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Canada. Parl. House of Comm.
Standing Comm. on Banking
and Commerce, 1938.

SESSION 1938

HOUSE OF COMMONS

complete in itself

STANDING COMMITTEE

ON

BANKING AND COMMERCE

MINUTES OF PROCEEDINGS AND EVIDENCE

Respecting

THE COMPANIES' CREDITORS ARRANGEMENT ACT

No. 1

TUESDAY, JUNE 7, 1938

WITNESSES

Mr. H. S. T. Piper, Montreal Board of Trade, Montreal; Mr. J. Gerard Kelly, K.C., Toronto Board of Trade, Toronto; Mr. W. Kaspar Fraser, K.C., Dominion Mortgage and Investments Association, Toronto; Mr. Lee A. Kelley, K.C., Canadian Credit Men's Trust Association, Limited, Toronto; Mr. W. J. Reilly, K.C., Superintendent of Bankruptcy, Department of Finance, Ottawa.

OTTAWA

J. O. PATENAUDE, I.S.O.

PRINTER TO THE KING'S MOST EXCELLENT MAJESTY

1938

ORDER OF REFERENCE

FRIDAY, May 6, 1938.

Ordered,—That the subject-matter of the following Bill be referred to the said Committee:—

Bill No. 26, An Act to repeal The Companies' Creditors Arrangement Act, 1933.

ARTHUR BEAUCHESNE,
Clerk of the House.

MINUTES OF PROCEEDINGS

TUESDAY, June 7, 1938.

The Standing Committee on Banking and Commerce met at 11 a.m., the Chairman, Mr. Moore, presiding.

Members present: Messrs. Baker, Clark (*York-Sunbury*), Cleaver, Dubuc, Hill, Howard, Kinley, Landeryou, Leduc, McLarty, Martin, Moore, Plaxton, Raymond, Stevens, Vien, Ward.

In attendance: Mr. W. J. Reilley, Superintendent of Bankruptcy, Department of Finance; Mr. H. S. T. Piper, Chairman, Montreal Board of Trade's Committee on Bankruptcy; Mr. J. Gerard Kelly, K.C., Counsel, Toronto Board of Trade; Mr. W. Kaspar Fraser, K.C., Counsel, Dominion Mortgage and Investments Association, Toronto, and Mr. Lee A. Kelley, K.C., Counsel, Canadian Credit Men's Trust Association, Limited, Toronto.

Before proceeding to the order of business, Messrs. McLarty and Kinley referred to the sudden passing of an active and prominent member of the Committee in the person of the late A. M. Edwards, member for Waterloo South. It was resolved that the sympathies of the Committee be conveyed to Mrs. Edwards and family.

The Committee had under consideration the subject-matter of Bill No. 26, An Act to repeal the Companies' Creditors Arrangement Act.

Mr. Bertrand, sponsor of the bill, made a brief statement.

Mr. H. S. T. Piper, for the Montreal Board of Trade, was called and examined.

With respect to proposed amendments to the Bankruptcy Act submitted by the witness, it was ordered that they be printed into the record but with the reservation that their consideration did not come under the scope of the committee's reference.

Witness filed with the Clerk of the Committee a list of 206 applications under the Act in the district of Montreal.

Witness retired.

Mr. J. Gerard Kelly, K.C., for the Toronto Board of Trade was called and examined.

Witness retired.

Mr. W. Kaspar Fraser, K.C., for Dominion Mortgage and Investments Association was called and examined.

Witness retired.

Mr. Lee A. Kelley, K.C., for Canadian Credit Men's Trust Association, Limited, was called and examined.

Witness retired.

Mr. W. J. Reilley, K.C., Superintendent of Bankruptcy made a brief statement.

Mr. Bertrand having stated that he wished to ask for leave to withdraw his bill, the Committee agreed to recommend accordingly to the House.

At 1 o'clock the Committee adjourned until Thursday, June 9, at 10 a.m. for consideration of Bill No. 124, An Act to amend the Copyright Act.

R. ARSENAULT,
Clerk of the Committee.

MINUTES OF EVIDENCE

HOUSE OF COMMONS, ROOM 277,

Tuesday, June 7, 1938.

