Limited that provision be made for the procedure with respect to bankrupts whose estates shall have been administered prior to the coming into force of the Bill and who have not then made application for their discharge.

Not adopted. Such a provision does not appear to be required.

Section 19 (*c*) of the Interpretation Act (R.S.C. 1927, c. 1) reads: "Where any Act or enactment is repealed, or where any regulation is revoked, than, unless the contrary intention appears, such repeal or revocation shall not, save as in this section otherwise provided, ...affect any right, privilege, obligation or liability acquired, accrued, accruing or incurred under the Act, enactments or regulation so repealed or revoked." Subsection (2) (*c*) of Section 19 provides that: "If other provisions are substituted for those so repealed or revoked, then, unless the contrary intention appears,... in the recovery or enforcement of penalties and forfeitures incurred, and in the enforcement of rights existing or accruing under the Act, enactment or regulation so repealed or revoked, or in any other proceedings in relation to matters which have happened before the repeal or revocation, the procedure established by the substituted provisions shall be followed as far as it can be adapted."

Section 127(2)—Appointment to be obtained by trustee.

Suggested by The Canadian Credit Men's Trust Association Limited that it is questionable whether an application for discharge should in all cases other than corporations be made within twelve months after the bankruptcy.

Not recommended. From the viewpoint of the bankrupt the application should not be delayed too long. He should be given the opportunity to wipe his slate clean at the earliest possible moment consistent with justice and get off to a fresh start. While undoubtedly the administration of many estimates cannot be completed within twelve months, nevertheless sufficient is known about the bankrupt's insolvency, his transactions and his conduct to enable the trustee to prepare his report and to warrant that it will at least indicate those matters about which doubt exists in the event that the information obtained up to that point has revealed questionable aspects which require further explanation or investigation. These the court can delve into at the hearing. Attention is drawn to Section 137(1) which provides that a discharge may be annulled if the bankrupt fails to perform the duties imposed on him by the Act.

Section 128(2)—Filing and service of report.

Suggested by Toronto Board of Trade that, as few corporations apply for a discharge, the procedure is unnecessary in nearly all cases.

Not adopted. The Board sees value in the provision requiring the trustee to file a report so that the information will be on record in the court whenever the bankrupt decides to apply for his discharge. But the Board does not see the necessity in the case of a corporation. However, the information which the report contains is not particularly difficult to gather and does not constitute such an arduous task for the trustee. Moreover it is different from the purely statistical data to be found in his statement of receipts and disbursements. Each is useful in its own way and each should be made a matter of record in the court to be available in the future whenever the occasion should arise.

Suggested by Toronto Board of Trade that a copy of the report be served on the bankrupt.

Not adopted. The report is filed in court and the bankrupt can inquire there.

Suggested by Toronto Board of Trade that a copy of the report be filed with the Superintendent. Adopted.

Section 129—Court may grant or refuse discharge.

Judge Urquhart: "Section 129 appeals to me as leaving the matter of discharge to the court's discretion".

Section 135(1)—Debts not released by order of discharge.

Suggested by Judge Urquhart that Section 147(1)(*d*) of the Act be restored.

Not recommended. Why should aliamentary debts be excepted? They are not under the United States Act, the Australian Act or the Scottish Act.

Section 13 (1) (a)—Debts not released by order of discharge.

Suggested by Toronto Board of Trade that this be deleted.

Adopted in part. The exception covering taxes and interest has been abandoned.

Suggested by Department of National Revenue that the bankrupt be not released, by an order of discharge, from the interest and penalties relating to taxes.

Adopted in part. The subsection now includes a reference to "any fine or penalty imposed by a court". However the exception covering taxes and the interest connected therewith has been dropped. The reasons are well stated by the Toronto Board of Trade in its brief (on page 16). The value of a discharge which did not purport to release the bankrupt from taxes would be questionable.

Section 138 (1)—Power of court to annul bankruptcy.

Suggested by Toronto Board of Trade that the subsection should contain a reference to "the debts of the bankrupt being paid in full".

Not adopted. Subsection (3) of Senate Bill L-11 has been deleted.

Section 139(2)—Order not effective until published.

Suggested by Judge Urquhart that the order take effect from the day on which it is drawn up and signed, as provided by Rule 162.

Recommended. The point seems well taken. Mr. Reilley's original notes on the matter read: "It is desirable to provide a surer method of the order actually being gazetted. Heretofore once an order was made and issued the bankrupt in many cases entirely ignored this requirement as it did not affect the validity of his discharge. By making the order of discharge become effective only and when it is gazetted the bankrupt will be prevented from ignoring this requirement." However, this now appears to be taken care of by section 127(4) of the Bill, provided of course that a rule be inserted stipulating that the trustee shall publish the statutory notice, in which case the cost of its insertion would have been paid in advance and prior to the granting of the order of discharge, as indicated in section 127(4).

Section 140 (1) (e)—Courts vested with jurisdiction.

Suggested by Judge Urquhart that the court is wrongly named.

Not recommended. The Judicature Act, R.S.O. 1937, c. 100, s. 3 reads as follows. "The Supreme Court shall continue to consist of two branches—The Appellate Division, which shall hereafter be known as "The Court of Appeal for Ontario", and The High Court Division, which shall hereafter be known as "The High Court of Justice for Ontario", and this Act and rules shall be deemed to be amended throughout accordingly."

Section 140(2)—Courts of appeal.

Suggested by Judge Urquhart that the subsection be clarified to establish definitely that the courts of appeal have no original jurisdiction.

Not recommended. The need of clarification is not apparent. The subsection is basically the same as section 152(3) of the Act which did not employ the word "original" and I am not aware of any difficulty occasioned thereby. Moreover, the new subsection concludes "to hear and determine appeals from the courts vested with *original* jurisdiction under this Act". This appears to eliminate any possibility of confusion.

Section 140(3)—Supreme Court of Canada.

Suggested by Judge Urquhart that the word "likewise" be inserted after "has" in the first line.

Recommended. If Judge Urquhart feels that it is desirable to add "likewise" to the subsection I have no objection although it was not found in section 174(3) of the Act.

Section 142—Assignment of judges to bankruptcy work by Chief Justice.

Suggested by The Canadian Credit Men's Trust Association, Limited that an amendment be provided so that judges will be assigned specifically to bankruptcy work.

Not recommended. Such an arrangement works very satisfactorily in those provinces where this has been done. However that would hardly appear to be a matter in which we could intervene. It will have to be left to the discretion of the Chief Justices, as at present.

Section 144 (8)—Trial of issue, etc.

Suggested by Toronto Board of Trade that the words "with or without jury" be inserted after "tried" in the first line.

Not adopted. If a creditor files an unliquidated claim, the matter is in the bankruptcy court and must be decided by the bankruptcy court. This is quite apart from any claim which he may have outside the bankruptcy court. Moreover, it is absolutely essential that claims be settled expeditiously and not left to the determination of some other tribunal.

Section 149 (1) (c), (d), (j)—Powers of registrar.

See questions raised by Richard Beaudry, Joint Registrar in Bankruptcy at Montreal, in his letter of December 14, 1948.

Section 149 (1) (h)—Powers of registrar.

Suggested by Toronto Board of Trade that this be revised to provide clearly that appeals from the disallowance of claims by trustees are covered.

Adopted. The word "applications" has been changed to "matters"; that is, anything concerning proofs of claims—as to voting (sec. 71 (1)); as to determination if a contingent or unliquidated claim is provable (sec. 83 (2)); as to the amendment of his claim by a secured creditor (sec. 91 (2)); as to appeals from disallowance (sec. 94 (4)).

Section 150—Court of Appeal.

Suggested by Toronto Board of Trade and Judge Urquhart that section 174 (1) of the Act be restored, giving an appeal as of right.

Suggested by David Grobstein that specific principles be enunciated to prevent frivolous appeals. (See his letters of December 20, 1948, and January 7, 1949).

Not adopted. The reason for permitting an appeal by leave only is to prevent delays in cases where an appeal is made for some frivolous purpose. It is desirable in bankruptcy administration to expedite matters as much as possible, and appeals should be allowed only where substantial grounds exist.

Section 151 (1) (1) of Senate Bill L-11: Powers of registrar.

Suggested by Toronto Board of Trade that this be amplified to enable the registrar to act also where the inspectors have failed to act.

Not adopted. Instead, this paragraph has been deleted in keeping with the amendment of section 82 (8) which now provides a solution.

Section 155 (7)—Limitation of costs.

Suggested by Toronto Board of Trade that amounts paid to secured creditors should not be deducted.

Not adopted. That part of the subsection to which exception is taken is similar to that of section 162 (3) of the Act save that in the latter the words "gross proceeds" are used. This has been changed to read "gross receipts less amounts paid to secured creditors" based upon the ruling of the court in In re T. Wesley Merrick (15 C.B.R. 88). It should be observed that the remuneration of the trustee is computed on the same basis, (sec. 17). In any event, it is provided that the amount of the legal costs may be increased "with the approval of the inspectors and the court".

Suggested by T.H. Wickett, K.C., Toronto, that the decision in In re Linton & Sinclair Co. Ltd. (18 C.B.R. 15) be followed.

Not adopted. The Court of Appeal of New Brunswick had held that section 162 (3) of the Act did not limit the fees to ten per cent but that this restriction only applied to increase above the scale of fees fixed by the tariff. It is evident that such an interpretation is not in harmony with the apparent intention of the Act for as stated by Louis Boyer, J.S.C., in In re Charles Paquet, "the spirit and intent of section 162 is to limit the costs". The jurisprudence in Ontario is

contrary to the ruling in the Linton & Sinclair case (which is a New Brunswick matter). See in In re Messervey's Ltd. (4 C.B.R. 493), In re T. Wesley Merrick (15 C.B.R. 88) and In re Empress Electric and Novelty Company Limited (23 C.B.R. 49). Judge Boyer held that the jurisprudence as settled in Ontario should prevail and so ruled in the Paquet case.