The Standing Committee on Banking and Commerce met at 11 a.m. The Chairman, Mr. Moore, presided.

The CHAIRMAN: As we have a quorum now, gentlemen, we will proceed.

Mr. MCLARTY: Mr. Chairman, before the committee proceeds with its business, I think it might be appropriate to record our regret at the passing of one of the most able and one of the most conscientious members of this committee. I refer, of course, to Alex. Edwards, the member for South Waterloo.

Tributes have already been paid in the House to his energy, industry and ability; but I think that in this committee he was particularly active and brought to bear his wide and extensive knowledge of financial matters.

I would like, sir, to move the appropriate resolution of regret at his passing.

Mr. KINLEY: Mr. Chairman, I rise to second the motion moved by Mr. McLarty. I have known the late Mr. Edwards but for a short time, but I think we will all agree that he was a man of sound judgment, one who judged fairly all things that came before him in his capacity as a member of parliament and as a member of this committee.

Mr Edwards seemed to me to be the type of citizen that we in this country can ill afford to lose at the present time. He was the type who believed that obligations should be fulfilled and that the business men of this country should carry on in a way beneficial to the interests of the people at large.

I feel the committee is paying a tribute to a worthy member who has passed on, and I second the motion.

The CHAIRMAN: Will the members of the committee please stand. (The members rose.)

Mr. VIEN: I think, Mr. Chairman, that this resolution should be entered in our minutes and a copy sent to the deceased's family.

The CHAIRMAN: That will be done, Mr. Vien.

Gentlemen, we are now to deal with the subject matter of Bill No. 26, an Act to amend the Companies' Creditors Arrangement Act. Mr. Bertrand.

Mr. BERTRAND: Mr. Chairman, I do not wish to repeat the argument that has taken place in the House in connection with this bill. I presented this bill because I felt that there had been certain abuses and that the best way to overcome them was to repeal the Act.

I understand that representatives of the boards of trade of Montreal and Toronto are here. They are the persons who are most interested, and I state to this committee that evidently they feel it is better to withdraw the bill, and I am ready to withdraw the bill and allow the Companies' Creditors Arrangement Act to be amended as they suggest.

I should like, Mr. Chairman, if you would call the representatives of these boards. I understand that they have statements to make.

The CHAIRMAN: Is there anyone acting as solicitor for the boards of trade?

Mr. MARTIN: Mr. Claxton is here.

W. K. FRASER, K.C.: Mr. Chairman, I am representing the Dominion Mortgage and Investments Association.

The CHAIRMAN: I am asking now about the order of arrangement, the order in which you desire to make representations. I have before me here a list which includes the Montreal board of trade, the Toronto board of trade, the Dominion Mortgage and Investments Association, also the Canadian Credit Men's Trust Association.

Would it be agreeable if the representatives spoke in the order I have mentioned?

Mr. VIEN: Are all of them represented this morning? I would take the appearances first, Mr. Chairman, and we will see then who is present.

The CHAIRMAN: Is anyone here representing the Montreal board of trade?

Mr. PIPER: Yes, sir.

The CHAIRMAN: And anyone representing the Toronto board of trade?

Mr. KELLY: Yes.

The CHAIRMAN: And the Dominion Mortgage Investments Association?

Mr. FRASER: Yes, Mr. Chairman.

The CHAIRMAN: And the Canadian Credit Men's Trust Association?

I will ask the Montreal board of trade to express its views.

H. S. T. PIPER, Chairman of the committee on bankruptcy of the Montreal board of trade, called.

Mr. KINLEY: Mr. Chairman, are we dealing with the bill?

The CHAIRMAN: We are going to hear representations from the Montreal board of trade.

Mr. KINLEY: Mr. Bertrand said he was going to withdraw the bill in favour of some amendments.

The CHAIRMAN: I understood Mr. Bertrand to say that he was ready to withdraw the bill if necessary.

Mr. KINLEY: I see.

The CHAIRMAN: In view of the presence here of these different associations and their representatives, it seems to me that we should hear first what their representations are, or what their desires are in the matter.

The WITNESS: In November 1936 the Montreal Board of Trade appointed a committee to review the general bankruptcy situation. A report was submitted in March 1937 in which, among other things, it was recommended that the Companies' Creditors Arrangement Act be repealed and that provision be made in the Bankruptcy Act for arrangements as between debtors and their creditors before as well as after an authorized assignment or receiving order.

In investigating the operation of this Act, the greatest difficulty was found in securing information as to the number of occasions on which it had been used and as to what the result of its use had been. The Act provides no machinery for the recording or collation of these facts. Complete information can only be obtained by a search of the records of the many courts throughout Canada in which petitions to hold meetings are heard.

Such statistics as were prepared by the committee of the Board of Trade were for the most part, obtained from Dun's Bulletin, but so far as Montreal is concerned, a complete list was made of what are believed to be all applications under the Act since it came into force, and this list is available for the use of your committee.

I would like here, sir, to refer to these statistics and to point out that we are perhaps more than usually concerned regarding the operation of this Act because since its inception we have had 206 cases to May 31, 1938.

By Mr. Vien:

Q. In Montreal alone?—A. In Montreal alone and the Montreal district. So far as we have been able to ascertain, as stated just now, through Dun's bulletin, there have been perhaps thirty-five or forty cases in the Toronto district. We have figures for Winnipeg for the year 1936, and there were no cases there. There was one case in British Columbia.

By Mr. Martin:

Q. You have not cases for the provinces, only for the cities?—A. No, sir; but our information is that the Act has been very little used outside of the districts of Montreal and Toronto.

It was generally understood in commercial circles that the main purpose of this Act was to facilitate arrangements between companies and security holders, thereby avoiding bankruptcy proceedings and the delays and expense incidental thereto.

Instead however, it has been found that the Act has been used to a very limited extent by such corporations, but its provisions have been extensively used by a large number of small companies, the creditors of which have been almost wholly unsecured.

Unsecured creditors, unlike security-holders, have no control over the debtor company's property. Under this Act assets and operations of the company remain under control of the debtor except in so far as a security holder or secured creditor may have control over his security.

There is no evidence of any complaint from secured creditors as to the operation of the Act. The criticism comes principally from the ordinary trade or unsecured creditor.

The criticism may be summarized under the following heads:

(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.

To illustrate this point I should like to read a report which was supplied us by the Better Business Bureau regarding such a case.

They say an interesting case is that of X & Company, a registered partnership consisting of a father and two sons. This partnership transferred all its liabilities and assets on October 31, 1937, to a company to be formed under the name of————. A charter was issued on November 5, 1937. The creditors were not notified of the transfer of the assets at this time and whilst these changes were going on within the firm, creditors were continuing to grant credit. On November 12, the company applied to the court to be allowed to proceed under the Creditors' Arrangement Act.

The first news to reach the creditors was when they opened their mail on November 15 and found a notice of a meeting of creditors, which asked to approve of an arrangement for the settlement of all claims of unsecured creditors. The notice of the meeting did not state what offer would be made to the creditors but merely that at the meeting an offer would be submitted. At the meeting the creditors were asked to accept its preferred shares.

The new company was capitalized at 50 shares of common and 900 shares of preferred. Practically all the common shares were issued to the former partners. The preferred shares, having a par value of $100 each, were to be allotted in settlement of creditors' claims. The principals were able to gather enough proxies to secure the necessary majority to carry the proposal at the meeting of creditors held on November 27. Three days later it was ratified by the court.

Before the proposal submitted under the Creditors' Arrangement Act was ratified by the court, the company had assets, fixed and otherwise, of $190,653.08, and liabilities of $161,081.33. Of the latter figure, $116,722.83 represented unsecured trade credit liabilities subject to the arrangement. The net result of the arrangement, therefore, was to hand over the uncontrolled management of the company to the former partners for the preferred shares carrying no voting privileges. The trade creditors now virtually become partners or part-owners of the business, without any voice in the management. Any new debts incurred from November 15 will rank against the assets; the old creditors by taking shares forfeited their rank.