Section 156—Bankruptcy offences.

Suggested by Toronto Board of Trade that the language is too broad and, specifically, that subsections (*d*), (*e*), (*l*), (*n*) and (*o*) of section 191 of the Act be retained as well as certain elements in subsections (*f*), (*m*), (*p*), (*q*) and (*r*) which it is claimed are not contained in subsections (*d*) and (*f*) of section 156.

Not adopted. The wording of section 191 is altogether too long and there is much needless repetition. A closer study will reveal that subsections (*d*), (*e*) and (*o*) are covered by subsection (*b*). Subsection (1) is contained in subsection (*c*). Subsection (*f*) corresponds to subsection (*n*). Subsection (*f*) is now subsection (*d*). Subsection (*m*) has become subsection (*f*). Subsection (*p*) is covered by subsection (*d*). Subsection (*q*) is represented by subsections (*d*) and (*f*). Subsection (*r*) which follows from subsection (*p*) is similarly to be found in subsection (*f*).

Section 156—Bankruptcy offences.

Suggested by Judge Urquhart that section 191 of the Act be restored.

Not recommended. Section 191 is much too lengthy and repetitious. Moreover its main features have been retained.

Section 156 (a)—Bankruptcy offences.

Suggested by Judge Urquhart that this is too drastic.

Not recommended. Section 132 of the Act states that "If a debtor wilfully fails to perform the duties imposed on him by the four last preceding sections, or to deliver up possession of any part of his property . . . he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court, and may be punished accordingly". The duties referred to are those which we now find in section 117 of the Bill.

Section 156 (g)—Bankruptcy offences.

Suggested by Judge Urquhart that this is too drastic.

Not recommended. The subsection is taken almost word for word from section 157 (1) of the English Act. Judge Urquhart maintains that the penalty is too severe. He would like to see the indictment clause deleted and the penalty clause thereunder reduced. Section 164 of the English Act provides that where no special penalty is imposed by the Act, a person guilty of an offence shall be liable "on conviction on indictment, to imprisonment with or without hard labour for a term not exceeding two years, or, on summary conviction, to imprisonment with or without hard labour for a term not exceeding six months".

Suggested by Toronto Board of Trade that section 157(1)(*c*) of the English Act be included and made an offence.

Not adopted. It is deemed severe to make this a bankruptcy offence subject to the penalties provided by section 156. However, see section 130(1)(*d*) which constitutes failure on the part of the bankrupt "to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities" a fact which pursuant to section 129(2) operates to bar an unconditional discharge.

Section 157—Failure to disclose fact of being undischarged.

Suggested by Toronto Board of Trade that the limitation of $100.00 is too drastic and that the limit of $500.00 be retained. Adopted.

Suggested by Toronto Board of Trade and The Canadian Credit Men's Trust Association, Limited, that the penalty of imprisonment without the option of a fine is unduly severe.

Not adopted. A fine is not always very effective. The Inspector General in Bankruptcy for Australia wrote September 15, 1937: "To provide for fines against bankrupts is ludicrous. All the property of the bankrupt at date of sequestration and that which he acquires before he obtains his Discharge vests in the Official Receiver or trustee with the exception of such as is required for his subsistence. Any fine inflicted can only be paid out of the creditors' money!" (Unless advanced by the debtor's relatives or friends.) "Thus fining would be no punishment to the bankrupt and would be useless as a deterrent." He goes on to say: "In my opinion the principal safeguard for public interests is the fear of punishment by imprisonment".

Section 159(3)—Unlawful transactions.

Suggested by Toronto Board of Trade that an alternative punishment by way of fine be provided.

Not adopted. The same reasons apply here as for section 157 (above).

Section 160(g)—Soliciting proxies.

Suggested by the Credit Bureau of Montreal that this be made applicable only to licensed trustees or persons acting on their behalf.

Adopted. This was actually the intention. The wording has been clarified.

Suggested by the Canadian Credit Men's Trust Association, Limited, that the entire elimination of proxy solicitation would be most unfair to creditors.

Adopted. See above.

Suggested by Toronto Board of Trade that the subsection be deleted.

Not adopted. Their objection has been met by revising the wording so as to clarify the purpose of this provision. Judge Urquhart comments: "In regard to soliciting proxies, I regret to say that I do not approve of the suggestion of the Board of Trade that this subsection should be deleted. I think the business of soliciting proxies has gone too far and that the new section rightly curtails such activities.

The section has been revised to make it clear that it applies to a trustee. As Judge Urquhart points out, however, there have been abuses in the past and solicitation of proxies by others than trustees has not always been to the best interests of the creditors at large or of bankruptcy administration generally. On the other hand I don't think we can go so far as to interfere with the creditors' rights.

Section 162—Penal liability of officer, director or agent corporation.

Suggested by Judge Urquhart that section 201 of the Act be retained.

Not recommended. The advantage of reverting to the original phraseology is not apparent. The words deleted are "and he shall be so liable cumulatively with the company and with such officers, directors or agents of the company as may likewise be liable hereunder". This seems repetitious. What does it add to the meaning?

Section 163(4)—Initiation of criminal proceedings by the trustee.

Suggested by Dominion Association of Chartered Accountants that the decision to initiate criminal proceedings be left to the inspectors or the Superintendent.

Not recommended. See comments on section 8(13).

Section 166(4)—To be judicially noticed.

Suggested by Toronto Board of Trade that the words "and shall have effect as if enacted by this Act" be retained.

Not adopted. They are hardly necessary.

Section 171—Repeal.

Suggested by Judge Urquhart that specific reference be made to the General Rules.

Not recommended. As any general rules enacted have been made pursuant to the Act and its amendments it would appear that section 171 of the Bill would be sufficient.

PENDING PROCEEDINGS

Suggested by Richard Beaudry, Joint Registrar in Bankruptcy, Montreal, that sections 173 and 174 of the May 4, 1948, printing be retained. They read as follows:

> "173. Subject to the provisions of this Act, all persons holding appointments under The Bankruptcy Act are continued in their respective positions, and all Rules, Regulations and Orders made pursuant to the said Act are continued under this Act."
>
> 174. In respect of bankrupt estates under administration at the time this Act comes into force, interested persons shall retain all rights which they heretofore had, but the procedure prescribed in this Act shall apply.

Not adopted. Unnecessary. See sections 19 (1) (*c*), 19 (2) (*a*) and (*c*) of the Interpretation Act, R.S.C. 1927, C.I. The first and last of these have been quoted elsewhere. Section 19 (2) (*a*) reads:

> If other provisions are substituted for those so repealed or revoked, then, unless the contrary intention appears, (*a*) all officers and persons acting under the Act, enactment or regulation so repealed or revoked shall continue to act, as if appointed under the provisions so substituted, until others are appointed in their stead.

Suggested by Toronto Board of Trade that provisions similar to section 168 (2) and (3) of the English Act be inserted.

Not adopted. See comments above.

SECTIONS OF ACT NOT FOUND IN BILL N.

Section 2 (b)—"Alimentary debt".

Suggested by Judge Urquhart that this definition be retained.

Not recommended. The expression "alimentary debts" previously only occurred once in the Act (section 18 (1)). Now it is not used at all. Section 18 (1) of the Act, now section 35 (2) of the Bill has been revised and co-ordinated with section 135 of the Bill which in turn does not recognize alimentary debts or provide for them. Section 135 corresponds to section 147 of the Act which, while it incorporated "any debt or liability for necessaries of life", did not employ the words "alimentary debts". In any event, this section has been completely changed.

Section 2 (h)—"Available act of bankruptcy".

Suggested by Judge Urquhart that this definition be retained.

Not recommended. It adds nothing as section 20 of the Bill specifies what are acts of bankruptcy and section 21 (1) (*b*) of the Bill states that for a petition in bankruptcy it must be established that "the debtor has committed an act of bankruptcy within six months next preceding the filing of the petition". See also comments on Page 27 of Duncan and Reilley.

Section 2 (v)—"judge".

Suggested by Judge Urquhart that this definition be retained.

Not recommended. It hardly seems necessary. The Bill speaks of "judges of the court" and we have "court" defined in (*g*).

Section 9 (7)—Assignments other than authorized assignments.

Suggested by Toronto Board of Trade and Judge Urquhart that such a provision is needed and should be retained.

Not adopted. If a debtor makes a bulk sale of his goods without complying with the provisions of any Bulk Sales Act in force in the province, then the sale is void. Any other fraudulent disposition of his property would be covered by section 20 of the Bill.

Section 10—Official receiver to deposit assignment in court.

Suggested by Toronto Board of Trade that a similar provision be inserted requiring the official receiver to deposit in court the assignment and relevant material.

Not adopted. This is a matter of procedure rather than substance and should, as at present, be incorporated in the Rules (See Rule 88 of the Act).

Section 18 (3)—Release under composition, extension or scheme of arrangement.

Suggested by Toronto Board of Trade that a similar provision be inserted to complete section 35 (2) of the Bill. Adopted.

Section 19 (4)—Debts between composition and subsequent adjudication of bankruptcy.

Suggested by Toronto Board of Trade that this subsection be retained.

Not adopted. This provision is hardly necessary. See Section 83 (5) of the Bill.

Section 20 (7)—Secret arrangements.

Suggested by Toronto Board of Trade that it would be advisable to retain a specific provision of this nature.

Adopted. This is covered by section 159 (3) of the Bill.

Section 30—Registration of receiving orders and assignments.

Suggested by Toronto Board of Trade that a creditor be empowered to apply to court for an order compelling registration.