At the meeting of creditors the lawyer for the company stated quite frankly that the assets had been transferred to a limited company, particularly with

a view to the company going under the Creditors' Arrangement Act. He told the creditors the Act did not apply to a registered partnership.

By the Chairman:

Q. Mr. Piper, is there any objection to stating the name of the company?—A. Well, sir, I must leave that in your hands. I am in the hands of the committee.

The CHAIRMAN: Does Mr. Reilley identify the case?

Mr. KINLEY: I think the case should be identified.

Mr. MARTIN: I do not think so.

The CHAIRMAN: Does the committee desire identification?

By Mr. Bertrand:

Q. Is it not a fact, Mr. Piper, that between the incorporation of the company and the time that the petition was made part of the assets were used to pay to the bank the loans that were guaranteed by the ex-partners?—A. I have no information on that.

By the Chairman:

Q. What is the name of the company?

Mr. MARTIN: Apparently they did not act legally.

The CHAIRMAN: I cannot see any objection to the name being given.

Hon. Mr. STEVENS: If you are going to bring a number of these forward, all right; but if you are going to bring only one company forward, why state its name? If we are going to put their names on the record, we ought to bring in a number of the companies.

The CHAIRMAN: Mr. Piper is giving evidence of the abuse of the Act, and it is a purely theoretical statement unless we have identification of the company. However, I will not press the question.

Mr. LANDERYOU: Mr. Chairman, full information would have to be disclosed, the amount of the assets and everything else. We would have to go into the whole thing.

The CHAIRMAN: I feel that to mention a case of that kind without giving the name is of questionable value. However, if you care to put it in in that form, it will stand for what it is worth.

Mr. KINLEY: The Creditors' Arrangement Act is supposed to be an improvement on an Act which has been criticized and which is a very cumbersome thing, that is, the Bankruptcy Act. Now, if these men who are giving expert evidence here would tell us wherein it is an improvement on the other Act, and compare the two, if we are going to destroy this one, we are going back to the Bankruptcy Act, and I think it is important to know, if we destroy this one, what we are going back to. They should have that in mind in presenting this to the company.

Mr. BERTRAND: I think they have that in mind. In 1921 it was even better than what we have to-day, but that part of the Bankruptcy Act was repealed because at that time there was no superintendent of bankruptcy, and it was found out that a certain number of trustees, as soon as they would see that somebody was being sued, would go to these persons and ask them to settle with their creditors by virtue of this Act. It was so bad that the government had to repeal that part of the Act, and later on the superintendent of bankruptcy was named. If we had had the superintendent of bankruptcy in 1921 it would not have been necessary to withdraw that part of the Act.

All I wanted, when I presented this bill, was to cure the evil in some way, and I think Mr. Reilley has a suggestion to make as to how to replace this Act and fix it in some way so that the abuses will not take place in future.

Mr. McLARTY: I should like to have a point cleared up for my own satisfaction. Is it the intention, if this bill passes, to have amendments made to the Bankruptcy Act which would be designed to get away from some of the difficulties that Mr. Piper has already mentioned, and, at the same time, to give an honest creditor a chance to make a compromise somewhat similar to that now enjoyed under the Companies' Creditors Arrangement Act? Is that the suggestion?

The CHAIRMAN: Perhaps I was wrong in my interpretation, but it seems to me it would be better to let Mr. Piper finish his statement and then we can come to a decision. The only thing I wanted to suggest was that when evidence is given to the committee of a specific illustration, or what is supposed to be a specific illustration, without mentioning the name, it carries but questionable weight with the members of the committee. However, continue, Mr. Piper.

Hon. Mr. STEVENS: I am not objecting any further to the names, except that I do not think you should limit it to one company.

By Mr. Vien:

Q. Are you through with your statement, because there are quite a few questions to put, and I think it would be preferable to have your full statement first?—A. I think it will be seen that the points raised by members of the committee have been well covered in this statement.

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

There are certain expenses sometimes incurred in submitting the proposal and petitioning the court, and so forth, and without any provision for the payment of these expenses the company may be forced into bankruptcy.

As the Act requires the approval of a proposal by three-fourths in value of the creditors, or of the class of creditors affected, present and voting either in person or by proxy, the importance of some of the objections listed becomes obvious.

Summed up, they revolve around the fact that the debtor may control both his own affairs and the machinery for considering the proposal.

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.

It is not surprising, therefore, that a number of companies have made use of this Act with a view to evading the protection to creditors and the governmental supervision which would obtain were proceedings taken under the Bankruptcy Act.

Having found that the facilities of the Companies' Creditors Arrangement Act could be widely abused, the committee of this Board at first recommended the complete repeal of the Act as otherwise the door would be left open to the fraudulent debtor whose activities have been so successfully curtailed under the Bankruptcy Act. In view, however, of representations that the Act had served a useful purpose in connection with company reorganizations, it is respectfully suggested that the Companies' Creditors Arrangement Act be amended by limiting its application to cases where a company has an issue of bonds or debentures issued under a trust deed running in favour of a trustee, whether or not secured, and a compromise or arrangement is proposed between such company and the holders of such issue.

[Mr. H. S. T. Piper.]

It is further recommended that amendments be made to the Bankruptcy Act to provide for compositions, extensions of time or schemes of arrangement before, as well as after, a receiving order or authorized assignment is made, and attached hereto will be found our recommendations as to the scope of such amendments.

According to the Report of the Internal Trade Branch of the Dominion Bureau of Statistics, in 1930 there were 10,124 companies in wholesale and retail trade and service establishments as opposed to 151,836 partnerships or individual traders. It cannot be seen why the privilege of making a composition before bankruptcy, which is now available to incorporated companies only, should not be extended to individual traders and partnerships, and, in case the amendment proposed above to the Companies' Creditors Arrangement Act is enacted, to the classes of companies not covered by that Act.

The creation of the office of Superintendent of Bankruptcy and the general revision of the Bankruptcy Act as a whole in more recent years has entirely changed the course of bankruptcy proceedings. Bankrupt estates are administered by licensed trustees, and creditor-inspectors, subject to the control of the courts and to the supervision of the Superintendent of Bankruptcy.

It is hardly necessary to state that the safeguards provided by the one Act and the very loose provisions of the other make unfavourable comparisons possible and explain the popularity of the Companies' Creditors Arrangement Act with any fraudulent debtor who desires to be relieved of liability under the more favourable auspices of an Act which makes a close scrutiny of his affairs very difficult. It is believed that it was never the intention of the Act that it should cover such cases and the purpose of the proposed amendment is to restrict its application to the cases it was intended to cover.

I have here, sir, both the proposed amendments to the Companies' Creditors Arrangement Act and a list of suggestions which we have drawn up covering proposed amendments to the Bankruptcy Act, if it is the wish of the committee that these be read.

Mr. VIEN: I think they should be read, Mr. Chairman, so that we shall have them in the record.

The CHAIRMAN: I think they could be placed on the record without being read.

Mr. MARTIN: In that event there will be no opportunity of questioning the witness.

Mr. VIEN: It would be interesting to hear the proposed amendments. Could you read the proposed amendments?

Mr. FRASER: I have a number of copies here.

Mr. VIEN: At the same time, I think they should be read into the record.

The CHAIRMAN: Distribute the copies.

Mr. VIEN: This will be printed, Mr. Chairman?

The CHAIRMAN: Yes. Is it the desire of the committee to have Mr. Piper read the amendments?

Mr. HOWARD: Yes; they are only short.

The CHAIRMAN: Read them, Mr. Piper.

Mr. BERTRAND: Mr. Piper, will you read the amendments?

The WITNESS: Yes, sir. I may say, Mr. Chairman, that most of the interests which I know are represented here this morning are in agreement as regards these amendments to the Companies' Creditors Arrangement Act designed to remove the abuses of which we have complained.

Repeal Sections 3 and 4 as they now stand and substitute the following:—

3. The provisions of this Act shall not apply in the case of any debtor company unless there is outstanding an issue of bonds, debentures,

debenture stock or other evidences of indebtedness of such company or of a predecessor in title of such company issued under a Trust indenture running in favour of a Trustee, or Trustees, whether or not secured by a mortgage, hypothec, pledge, charge, lien or privilege on or against, or an assignment, cession or transfer of, or a trust in respect of, all or any property of the debtor company, and a compromise or arrangement is proposed between such debtor company, and the holders of such an issue.