Not adopted. Section 43 (1) of the Bill provides that "Every receiving order... and every assignment... *may* be registered by or on behalf of the trustee..." and subsection (3) adds that "Where... for any reason a copy of the receiving order or assignment has not been registered as provided in subsection one, a caveat or caution *may* be lodged with the proper master or registrar by the trustee..." In other words, it is left to the discretion of the trustee. Section 30 of the Act is severe and even contains a penalty clause. Moreover, would not section 15 of the Bill offer the same protection. It enables the bankrupt or creditor aggrieved by an act or decision of the trustee to apply to the court to have it reviewed.

Section 33—Correction of mistakes by court.

Suggested by Toronto Board of Trade and Judge Urquhart that this section be retained.

Not adopted. Is such a provision necessary? Section 144 (5) of the Bill states: "Every court may review, rescind or vary any order made by it under its bankruptcy jurisdiction." Subsection (9) further provides that, "No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity..." Section 33 of the Act seems to conflict with this subsection which was identified as section 186 (1) in the Act. As stated in "Bankruptcy in Canada" (2nd ed. Duncan & Reilley): "This section (i.e. sec. 33) has been introduced from the Manitoba or the Ontario Assignments Act, and without due regard to sections 163 (4) and 186."

Section 62(3)—Definition of "settlement".

Suggested by Toronto Board of Trade that this definition should be incorporated.

Not adopted. It hardly seems necessary. "Settlement" has its accepted and established meaning and this is confirmed by the jurisprudence. See pp. 405-407 of "Bankruptcy in Canada".

Sections 70(3), (4), 71, 72, 73—Contributories to insolvent corporations.

Suggested by Toronto Board of Trade that these provisions be retained.

Not adopted. See comments on section 46 of the Bill.

Section 80—Bankruptcy of partner.

Suggested by Toronto Board of Trade and Judge Urquhart that this section be retained.

Not adopted. It is claimed that section 101 of the Bill applies where both partners of a partnership are in bankruptcy but does not provide, as section 80 does, for the case where only one partner is bankrupt. This is covered by section 101(4) of the Bill.

Section 141(6)—Reading examination of bankrupt in court.

Suggested by Toronto Board of Trade and Judge Urquhart that these provisions be retained.

Not adopted. The subsection appears unnecessary as the power is inherent in the authority of the court and does not require to be specifically mentioned. With regard to the other remarks of Judge Urquhart on the matter, there is section 121(3) of the Bill.

Section 149—Evidentiary value of order of discharge.

Suggested by Toronto Board of Trade that this be retained.

Not adopted. Both assignments and receiving orders are filed in court. Is that not sufficient? Moreover, the defence which section 149 provides would be available to the debtor in any event.

Section 153—Application of Winding-up Act.

Section 161(2)—Application of Rules to Winding-up Act.

Suggested by Toronto Board of Trade that these are necessary and should be retained.

Not adopted. I consider that the Winding-up Act is a procedure exclusive of the Bankruptcy Act. The primary purpose of the former is to distribute the assets among the shareholders while the latter is concerned with the realization of the assets and the distribution of the proceeds to the creditors. There would, therefore, appear to be no necessity for a reference to the Winding-up Act in the Bankruptcy Act.

Section 163(1), (3), (4), (5), (6)—Procedure.

Suggested by Toronto Board of Trade that the courts should continue to have these powers.

Not adopted. Subsections (1), (5) and (6) are matters for General Rules. See Rule 7 (1) for example. Subsection (3) is inherent in the authority of the court. With regard to subsection (4) see section 144(5) and (9).

Section 168—Proceedings by or against partnership.

Suggested by Toronto Board of Trade that this be retained.

Not adopted. What is the advantage?

Section 169—Joint contracts.

Suggested by Toronto Board of Trade that it is desirable that this be retained.

Not adopted. Is it necessary? Does its omission create any particular problems?

Section 181—Affidavits.

Suggested by Toronto Board of Trade that a statement of the legal basis for affidavits be retained.

Not adopted. This hardly seems necessary. Affidavits are not restricted to the Bankruptcy Act.

Section 184—Computation of time.

Section 185—Service of Notices and documents.

Suggested by Toronto Board of Trade that these provisions be retained.

Not adopted. However, the intention is to include them in the Rules.

Section 190—Power of court.

Suggested by Toronto Board of Trade that power of court be defined where alternate authority conferred on others.

Not adopted. The court would hardly presume to intervene.

Section 195(3)—Actions against Superintendent and others.

Suggested by Toronto Board of Trade that it is desirable to retain this provision which requires leave of the court.

Adopted. See section 169 of the Bill. However, it has been slightly modified as it was too broad in scope as worded in the Act.

MISCELLANEOUS—(TORONTO BOARD OF TRADE)

Advertising. A similar suggestion re "block publication" had been considered in connection with Bill A5 which provides that the Superintendent would publish the statutory notices in the *Canada Gazette*. It was thought that, if weekly lists could be published, this would result in uniformity, promptness and reduced costs. However, it was decided that the time element did not permit.

Trafficking. Three solutions are available: (1) If this office were to be furnished with positive proof, assurance is given that no time would be lost in taking effective action and notably by reporting to the Minister pursuant to section 3(8) of the Bill and recommending cancellation of the trustee's licence. (2) Attention is also drawn to section 160(*f*) of the Bill which makes it an offence for a trustee to solicit assignments and section 160(*g*) which similarly constitutes solicitation of proxies by a trustee an offence, both entailing severe penalties. (3) It has been suggested by the Board of Trade and by David Grobstein that a greater percentage of votes be required for the substitution of trustees. This plan has been adopted and, instead of an *ordinary* resolution of the creditors which is based upon a simple majority of the votes, the Bill provides (section 6(1)) that a *special* resolution is necessary. "Special resolution" is defined as "a resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present, personally or by proxy, at a meeting of creditors and voting on the resolution."

Companies' Creditors Arrangement Act: See comments on section 38 (2).

ROBERT FORSYTH.

Prepared by John S. Larose.

1949

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE ON BANKING AND COMMERCE

To whom was referred the Bill N, intituled:
"An Act respecting Bankruptcy"

No. 3

TUESDAY, MARCH 29, 1949
THURSDAY, MARCH 31, 1949

CHAIRMAN

The Honourable Elie Beauregard, K.C.

WITNESS

Mr. R. C. Merriam, barrister, Ottawa, representing a group of British Columbia Industrial Firms

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APPENDICES

L. Letter from Mr. A. W. Bruce, President, Association of Canadian Small Loan Companies.

M. Draft amendment to section 52 (copyright), submitted by the Honourable A. David.

N. Brief on behalf of the Law Society of Upper Canada, submitted by Mr. Lee A. Kelley, K.C., and Mr. Charles L. Dubin.

O. Letter from Mr. Jules E. Fortin, Secretary-Treasurer, The Dominion Mortgage and Investments Corporation.

P. Memorandum of The National Committee of Canadian Commercial Travellers, submitted by Messrs. Foster, Hannen & Co., barristers, Montreal.

Q. Brief on behalf of a group of British Columbia industrial firms, submitted by Mr. R. C. Merriam.

R. Submission by the Bar of the Province of Quebec.

OTTAWA
EDMOND CLOUTIER, C.M.G., B.A., L.Ph.,
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
CONTROLLER OF STATIONERY
1949

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Thursday, 17th February, 1949.

Pursuant to the Order of the Day, the Honourable Senator Robertson moved that the Bill (N), intituled: "An Act respecting Bankruptcy," be now read a second time.

After debate,

The said Bill was read the second time, and—

Referred to the Standing Committee on Banking and Commerce.

L. C. MOYER,
Clerk of the Senate.

STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Elie Beauregard, K.C., Chairman.

The Honourable Senators Aseltine, Aylesworth, Sir Allen, Ballantyne, Beaubien, Beauregard, Buchanan, Burchill, Campbell, Copp, Crerar, Daigle, David, Dessureault, Duff, Euler, Fallis, Farris, Fogo, Gershaw, Gouin, Haig, Hardy, Hayden, Horner, Howard, Hugessen, Jones, Kinley, Lambert, Leger, Mackenzie, MacLennan, Marcotte, McGuire, McKeen, McLean, Moraud, Murdock, Nicol, Paterson, Quinn, Raymond, Robertson, Sinclair, Taylor, Vien and Wilson.—47.

MINUTES OF PROCEEDINGS OF SUB-COMMITTEE

TUESDAY, March 29, 1949.

Pursuant to notice the Sub-Committee of the Standing Committee on Banking and Commerce, appointed on March 17, 1949, to consider and report back to the Committee on the evidence adduced and the briefs filed, with respect to the provisions of Bill N, "An Act respecting Bankruptcy", met this day at 11.00 a.m., at which hour a quorum was present.

The Honourable Senator Beauregard was elected Chairman of the Sub-Committee.

In attendance: Mr. J. F. MacNeill, Law Clerk and Parliamentary Counsel.

The following submissions were presented by the Chairman, and were ordered to be printed in the record:—

Letter from Mr. A. W. Bruce, President, Association of Canadian Small Loan Companies. (Appendix "L")

Draft amendment to section 52 (Copyright), submitted by the Honourable Senator David. (Appendix "M")

Brief on behalf of the Law Society of Upper Canada, submitted by Mr. Lee A. Kelley, K.C., and Mr. Charles L. Dubin. (Appendix "N")

Letter from Mr. Jules E. Fortin, Secretary-Treasurer, The Dominion Mortgage and Investments Association. (Appendix "O")

Resolved that those persons or organizations of record as desiring to be heard, having filed no briefs and not having previously appeared before the Committee, be given an opportunity to make representations on Thursday next, 31st March instant.

At 11.30 a.m. the Sub-Committee adjourned to the call of the Chairman.

Attest.

JOHN A. HINDS,
Clerk of the Sub-Committee.