Section 4 would then read:—

4. Where a compromise or arrangement is proposed between a debtor company to which the provisions of this Act apply, and its secured creditors or its unsecured creditors, or any class or classes of them, the Court may, on the application in a summary way of the company or of any creditor or of the Trustee in Bankruptcy or liquidator of the company, order a meeting of such creditors or class or classes of creditors, and, if the Court so determines, of the shareholders of such company to be summoned in such manner as the Court directs.

Amend Section 5 by striking out in the fifth line the words "Sections 3 and" substituting the word "Section," and by striking out in the same line the words "or either of such sections."

Section 16 (*a*) Add new section as follows:—

16. (*a*) The applicant shall promptly after the issue thereof mail to the Dominion Statistician, Department of Trade and Commerce, Ottawa, true copies of all orders made by the Court under the provisions of this Act.

The purpose of the amendment, Mr. Chairman, is to remove from the operation of the Companies' Creditors Arrangement Act proposals by companies unless there is a corporate issue of bonds, debentures, and so forth.

The recommendations as to proposed amendments to the Bakruptcy Act are as follows:—

The CHAIRMAN: Before you proceed, Mr. Piper, is it the opinion of the committee that this matter comes within the purview of our reference?

Mr. VIEN: Mr. Chairman, a bill has been referred to us and during the consideration of the purport of the bill it develops that it would be preferable not to repeal the Act but to amend the Companies' Creditors Arrangement Act and the Bankruptcy Act. I think it is sufficiently linked up with the subject matter of our study for the committee to consider the suggestions made by Mr. Piper.

Mr. MCLARTY: Mr. Chairman, it would be almost impossible to pass an opinion on the amendments that are now suggested to bill 26 which limits the application of the Companies' Creditors Arrangement Act unless we knew the definite proposals that were going to be made as to amending the Bankruptcy Act to fit into the situation that we would find ourselves in after bill 26 passed.

Mr. VIEN: Exactly.

Mr. BERTRAND: The bankruptcy law and the Companies' Creditors Arrangement Act should be only one bill. In England there are three sections of the company law with reference to the arrangements between companies and creditors, and these three sections are included in the company law. So is the Winding-up Act incorporated in the company law. Here we have different laws, and it would be far better if they were all linked togther.

Mr. MARTIN: Are you seeking not to withdraw your bill?

Mr. KINLEY: I think it should be clear as to these amendments. In effect they mean that unless a man has a mortgage or a bond issue he does not come under the Companies' Creditors Arrangement Act.

Mr. MCLARTY: That is a corporation.

Mr. KINLEY: Yes. A corporation. That is quite a change in principle, because it means elimination of the little fellow and elimination of the man who tries to do business without borrowing money from other people. I do not see why he should be eliminated. I cannot see that at all.

The WITNESS: We have, of course, made due provision for that very point.

Mr. KINLEY: The Bankruptcy Act, to my mind, is an Act that should be a last resort. It means that everything is thrown into the pot and sacrificed, and with legal expenses and other expenses it means that nobody gets anything. Everybody tries to get clear of the Bankruptcy Act, so far as I know, in any hopes that they have of getting anything out of the debtor who wants to arrange with his creditors.

Mr. BERTRAND: Mr. Chairman, insofar as Mr. Kinley's statement is concerned, this Act gives to-day a privilege to companies that partnerships have not got, and I know that the boards of trade, both of Montreal and Toronto, have proposed amendments to the bankruptcy law to permit partnerships and individuals to make arrangements, if we will only listen to them.

The WITNESS: Mr. Chairman, the situation at the moment is that arrangements are only possible by companies at the present time under the Companies' Creditors Arrangement Act before bankruptcy. Arrangements can only be made under the Bankruptcy Act after bankruptcy. Our proposal is that companies with only unsecured creditors shall not come under the Bankruptcy Act, but they may make a compromise without going into bankruptcy and without all that distribution and liquidation which the member speaks of, and may seek a compromise as they were able to do many years ago; but with the added protection of better administration under the bankruptcy law, that is, better supervision.