33017—1½

MINUTES OF PROCEEDINGS

THURSDAY, March 31, 1949.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators:—Beauregard, Chairman, Aseltine, Beaubien, Campbell, Copp, Euler, Haig, Howard, Hugessen, Leger, McGuire, Moraud, Nicol, Fogo, MacLennan and Taylor—16.

In attendance:

Mr. J. F. MacNeill, Law Clerk and Parliamentary counsel.

The Official Reporters of the Senate.

The consideration of Bill N, "An Act respecting Bankruptcy", was resumed.

A letter dated March 30, 1949, from Messrs. Foster, Hannan and Company, barristers, Montreal, representing The National Committee of Canadian Commercial Travellers, was read by the Chairman.

Ordered that the brief attached to the said letter be printed in the record. (See Appendix "P").

On Motion of the Honourable Senator Haig, it was resolved that the Law Clerk and Parliamentary Counsel be directed to arrange, in alphabetical order, the definitions in the interpretation section of the English and French versions of the Bill, and that the letter indicating the paragraph in the other version be placed at the end of each definition.

Mr. R. C. Merriam, Barrister, Ottawa, was heard on behalf of the following British Columbia companies:—

American Can Company Limited.

Vancouver Supply Company Limited.

W. H. Malkin Company Limited.

Shell Oil Company of British Columbia, Limited.

A brief submitted by Mr. R. C. Merriam was ordered to be printed in the record. (See Appendix "Q").

A brief submitted by the Bar of the Province of Quebec was ordered to be printed in the record. (See Appendix "R").

Further consideration of the Bill was postponed.

At 11.15 a.m. the Committee adjourned to the call of the Chairman.

ATTEST.

JOHN A. HINDS,
Clerk of the Committee.

MINUTES OF EVIDENCE

THE SENATE

OTTAWA, Thursday, March 31, 1949.

The Standing Committee on Banking and Commerce, to whom was referred Bill N, an Act respecting Bankruptcy, met this day at 10.30 a.m.

Hon. Mr. BEAUREGARD in the Chair.

The CHAIRMAN: Honourable members, first I wish to report that the subcommittee which met this week were informed that certain people wished to appear before the full committee, and it was decided to get in touch with them and give them an opportunity to come here. That is why we are meeting this morning, and unless the committee decides otherwise this will be the last occasion on which witnesses will be able to appear before the full committee. It was understood that we would have two witnesses this morning. One of these was to represent the National Committee of Canadian Commercial Travellers, but I have just received a letter from Messrs. Foster, Hannan, Watt and Stikeman, Montreal, who say that no one will appear on behalf of the association. However the letter is accompanied by a memorandum. (*See Appendix "P" to this report*).

The only witness we have present is Mr. R. C. Merriam, of the law firm of Gowling, MacTavish, Watt, Osborne and Henderson. He represents a number of firms in British Columbia, and with your permission I shall call upon him in a few minutes.

My attention has been drawn to a letter addressed to Senator Hugessen by the Board of Trade of the City of Toronto. The board has already made a submission to the committee and says it will send its representative here again if the committee so suggests. However, it has not been the practice of the committee to invite anyone to appear; rather, we have made it known that anyone is welcome to come here within the time set apart for our sittings. I do not know whether Senator Hugessen wishes to make any submission on behalf of the board.

Hon. Mr. HUGESSEN: Mr. Chairman, I think the only thing the Board of Trade of the City of Toronto wanted to make clear was that it has already submitted a memorandum, and if the committee wished to ask questions upon it a representative would appear here to answer them.

The CHAIRMAN: The board's memorandum has been printed in our records, and the committee has expressed no wish to ask any questions concerning it.

I would like now to have a motion that the memorandum from the National Committee of the Canadian Commercial Travellers be printed in our records.

Hon. Mr. HAIG: I so move, Mr. Chairman.

The motion was agreed to.

The CHAIRMAN: Do you wish to file a brief, Mr. Merriam, in addition to any submissions you make to us here this morning?

Mr. MERRIAM: Yes, Mr. Chairman, I will file a brief.

The CHAIRMAN: The subcommittee has decided not to begin the work of revising the bill until all the submissions that are going to be printed have been printed, so that whatever submissions there are with respect to any section may be considered at one time when that section is being dealt with. It has been

suggested that it would be useful to have all submissions compiled respectively under the headings of the sections to which they relate. This work of compilation will take some time. There is a further suggestion that the compilation itself should also be printed.

Then there is a point concerning the French version of the bill. Of course, both the French text and the English text are original, but since the bill has been printed in English the French text becomes necessarily a version of it. There are certain difficulties connected with the translation. For instance, in section 2, the Interpretation section, "assignment" is defined in clause (*b*), but the French word for "assignment" is "cession", so the order in which this definition would appear in the French version is different. Similar translation difficulties arose when the Shipping Bill was before us, and at that time it was suggested that the order of the definitions in the French version should be the alphabetical order, but that each definition should be accompanied by a note indicating to the reader in what clause of the English version the definition was given. I shall need a motion authorizing that to be done, and I understand that otherwise the French text will not be considered as an original. Is that right, Mr. MacNeill?

Mr. J. F. MacNeill, K.C., Law Clerk and Parliamentary Counsel: No, Mr. Chairman, that is not quite correct. All that the translators want is a direction from this committee to put the definitions in alphabetical order in the French version, and it is also necessary for the committee to instruct me to put the French lettering at the end of the English letter. Then if paragraph (*b*) in English is (*c*) in French, the letter "(*c*)" will be put at the end of the English paragraph (*b*), and "(*b*)" will be put at the end of the French paragraph (*c*), to show in each case where to find the corresponding definition in the other version. That was done in the Shipping Act, at the direction of this committee, and all we need now is the same direction with respect to this bill.

Hon. Mr. Haig: I would move that the direction be given.

The motion was agreed to.

The Chairman: There are no more detailed matters requiring our attention, so I will now call on Mr. R. C. Merriam.

Mr. R. C. Merriam, of Messrs. Gowling, MacTavish, Watt, Osborn & Henderson: Mr. Chairman, I am representing certain companies.

Hon. Mr. Euler: What companies?

Mr. Merriam: Certain companies in British Columbia, sir.

Hon. Mr. Haig: I would like to know what companies they are.

Mr. Merriam: The companies I am representing are a group of B.C. industrial concerns, composed of the American Can Company Limited, the Vancouver Supply Company Limited, W. H. Malkin & Company, Limited, and Shell Oil Company of B.C., Limited.

The group of firms which I have just enumerated have considered carefully the proposed Bill N, and while they are in general agreement with the provisions therein contained they have instructed me to make certain representations to this committee with regard to four sections as now worded. The first of these is section 79 (3) (*b*), which provides that where the bankrupt is a corporation, any officer, director or employee thereof may not vote on the appointment of a trustee or inspector. Our submission is that this should be extended to cover the situation where the parent company of a bankrupt subsidiary or associate is a creditor of that bankrupt. I think the reason for the proposal will become apparent when you consider the following example. One of the subsidiary companies of a parent company goes into bankruptcy, and it transpires that either the parent company or an associated company is a large creditor. The

obvious result would be, under the present wording, that the parent or associated company would practically control the election of the trustee or inspector, and of course quite naturally would see that someone acceptable to it was appointed to the position. To all intents and purposes it would then exercise complete control of the subsequent administration of the bankrupt subsidiary.

The fundamental reason, as we understand it, for providing that an officer, director or employee of a company may not vote on the appointment of a trustee or inspector is simply that the probabilities are that his interests are adverse to the interests of the creditor. We feel and we submit for your consideration that this same reason applies with equal force and equal effect to the situation where a parent or associated company is in the position of creditor of a bankrupt subsidiary.

Our submission, then, is that section 79 (3) (*b*) be extended to cover that situation or that a new subsection be added to take care of it.

Hon. Mr. FOGO: You mean that any interest would disqualify; are you suggesting that it would have to be a controlling interest in the company for the disqualification to operate?

Mr. MERRIAM: No; we are suggesting at least a substantial interest. I would not say that any small quantity of stock would be sufficient to disqualify. That would be a matter for discussion, as to how far that was going to be carried. I would be inclined to feel that a controlling interest would be a disqualification.

Hon. Mr. FOGO: It would necessitate a further definition of what was a substantial interest?

Mr. MERRIAM: That is true.

Hon. Mr. HAIG: Mr. Chairman, Mr. Merriam, supposing a parent company had a large claim, but I was a minority stockholder in the company: your proposed legislation would preclude me from having anything to say in the vote on that trustee. I do not know why I should not be allowed to have it. The companies are different corporations with a different set of shareholders.

Mr. MERRIAM: That is true. They are individuals, regardless of their interlocking directorates.

Hon. Mr. HAIG: But there are generally heavy minority shareholders. In a good many companies I know of they say, "Such-and-such a company is controlled by the Standard Oil", but there are a tremendous number of shareholders in the other company which are not in the Standard Oil.

Mr. MERRIAM: Our feeling was that in many instances that is not the case.

Hon. Mr. HAIG: I have not read the details of the provision, but the old act provided that the small fellow had quite a vote. I can imagine a $100,000 claim, and 10,000 other claims; the 10,000 would have as many votes as the 100,000. It was not so under the old bill. If you had one hundred, let us say, you had a vote; if five hundred, you had two votes, and so on. Well, then the smaller debtors had a tremendous control. I did a lot of work under this in Winnipeg up until twenty years ago; and the small creditors came always very near controlling.

Hon. Mr. CAMPBELL: I understand you had in mind that if a company is a bankrupt, then any company that is controlled by the bankrupt should be deprived,—that is their officers should be deprived of the right to vote?

Mr. MERRIAM: No, just the reverse of that.

Hon. Mr. HUGESSEN: The case envisaged is where the parent company is creditor of a subsidiary which goes bankrupt and wishes to vote for the appointment of the trustee?

Mr. MERRIAM: Yes.

Hon. Mr. HUGESSEN: And you feel that this provision would prevent an officer or employee of the parent company who happens to be an officer and employee of the subsidiary from voting for the trustee?

Mr. MERRIAM: No. My point is that I want this to cover this situation,—that an officer or employer of the parent company will not be allowed to vote.

Hon. Mr. HAIG: The parent company will not be allowed to vote at all.

Hon. Mr. CAMPBELL: Surely it should only apply where the bankrupt is a wholly-owned subsidiary.

Hon. Mr. HAIG: There are a lot of companies where the controllers own about 60 per cent; that is all they own; and since succession duties are so heavy, the tendency in all business is that the larger companies have a large outside stockholding, so that when a very heavy stockholder in the company dies, there is a place to sell some of his stock.

Mr. MERRIAM: Yes; that is more and more the case all the time.

Hon. Mr. HAIG: I would be afraid that this would deny these people representation at all.

Hon. Mr. CAMPBELL: And what about your preference shareholders, who are really interested in the problem as much as the common shareholders?

Hon. Mr. HAIG: More so.

Mr. MERRIAM: They are only interested in the actual assets of the company in which they happen to be preferred shareholders. I grant you that on the books of the company this debt will be carried as a credit, probably; but it seemed to us that, in the same way that the directors of a company control that company, and therefore are precluded from voting in the appointment of a trustee, if you swing over to the case of the parent company which in exactly the same fashion controls the subsidiary, the same principle should apply.

Hon. Mr. EULER: Would you say that if a parent company owns practically all the stock in the subsidiary company that becomes bankrupt, that parent company should have nothing whatever to say as to the appointment of a trustee?

Mr. MERRIAM: That is my submission, sir, yes; on the same basis that the actual directors of that company have nothing to say in the appointment of the trustee.

Hon. Mr. EULER: That does not seem right.

Hon. Mr. HAIG: And it is worse when it only owns 55 per cent of it.

Hon. Mr. EULER: They ought to have something to say, when they control the company altogether. I cannot see why these people who are most concerned in the bankrupt company's affairs should be entirely deprived of the right to say who shall be the trustee. It does not look equitable to me.

Hon. Mr. HAIG: I can see the case where maybe half a dozen outside debtors could control the whole thing.

Mr. MERRIAM: Yes.

Hon. Mr. EULER: Sure they could.

Hon. Mr. HAIG: And the real big money in the concern would be unrepresented, under your provision. As the matter stands in the original bill, the directors of the defunct company cannot do it. I can understand them not voting, because they are the rascals that broke it up.

Mr. MERRIAM: Does not that apply to wholly-owned subsidiaries, where the directors of the parent company are the ones who actually conducted the transactions of the subsidiary company, so that in effect they have wrecked it themselves?

The CHAIRMAN: Would you not like to cut out the words "rascal" and "wrecked"?

Hon. Mr. HAIG: No, I would not, because they know they are upsetting the company before it gets to the voting stage. If they do not, they ought to.

The CHAIRMAN: Will you proceed, Mr. Merriam?

Mr. MERRIAM: Our next submission is in relation to section 82 of the bill, which relates to the appointment of inspectors, and our submission in this respect is simply that a further subsection be added to provide that a creditor corporation may itself be appointed inspector. Now, quite often inspectors are chosen on the basis that they represent the large creditors, which in many instances happen to be a corporation. Usually, or in any event in many instances, the credit manager say of a large creditor corporation is personally appointed as an inspector. In time he may be promoted in the company to another department; he may leave the employ of the company entirely; and in either of these cases he has lost any real personal interest in the position of his ex-company as a creditor; and moreover he is out of touch with the affairs of the bankrupt generally. Our suggestion and submission in circumstances such as this is that the creditor corporation itself be appointed the inspector, with power to designate one of its employees to exercise the duties of inspector in its name.

The CHAIRMAN: Is not that sufficiently provided for under paragraph 5 of the same article, which states, "The creditors may at any meeting and the court may on the application of the trustee or any creditor revoke the appointment of any inspector and appoint another in his stead"? Is not the door opened widely enough by that subsection? If a company is a creditor and it wants another man, the company may come before the court and say that Mr. So-and-So is no longer in its employ, and suggest that another person be appointed.

Mr. MERRIAM: There is a provision for changing it; there is no question about that; but it seems to me that this is a somewhat more involved procedure; that it would be much simpler if the corporation itself were the trustee and had the power to designate who should be appointed in its behalf, without having to make application to the court in the event of changes taking place.

Hon. Mr. MORAUD: That is, you would leave it to the company creditor?

The CHAIRMAN: It might be that Mr. So-and-So from the company has been appointed by the creditors on account of his personality, and that he might not have been appointed if he had been a different man. It would be another thing to have his successor in office appointed automatically.

Hon. Mr. HAIG: In actual experience in the carrying out of these assignments, the people who are usually creditors, or are quite often creditors, like wholesale houses, have men whose special job is practically just this.

Mr. MERRIAM: That is quite right, sir.

Hon. Mr. HAIG: Well, in any case that I have known of, immediately an employee resigns, they go back to the court and ask for a new man to be appointed, and the court appoints a new man in his place, and it is generally on the recommendation of the same creditor.

Mr. MERRIAM: Yes, that is just it. Usually what the creditor wants, if he wants to appoint—

Hon. Mr. HAIG: There may be personalities involved, and creditors might say, "No, not this new man; we don't like him, we want somebody else in there", and they might put the somebody else in. I think it would happen. I would rather leave it the way it is.

Hon. Mr. MORAUD: The inspectors are appointed to represent the creditors at large, not to represent one creditor.

Hon. Mr. HUGESSEN: Would it not be most unusual for a corporation to be appointed an inspector, any more than for a corporation to be appointed as a director? I cannot see how a corporation could be appointed to a personal office of that kind.

Hon. Mr. HAIG: But he is not appointed because he represents that corporation. True, he happens to represent them, but, as the Chairman says, he represents the personality: the creditors all feel that he can represent them all.

The CHAIRMAN: All right; go ahead.

Mr. MERRIAM: The next submission deals with section 121, subsection 1; and my instructions are to submit this as strongly as I can for your consideration, that this section as presently worded provides for the examination of the bankrupt and certain other persons "before the registrar of the court or other authorized person". Quite often this examination is held before an official stenographer, or even before the registrar, and in many cases it turns out that it is perfunctory and of not great value in the administration of the estate. I have been instructed to submit to you that a provision be inserted whereby the bankrupt may be examined before the judge in bankruptcy himself on the request of the trustee and with the approval of the inspectors; and it is our belief that there are numerous instances in which such an examination would be a great benefit in the administration of the estate and in the protection of the creditors.

Hon. Mr. LEGER: This is not a trial; it is simply to get out the evidence; so anybody who can take the evidence would be competent.

The CHAIRMAN: I feel that the judges entrusted with the administration of the law would not share your views, witness, because at times there are many bankruptcies, and the court is occupied all day with the hearing of trials; and if furthermore the judge had to hear evidence of this type, which we call preliminary evidence, or ex parte evidence, I do not know when he would have time to do it.

Hon. Mr. LEGER: It seems to me that the registrar of the court would be the proper officer before whom to hold these examinations.

Mr. MERRIAM: In most instances that is what would happen, but every so often there would be a case which is just off the beaten track, and in which you are not going to get to the root of the assets owned by the bankrupt except under the most thorough examination; and it is our feeling that thoroughness can be much more effectively accomplished before a judge.

The CHAIRMAN: Is it not your experience that the thoroughness of the examination depends entirely on the lawyer's knowledge as to the case rather than on the presence of the judge?

Mr. MERRIAM: I think they both work hand in hand, Mr. Chairman. I think the presence of a judge adds tremendously to any examination.

Hon. Mr. FOGO: Would you not get more latitude before the registrar than before a judge, in an examination?

Mr. MERRIAM: That could be, sir.

Hon. Mr. CAMPBELL: Mr. Chairman, Mr. Merriam's suggestion may be a good one for cases where it is desirable to test the creditability of the bankrupt or a witness. It seems to me that if the proposed amendment were made we should provide that an examination may be held before the Judge in Bankruptcy only after special leave obtained from the judge upon application to him.

Mr. MERRIAM: That would serve the purpose, sir.

Hon. Mr. CAMPBELL: A person should not be able to obtain an examination before the Judge in Bankruptcy as a matter of right.

Mr. MERRIAM: We do not propose that every case be examined before the judge. I think your suggestion would meet our submission perfectly, sir.

Hon. Mr. HUGESSEN: If the registrar feels that a witness is not telling the truth and that he has not sufficient authority to deal firmly with the witness, could the registrar under the ordinary court rules not refer the case to the judge?

Hon. Mr. HAIG: I do not think you would get the registrar to do that.

Hon. Mr. MORAUD: Let the Judge decide the matter.

Hon. Mr. HAIG: Application could be made to the Judge for special leave, as Senator Campbell suggests.

Hon. Mr. LEGER: Subsection (1) of section 121 says that the trustee may examine without an order. I should think that an order could be made for examination before a Judge.

Hon. Mr. HAIG: That may be so.

Hon. Mr. CAMPBELL: But I do not think it is the practice.

Mr. MERRIAM: Section 121 (2) provides for examination after an order, but only for examination "before the registrar or other authorized persons".

Hon. Mr. HUGESSEN: Could the word "judge" not be inserted there before the word "registrar"?

Mr. MERRIAM: Yes, sir, that would cover the point.

Our final submission is in relation to section 142 (1), which provides that the Chief Justice may nominate or assign one or more of the judges of the court to exercise the judicial powers and jurisdiction conferred by this Act. Our submission is that this should be mandatory rather than permissive; in other words, that "shall" should be substituted for "may".

Hon. Mr. LEGER: The Chief Justice always does nominate one of the judges as Judge in Bankruptcy.