By Mr. Clark:

Q. You have made reference to courts. What courts have you reference to?—A. The competent courts in the various jurisdictions.

Shall I proceed, sir?

The CHAIRMAN: Yes.

The WITNESS: These are recommendations as to proposed amendments to the Bankruptcy Act:—

1. That proposals for a composition, extension of time, or scheme of arrangement, should be provided for before as well as after a receiving order or authorized assignment is made, and that for this purpose appropriate amendments should be made in the Bankruptcy Act to section eleven and such other sections as may be necessary.

2. That the procedure to be followed in calling a meeting of creditors to consider a proposal be by petition to the court, supported by a copy of the proposal, a statement of the debtor's affairs and a list of the debtor's creditors.

3. That if the court finds the petition to be well founded it should appoint a licensed trustee, selected as far as possible by reference to the wishes of the most interested creditors, and such trustee should as soon as possible convene a meeting of the creditors to consider such proposal and by registered mail send the creditors ten days' notice of the meeting, as well as a copy of the debtor's proposal, a list of the creditors and a statement of the debtor's affairs with the trustee's report thereon.

4. That on the issuance of an order by the court calling a meeting of the creditors for the purpose of considering a proposal there should be a stay of proceedings and the trustee should be vested with the powers of an interim receiver, or such other powers as might be considered necessary by the court to safeguard the rights of the creditors and others affected, while as far as possible permitting the normal conduct of the debtor's affairs.

5. That the trustee should be chairman of the meeting called to consider the proposal and he may be instructed by a resolution adopted by the majority in value of those present and qualified to vote to make a further investigation of the debtor's affairs. The proceedings should otherwise be subject to the order of the court which should provide that the proper remuneration and disbursements of the trustee shall constitute a charge on the assets of the debtor, prior to the claims of unsecured creditors and any dispute in respect of the amount thereof should be determined by the court upon summary application of the trustee or any interested person.

6. That the chairman of the meeting of those summoned to consider the proposal shall record the vote of each person qualified to vote thereon and shall file a copy of such record with the court and such record shall also include a list of those qualified to vote who did not vote in favour of the proposal. In the event of the proposal being accepted by the required three-fourths majority of the creditors present in person or by proxy the trustee shall report any facts which might justify the court in refusing to sanction the proposal. If approved by the court the proposal shall be binding upon all the creditors of the class to which the proposal was made.

7. That all proceedings in connection with proposals made by debtors should not be headed "In Bankruptcy," nor make any reference to the Bankruptcy Act.

8. That the trustee appointed by the court should promptly after their receipt or preparation mail to the Superintendent of Bankruptcy and to the Dominion Statistician, Department of Trade and Commerce, Ottawa, a true copy of the debtor's proposal, statement of the debtor's affairs, notice calling the meeting, report of the trustee, and every order of the court in connection with the proposal.

That, sir, completes the presentation of the Montreal Board of Trade.

By Hon. Mr. Stevens:

Q. Is the appointment by the court of a trustee entirely new?—A. No, sir. The court, under the Bankruptcy Act, appoints the trustee.

Q. That is regarding the Bankruptcy Act?—A. Yes.

The CHAIRMAN: Thank you, Mr. Piper.

Is it the desire of the committee to hear representations from the Toronto Board of Trade?

Mr. VIEN: I move that the representative of the Toronto Board of Trade be heard, Mr. Chairman.

J. G. KELLY, representing the Toronto Board of Trade, called.

The WITNESS: Mr. Chairman, the Toronto Board of Trade has worked fairly closely with the Montreal Board of Trade. There has been a good deal of correspondence between them and some meetings and conferences. In addition, the Toronto Board of Trade has consulted all other interested organizations, as far as we could find them, to find out their views.

The Toronto Board of Trade agrees that there is no complaint. No complaint has come forward from any secured creditor objecting to the Companies' Creditors Arrangement Act. Since the debtor does not have to use the Act if the secured creditors do not object to it, there does not seem to be any reason to interfere with an Act that has given satisfaction. That is the position of the Toronto Board of Trade, and we have enquired very diligently to find out whether there have been any complaints.