Mr. MERRIAM: We would like that requirement to be made mandatory.

Hon. Mr. FOGO: Do you know of any province where it is not done?

Mr. MERRIAM: I do not know of any, sir.

Hon. Mr. HAIG: That is what is usually done, but there is nothing in the Act saying that it has to be done.

Mr. MERRIAM: That is the point, sir.

The CHAIRMAN: The jurisdiction is with the Chief Justice.

Mr. MERRIAM: We do not suggest that the Chief Justice should exercise that jurisdiction himself, for he has too many other things to do. We feel it would be of great assistance to inspectors, trustees and everyone else interested in the administration of estates to know that one judge in the province was an authority on the subject, and that when something out of the ordinary arose they could go to him for direction. That would overcome many difficulties.

The CHAIRMAN: Is it not the practice that the Chief Justice nominates one or two judges to look after bankruptcy work?

Mr. MERRIAM: I think that is usually done, Mr. Chairman.

Hon. Mr. HUGESSEN: Can you cite us any actual case where the Chief Justice of a province has not nominated a judge to act?

Mr. MERRIAM: No, sir, I cannot.

Hon. Mr. HAIG: Mr. Chairman, I think we should not recommend any change in the section unless we can be shown some cases of abuse. In our province of Manitoba one judge is assigned for bankruptcy work, and if he becomes ill or has too much work to do the Chief Justice assigns another man.

Hon. Mr. MORAUD: Has there been any complaint about the present method?

Mr. MERRIAM: No, senator. This is merely a suggestion.

Hon. Mr. MORAUD: I have never heard of any complaint in Quebec.

Hon. Mr. HUGESSEN: Nor have I.

Hon. Mr. MORAUD: I think we should leave well enough alone.

Hon. Mr. LEGER: At present the Chief Justice may delegate his powers. I do not think we should say he must do so.

Hon. Mr. HUGESSEN: No. In some instances he might choose to act himself.

Hon. Mr. HAIG: The present practice has worked all right in Manitoba.

Mr. MERRIAM: It has worked all right in Ontario too, sir. I have not been instructed that there are any particular complaints. We are making merely a suggestion here.

Hon. Mr. HAIG: I agree with Senator Moraud that we should leave well enough alone.

Mr. MERRIAM: That concludes our submissions, Mr. Chairman, and I wish to thank the committee for hearing me.

The CHAIRMAN: On behalf of the committee I thank you for presenting the submission, Mr. Merriam.

The committee adjourned, to resume at the call of the Chair.

APPENDIX "L"

ASSOCIATION OF CANADIAN SMALL LOAN COMPANIES

217 Bay Street
Toronto 1, Ont.
March 12, 1949.

The CHAIRMAN,
The Standing Committee on Banking and Commerce,
The Senate,
Ottawa, Ontario.

Re: Bill "N"—An Act Respecting Bankruptcy

GENTLEMEN: Section 135 of the Bill lists debts from which a bankrupt is not released by an order of discharge.

Clause (*c*) of this Section reads—"any debt or liability for maintenance and support of his wife and children."

Consumer cash-lending agencies, (Licensees under Small Loans Act), may make loans of cash for the purpose of liquidating indebtedness assumed for such purposes.

We respectfully suggest that such a loan should be included within the meaning of Section 135.

This can be done by adding a clause (*f*) to paragraph (*l*) of the following effect—

(*f*) any debt or liability incurred for the purpose of discharging another debt or liability from which the bankrupt would not be released by an order of discharge.

Yours very truly,

A. W. BRUCE,
President

APPENDIX "M"

AN ACT RESPECTING BANKRUPTCY—Senate Bill N—1949.

Draft amendment to section 52: "Copyright".

Submitted by the Honourable Senator David.

For clause 52, substitute the following:

Copyright, manuscripts and unmarketable material to revert automatically to the author.

52 (1). Notwithstanding anything contained in this Act or in any other statute, any copyright or any interest in a copyright in whole or in part assigned to a publisher, printer, firm or person becoming bankrupt or against whom a receiving order has been made—if the work covered by such copyright has not been published and put on market at the time of the bankrupt or of the receiving order—shall automatically revert and be delivered to the

interested author or his heirs, as well as the author's manuscripts, proofs and revises of his set-up work and any material deriving from his work and not intended for the public market; and any contract or agreement between the author or his heirs and such bankrupt or person shall then terminate and be null and void.

If copies of the work are on the market.

(2) If, at the time of the bankrupt or receiving order, the work was published and put on the public market, the trustee shall not be entitled to sell, or authorize the sale or reproduction of, any copies of the work, or to perform or authorize the performance of the work, except on the terms of paying to the author or his heirs such sums by way of royalties or share of the profits as would have been payable by the bankrupt, nor shall he, without the written consent of the author or his heirs, be entitled to assign the copyright or transfer the interest or to grant any interest therein by licence or otherwise, except upon terms which will guarantee to the author or his heirs payments by way of royalties or share of the profits at a rate not less than that that which such bankrupt or person was liable to pay. And any contract or agreement between the author or his heirs and such person or bankrupt shall then terminate and be null and void, except as for the disposal, under this subsection, of copies published and put on the market before the bankruptcy or the receiving order.

Marketable copies to be first offered for sale to the author.

(3) Before disposing, in the manner prescribed in this section, of the manufactured and marketable copies, if any, of the copyright work comprised in the estate of such person or bankrupt, the trustee or other winding-up authority shall by writing offer the interested author or his heirs to sell same himself or themselves at such price, terms and conditions as the trustee or winding-up authority may deem fair and proper to all whom it may concern.

APPENDIX "N"

SUBMISSIONS OF THE LAW SOCIETY OF UPPER CANADA TO THE STANDING COMMITTEE ON BANKING AND COMMERCE OF THE SENATE OF CANADA WITH RESPECT TO SENATE BILL N, (AN ACT RESPECTING BANKRUPTCY)

To: The Honourable E. BEAUREGARD, Chairman,
and Members of the Committee on Banking and
Commerce of the Senate of Canada,
Parliament Buildings,
Ottawa, Ontario.

We have had an opportunity to consider the representations made by the Honourable Mr. Justice Urquhart and the Board of Trade of the City of Toronto, and the Law Society does approve, in principle, the representations made to your Committee in those briefs. We should also like to join with the Board of Trade and Mr. Justice Urquhart in recording the appreciation of the Law Society for the work performed by the Superintendent of Bankruptcy in developing the revision of the Bankruptcy Law. We should like, however, to add a few observations with respect to particular sections of the Act.

Section 21 (a)—Petition for Receiving Order

Section 21 (*a*) provides in part that one or more creditors may file in Court a petition for a receiving order against a debtor if the debt or debts owing to the petitioning creditor or creditors amount to $1,000,000. This new section increases from $500.00 to $1,000.00 the debt necessary in the case of a petition for a receiving order. We submit that increasing the requirement from $500.00 to $1,000.00 imposes an unnecessary burden on a petitioning creditor in that in many cases it would be necessary for him to endeavour to join with other petitioning creditors of whom he has no knowledge in order to ascertain the debtor's liability and creditors are frequently reluctant to join in a bankruptcy petition. It is, therefore, submitted that the present requirement of $500.00 would seem to be a reasonable amount, and that section 21 (*a*) be amended to reduce the amount required to $500.00.

Section 25—Re Exclusion of Section 21 and Following

The effect of this proposed section would exempt a wage earner who does not earn more than $2,500.00 a year from those provisions of the Act relating to the application for a receiving order. In the present Act the amount is $1,500.00 and it is submitted that this figure should remain and that an increase to $2,500.00 is not warranted.

Section 83 (1) and Section 144 (8) Re Debts Provable in Bankruptcy and Trial of Issue

One of the important changes in the Bankruptcy Act is in Section 83 (1) of Bill N. Prior to this amended section, one could only prove in bankruptcy for unliquidated claims arising by way of a contract, promise, or breach of trust. Unliquidated claims for tortious actions, or in actions arising otherwise than by reason of a contract, promise, or breach of trust, could not be proved in bankruptcy. However, now it will be possible to prove in bankruptcy for unliquidated claims arising out of a tortious transaction.

Thus, one could make a claim against the bankrupt estate for damages arising, let us say, out of the ordinary negligence action. Although there is much to be said for the extension of the Act in this regard, the difficulty arises where the proceedings with respect to the tortious action are pending at the time the assignment, or receiving order is made, and there is no settlement and no judgment. Under such circumstances the Bankruptcy Court under the proposed Section 144 (8) could direct a trial of an issue to determine the liability and the quantum of damages, but under the present subsection the Court is limited in that the issue could only be tried by Judge or other officer of the Court of any of the provinces, and there is no provision for trial by jury under such circumstances.

Thus, if the section were to stand as it is now, the Plaintiff in a negligence action, in which the defendant becomes a bankrupt before judgment, would be deprived of his right to a trial by jury.

This Section should be amended to permit the litigant to pursue his ordinary course where there is a dispute as to either the liability or the amount of damages and subsection 8 of Section 144 should permit the Court, in directing the issue to be tried, to allow the litigant trial by jury if under ordinary circumstances he would be so entitled. We suggest that Section 144 (8) should be amended to read as follows:

> The Court may direct any issue to be tried or inquiry to be made by any judge or officer of any of the courts of the provinces or by a Judge or jury according to the practice relating thereto to trial of such

issues and the decision of such judge or officer is subject to appeal to a judge in bankruptcy unless the judge is a judge of a superior court or unless the issue shall have been tried by a jury when the appeal shall, subject to section 150, be to the Court of Appeal.

Section 127 and Following—Re: Automatic Discharge of Bankrupt

Another rather radical change is the amendment to the Act relating to the application for discharge of a bankrupt. Under the new procedure the making of a receiving order against, or an assignment for discharge of the bankrupt. This appears in Section 127, and following, in the proposed Act, and thus places on the Trustee the onus and expense of obtaining an appointment for the application for discharge.

It does appear that treating the receiving order or assignment as an automatic application for discharge is somewhat contrary to public policy, having in mind the history and purpose of the Bankruptcy Act. While it is true that there has been from the beginning of Bankruptcy legislation a trend in favour of the debtor, nevertheless, keeping on him the onus of applying for his discharge would appear to have a salutary effect. In other words, it has often been said that the purpose of bankruptcy legislation is to permit an honest but unfortunate debtor to obtain a discharge from his debts subject to reasonable conditions and thus be enabled to make a fresh start, as well as affording creditors an expeditious and inexpensive method of compelling an insolvent debtor to turn over his property to a trustee for rateable distribution amongst his creditors.

It would appear more in keeping with such policy if the onus of obtaining his discharge, after having satisfied the requirements of the Bankruptcy Act, were left with the debtor and in this way giving him the satisfaction as well as the burden of satisfying the Court that he has complied with the Act rather than placing this burden on the bankrupt's estate.

However, it would certainly be in order to retain in the new Act the provision of Section 128 relating to the Trustee's report as to the affairs of the bankrupt and the manner in which he has performed his duties and the many other requirements of that section, so that the information could be on record whenever the bankrupt would apply for his discharge. The argument in favour of automatic discharge is that frequently the bankrupt does not know of his right to make such an application. This might well be cured by requiring the Trustee to notify the bankrupt of his right to make such an application. In the event that the bankrupt does not wish to make such an application surely the duty for such application should not lie with the Trustee nor should the estate have to bear the expense.

Section 155 (7)—Legal Costs

Under the proposed section 155 (7) there is a limitation on the total fees available for legal services which excludes, in computing the amount from which the percentage of 10 per cent is to be taken, the amounts paid to secured creditors.

The difficulty is that frequently the handling of secured creditor's claims causes considerable and often complicated legal work and there would appear to be no justification for deducting this item in computing the maximum of legal fees.

We suggest that this subsection be amended so that in computing the percentage, with respect to the maximum fees, the amounts paid to secured creditors as well as all items be included, and that the section should read as follows:

(7) Notwithstanding anything in this section, the total legal costs exclusive of disbursements for all legal services specified in paragraph (*e*) of subsection six shall not exceed ten per cent of the gross receipts except with the approval of the inspectors and the court, and, where the amount thereby available or authorized for payment of such legal fees is insufficient, the fees shall be abated proportionately.

Section 140 (1) (e)—Jurisdiction of Courts

In Section 140 (1) (*e*) there is reference made to the High Court of Justice for the Province of Ontario. Actually under our Judicature Act the High Court of Justice is only a branch of the Supreme Court of Ontario and that section should be amended to read "In the Province of Ontario, the Supreme Court of Ontario". That this is necessary would appear from other sections, such as 144 (1) which requires every Court to have a seal. There is only one seal in our High Court in Ontario and that is the seal of the Supreme Court of Ontario and there is no separate seal for the High Court of Justice.

All of which is respectfully submitted.

LEE A. KELLEY, K.C., and
CHARLES L. DUBIN
Of Counsel

APPENDIX "O"

THE DOMINION MORTGAGE AND INVESTMENTS ASSOCIATION

Toronto 1, Canada,

March 28, 1949.

Re: Senate Bill N—An Act Respecting Bankruptcy

Dear Sirs: In our letter of March 4, 1949, we advised that this Association had no representations to make on the provisions of Bill N in their present wording. It has come to our attention, since that time, that some of the submissions made to you on March 10, 1949, have made reference to the Companies' Creditors Arrangement Act and advocated the modification or repeal of that Act. Our member companies, being the life insurance, loan and trust companies representing the major portion of the business of these types in Canada, are large investors in the bonds, debentures and other securities of corporations. They are very much interested, therefore, in legislation and procedures under which arrangements between corporations and their creditors may be effected.

On June 20, 1946, when you had under consideration Bill A-5, an Act respecting Bankruptcy, our representative Mr. Terence Sheard was a witness before you in support of our Brief. His evidence and a copy of our Brief were printed in your Proceedings, number 3, June 20, 1946. The essence of our submission was that (1) the Bankruptcy Act was not a suitable means of effecting reorganizations of large public companies with issues of securities largely distributed in the hands of the public; and (2) the Companies' Creditors Arrangement Act had proved to be a valuable instrument to effect corporate reorganizations, that it had worked well from the viewpoint of the investor and that it should be retained in full force and effect. Nevertheless, we

recognized that abuses had taken place in some cases in the compromise under the Act of the rights of trade creditors where there had been no general public investment interest. To prevent the kind of abuses which had occurred and to insure that so far as small companies are concerned recourse will be had to the Bankruptcy Act, we suggested amendments to the Arrangement Act in the form of a draft bill appended to our Brief. These amendments were prepared by Mr. R. B. F. Barr of the legal firm Blake, Anglin, Osler & Cassels, Toronto, in consultation with the late Mr. W. Kaspar Fraser, K.C., Toronto, and the late Mr. Gilbert S. Stairs, K.C., Montreal.

We continue to hold the views we expressed in 1946 and desire to reiterate our submissions to you at that time.

While we appreciate that the Companies' Creditors Arrangement Act is not before you, we feel that Bill N and the Arrangement Act are related in their operations. In our view, there is grave doubt that compromises of claims arising under bond mortgages can be carried out effectively under Bill N because of the secured nature of the claims and because the scheme of Bill N does not lend itself to dealings with holders of bearer securities. Where a company has outstanding obligations evidenced by trust indentures, both secured and unsecured, as well as ordinary trade debts, and where the rights of preferred and common shareholders of various classes are involved, the situation is greatly complicated. We believe that the Bankruptcy Act and the Companies' Creditors Arrangement Act, as well as the Winding-up Act, can and do each perform useful and necessary functions side by side and that each should continue to operate. We are, therefore, much opposed to any suggestion for the repeal of the Companies' Creditors Arrangement Act. Further, we consider that section 38 (2) of Bill N is a desirable provision (as is its counterpart, section 10 of the Arrangement Act) whereunder compromise proceedings under the Bankruptcy Act may be transferred by the Judge to proceedings under the Arrangement Act.

We have noted a suggestion that provision be made in the Arrangement Act for the intervention of a licensed trustee in proceedings under that Act. We consider that such a provision would be undesirable as the investor-creditor is already fully protected by Bondholders' or Debentureholders' Committees and by the Trustees under The Trust Indentures evidencing the debt. The intervention of a licensed trustee could only add to an already involved procedure and result in additional delays and expense.

We have no amendments to suggest to Bill N and view with favour the new provision permitting proposals for compromise before as well as after bankruptcy so as to permit the compromise of the claims of trade creditors. The enactment of the amendments to the Arrangement Act which we proposed in 1946 and which we again propose would, we submit, prevent the abuses which have taken place in the past under the Arrangement Act where trade-creditors were involved and would cause such compromises to be undertaken under this new provision of the Bankruptcy Act.

We shall be glad to attend before you in Ottawa should you desire to examine us on our views in this matter.

Respectfully submitted,

JULES E. FORTIN,
Secretary-Treasurer.

The Honourable Elie BEAUREGARD, K.C.,
Chairman and Members of the Committee
on Banking and Commerce of the Senate,
Parliament Buildings,
Ottawa, Ontario.

APPENDIX "P"

IN THE MATTER OF BILL N, AN ACT RESPECTING BANKRUPTCY

MEMORANDUM SUBMITTED TO THE STANDING COMMITTEE ON BANKING AND COMMERCE OF THE SENATE OF CANADA BY THE NATIONAL COMMITTEE OF CANADIAN COMMERCIAL TRAVELLERS

The National Committee of Canadian Commercial Travellers was formed in May, 1942, to provide an agency whereby its six member associations might speak with one voice. The member associations are as follows:—

Commercial Travellers Association of Canada, Toronto,
Dominion Commercial Travellers Association, Montreal,
Ontario Commercial Travellers Association, London,
Maritime Commercial Travellers Association, Halifax,
North West Commercial Travellers Association of Canada, Winnipeg, and
Associated Canadian Travellers, Calgary.

The six member associations comprise between them today some forty thousand (40,000) Commercial Travellers.

The Problem

The problem concerns the effect of Section 95(d) of the Act on travelling salesmen on commission.

No complaint is made of the degree of priority which such employees are given by this Section and no change is suggested in the text except with respect to the limit of $500 to which we shall refer later.

Claims by salesmen on commission for a priority in the event of bankruptcy have been fairly, if not liberally, dealt with by the Courts in the few cases where an appeal has been taken from the trustee's disallowance in the past. The difficulty has not been with the text of the law but in making this protection available to those it was designed to protect. Clerks, servants, travelling salesmen, labourers and workmen have ordinarily no income beyond their wages or commissions and when their employer goes bankrupt, even that disappears. Consequently, they can rarely avail themselves of the recourse to the Courts which the Act provides from a trustee's disallowance of their claim to a priority and which disallowance very often means that their whole claim in effect is denied because there will be nothing for the unsecured creditor.

An unsuccessful appeal to the Court from a trustee's disallowance of such a claim could, in this Committee's experience, easily cost $150 in taxable Court costs payable to the trustee. In addition, the employee would have to pay his own solicitor, making the total costs anywhere from $200 to $300. These costs are prohibitive and have resulted, in the experience of this Committee and its members, in many just claims being abandoned after an unfavourable decision from a trustee. The trustee makes a quick ex parte decision in these matters without hearing the creditor. His natural tendency is to disallow doubtful claims to a priority, leaving it to the creditor to appeal to the Courts where the matter can be properly heard and properly decided. That practice works no great hardship with respect to creditors other than employees. In their case, what is needed in our submission is a cheap summary and final review of the trustee's disposition of a claim to a priority under Section 95(d).

Recommendations

We further submit that this can best be secured within the framework of the Act by obliging the trustee to obtain the direction of the Court under Section 12 before disallowing a claim for priority under Section 95(d). We would, therefore, respectfully suggest and recommend that the following paragraph be added to Section 12(1):—

> A trustee must apply to the courts for directions before disallowing any claim to a priority under Section 95(d) and give notice of such application to the creditor. The direction of the court on such an application shall be final and conclusive, notwithstanding any other provision of this Act and no costs shall be awarded against any creditor who appears thereon.

We believe that the direction of the Court should be final because the employee will hardly ever be in a position to appeal and the amount of any such priority is limited by Section 95(d) to $500 which is not appealable under the present Act.

Our second submission is that the amount of $500 to which the priority is limited by Section 95(d) should be increased in the case of travelling salesmen to $500 plus expenses incurred by them on behalf of the bankrupt during the three months limited by the Section.

The whole respectfully submitted,

FOSTER, HANNEN, WATT & STIKEMAN
Attorneys for The National Committee of Canadian Commercial Travellers.

APPENDIX "Q"

March 31, 1949.

The Senate Committee on Banking and Commerce,
Ottawa, Ontario.

Re Proposed Amendment to the Bankruptcy Act

Gentlemen: Bill N, entitled an Act respecting Bankruptcy, which received a first reading in the Senate of Canada on Monday, the 14th of February, 1949, has been carefully studied and considered by a representative group of wholesale manufacturing and industrial firms in British Columbia, consisting of American Can Company Limited, Vancouver Supply Company Limited, W. H. Malkin Company Limited and Shell Oil Company of B.C. Limited. While being in agreement with the general terms of the proposed Bill, these firms would like to make the following submission with respect to certain sections of the proposed Act.

As presently constituted Section 79 (3) (*b*) provides that where the bankrupt is a corporation any officer, director or employee thereof may not vote on the appointment of a trustee or inspector. It is submitted that this section should be extended to provide that a company may not vote for the appointment of a trustee or inspector of one of its bankrupt subsidiary or associated companies of which it happens to be a creditor.

The purpose of this proposal is apparent from a consideration of the situation where a parent company has several subsidiary or associated companies with interlocking directorates and one of the subsidiary or associated companies goes into bankruptcy. It then transpires that the parent company or one of

the other associated companies has a large claim against the bankrupt company. By reason of the size of the claim the creditor parent or associated company, controls the election of the trustee and the inspector and has persons acceptable to it appointed or elected to the position. As a result, the parent or associated company exercises an extremely great influence on the subsequent administration of the bankrupt company. The fundamental reason for providing that any officer, director or employee of a bankrupt corporation cannot vote on the appointment of a trustee or inspector is that their interest is probably adverse to the position of the creditors. The same reasoning applies with equal force and effect with respect to a parent or an associated company voting in the case of the bankruptcy of one of its subsidiaries.

Section 82 of the Bill relates to the appointment of inspectors. It is suggested that a further subsection be added to Section 82 to provide that a creditor corporation may be appointed an inspector to act by its representative with power to change its representative if it deems it advisable so to do. It is very often the case that inspectors are chosen because they represent the larger creditors which in most instances are corporations. By way of illustration, very often the credit manager of a large creditor corporation is appointed inspector. Subsequently he may either leave the employ of the creditor company or be transferred to another department in either of which cases he is no longer actively interested either in the position of his company or ex-company as a creditor or in the affairs of the bankrupt generally. In circumstances such as these it is believed that the creditor corporation should have the privilege of appointing another of its employees to act in its behalf and it is submitted that the simplest way to accomplish this is to make provision for the appointment of a creditor corporation as an inspector to act through such representative as it may designate.

Section 121 (1) provides for the examination of the bankrupt and certain other persons before the Registrar of the Court or other authorized person. Quite often this examination is held before an official stenographer and even when held before the Registrar such examinations are in many cases perfunctory and of little or no assistance. It is submitted for your earnest consideration that a provision be inserted in this section whereby a bankrupt can be examined before the Judge in bankruptcy himself upon the request of the trustee and the approval by a majority of the inspectors. There are numerous instances where an examination before the Judge would be of immense benefit to the estate.

Section 142 provides that the Chief Justice may assign one or more of the Judges of his Court to exercise the powers and jurisdictions conferred by the Act. It is submitted that this provision be made mandatory by the substitution of the word "shall" for the word "may". The reasons prompting this submission are reasons of convenience to all having an interest in bankruptcy matters. The effect of such a designation would be that there would be one judge thoroughly familiar with the Bankruptcy Act and practice and procedure and who is recognized by all as an authority in these matters. His experience and advice would be available to trustees and others in connection with the administration of estates and it is believed that the guidance thus obtained would aid materially in overcoming many of the difficulties of practice, procedure and interpretation now encountered by trustees of bankrupt estates.

All of which is respectfully submitted on behalf of the above named corporations by their solicitors, Gowling, MacTavish, Watt, Osborne & Henderson, 56 Sparks Street, Ottawa, Ontario.

APPENDIX "R"

(Translation from the French)

REMARKS OF THE BAR OF THE PROVINCE OF QUEBEC IN CONNECTION WITH BILL "N", "AN ACT RESPECTING BANKRUPTCY".

We notice with satisfaction:

1. That the drafters of the new Bill have taken account of the objections and suggestions put before the Senate by the magistrature, the bar of several provinces and many public institutions on the Bill drafted by the late William J. Reilley, and that has been eliminated therefrom almost everything which proved unacceptable in the former draft.

2. That many provisions of the Bankruptcy Act, 1919, which was the best, have been re-established with improvement.

3. That the jurisdiction of the Courts remains unimpaired. In fact, the constant interference of the Superintendent in any bankruptcy, as proposed in the 1946 Bill, has rightly been eliminated.

4. That easy penalties and swiftly enforceable against recalcitrant debtors have been provided for.

5. That the bona fide creditors will now have a way of being informed of the result of their claims filed with the trustee, and of having the Court quickly dispose of same and at much reduced costs.

6. That the memorandum on priorities means a commendable endeavour to prevent long and costly proceedings, not only between federal and provincial authorities, but also between two or many departments of one government.

7. That the law is clearer, more logically arranged, and embodies many new provisions which are required under the present conditions of living.

8. That consideration has been given, in the remodelling of several sections of the Bill, to the jurisprudence established since 1920.

We notice, however, that the numbers of sections have been changed, whether because the insertion of fresh sections, whether on account of the embodying of actual rules in the Bill. Such arrangement is bound to bring confusion and is also liable to diminish the advantage of the established jurisprudence.

We suggest, therefore, that, whatever are the amendments or additions brought into the new law, these amendments or additions should be embodied therein under the section number corresponding to the amended sections.

Following a survey of the Bill, section after section, we submit the following observations:

2 (*d*) of the French version—It would be advisable, we believe, to include 2 (*f*) of the English version—"corporation publique" ("Public corporation") in the corporative entities which are excluded from the bankruptcy.

9 (4) We concur in the suggestion of the Toronto Board of Trade, in connection with this section.

9 (12) We prefer to keep the present General Rule 175 which prescribes a demand from the Superintendent.

10 (1) (*c*) We object to that provision as unfair for the creditor and contrary to the principle of our Civil Code. In our opinion, the section of the present Act on that point is preferable.

10 (1) (*h*) It would be better to use the word "settle" (régler) instead of the word "pay" (payer).

11 (7) In order to avoid any conflict, the following proviso should be added at the end of that subsection: "Subject to the rights of preferred creditors and of secured creditors."

12 (2) There is an obvious error in the French version which puts an affirmative sense while the English version puts the negative. This subsection should read: "Lorsque les biens *n'ont pas* été pleinement administrés, etc."

23 (2) We insist upon the keeping of General Rule 55 in its entirety.

25 It seems that the amount of $2,500 is too high and that the $1,500 limit should be maintained.

28 Why not the same notices as in ordinary bankruptcies?

40 We object that a permit of the Court be required to sue after the discharge of trustee. However, the present section should be clarified in that respect.

57 "Intérêts accrus" would be of better style that "intérêts courus".

64 We concur in the objections brought against this section, and we would like to maintain the present provisions, except that the words "with *the* view" in the English version should be substituted for "with *a* view".

94 (5) It would be preferable to use the word "rayer", instead of "repousser", and the word "réduire", instead of "déduire".

95 In our opinion, the case of a preferred creditor should be precised according to the law of the provinces where the preference or privilege has no funding on any particular property. Does he remain a resured creditor?

95 (*e*) We concur in the suggestion brought before the Committee by Mr. Justice Urquhart and by Mr. Pickup. Quid of the costs of the distraining creditor?

108 (2) The words "tax and due department" should be substituted for "taxing authority".

111 (3) Fifteen days instead of thirty days.

125 Let us keep the present section 138; but let us rather limit to the case of the bankrupt or of his agent the use of the evidence in Criminal Court.

127 The Court should determine in advance the trustee's fees in connection with the request for discharge.

129 In our opinion, the suspension should be limited to a maximum of five years. The words "suspend the discharge for not more than five years" should be substituted for "suspend the discharge".

135 We feel that section 147 of the present Act should be maintained.

140 (1) In the French version, it would be of better style to substitute "en vacance et en cabinet" for "en vacation et en chambre".

150 The present section 174 must be maintained, but it could be precised according to the construction of same by our Courts.

155(7) We accept the representations of the Toronto Board of Trade in respect of the deduction in secured debts.

N.B.—Rules now in force since the 23rd of February refer to sections of the present Act. A change in such references would be necessary.

The Secretary-Treasurer,
(Sgd.) CHARLES CODERRE.

Seal of the Bar of the Province of Quebec.
Montreal, April 11, 1949.

13.

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