[Mr. J. Gerard Kelly, K.C.]

Our view is, with regard to the unsecured creditors, that protection could be given by the adoption of regulations or rules under section 17 of the Act.

By Mr. Martin:

Q. What does section 17 provide?—A. Section 17 of the Act provides that the Governor in Council may enact regulations.

By Mr. McLarty:

Q. Have there been any rules adopted under this section?—A. There have been none, sir.

In a letter of February 25th of this year to the Minister of Justice, the Toronto board of trade forwarded proposed regulations which had resulted from a conference between a number of interests, and these regulations were sent to the Montreal Board of Trade. The Montreal Board of Trade, as Mr. Piper has said, indicated that they were not in favour, as they did not think the rules went far enough.

The position of the Toronto Board of Trade is this: this is an application to amend or appeal the Companies' Creditors Arrangement Act. We see no reason for interfering with the rights of the secured creditors. We agree to the amendment to that Act which Mr. Piper has read. But we have never seen and never been shown the amendments to the Bankruptcy Act.

We have investigated, and we think that we would like sometime to consider the actual proposed amendments and to refer them to organizations that are interested, such as the Canadian Credit Men's Trust Association, and other organizations, before we are asked to express approval or disapproval. We were never shown these proposed amendments to the Bankruptcy Act, and I am without instructions from the Toronto Board of Trade. I know they would not allow me to support any amendments to the Bankruptcy Act without the qualification that they should be carefully considered and that the business men who are interested should have an opportunity of considering their exact effect.

By Mr. Vien:

Q. Therefore your submission would be that we should approve these proposed amendments to the Companies' Creditors Arrangement Act and leave the others stand for some time?—A. Yes, sir.

Mr. HOWARD: That is the only thing we can do.

By Mr. McLarty:

Q. Are you recommending that the rules you submitted some time ago should be incorporated in the amendment?—A. No. We still think that would be better. But we had reached this agreement with the Montreal Board of Trade that, in order to present an agreement when approaching the gentlemen of this committee, we should agree to the amendment of the Companies' Creditors Arrangement Act. But we did not expect to have the Bankruptcy Act thrown at us as part of that. We did not agree to that and we were taken by surprise; and I think the Canadian Credit Men's Trust Association represented here would oppose the Bankruptcy Act amendment at the present time. That, sir, is the Toronto Board of Trade's position.

By Mr. Vien:

Q. How long would it take you to reach a conclusion as to the amendment of the Bankruptcy Act?—A. I do not think it could be reached for—I think we should have two months.

By Mr. Martin:

Q. The effect of your submission, of course, is discrimination in the class of companies. I mean, section 3 of the proposed amendment clearly earmarks the character of the companies that shall come under the provisions of the Companies' Creditors Arrangement Act.—A. Yes.

Q. And the other kinds of companies and trade organizations that Mr. Piper mentioned, with a view to bringing them within the terms of the proposed amendment of the Bankruptcy Act, would be out.—A. I think it is really—if we are going to deal with the company, I think the discussion or the approach should be with respect to what creditors are you protecting rather than what companies are you dealing with. You can get into some difficulty if you keep looking at the debtor. After all, the debtor does not have to choose this Act at all. The debtor is free to do what he likes. He can go to the Bankruptcy Act or anything else. There is no compulsion on him. The effect of this Act is to give to a certain class of creditors—the majority of the creditors—power to coerce the minority to accept what appears to be a reasonable solution in the interest of the business community, rather than having one man hold out and say, "I have got a $100 debenture or a $100 bond and I will not agreed." We must work out some way of the majority enforcing what is in the interest of all, and not have a holdout. I think if you approach it from the company, it is misleading, because it is all dealing with creditors, because they are the only ones that have any complaints. I do not know whether I have met what you have stated.

Mr. MARTIN: As I understand it, the creditor would exist in the case of the smaller group, just as in the case of the larger group. Whatever way you look at it, either the creditor or debtor will, on the surface, be discriminated against, if these proposed amendments to the Bankruptcy Act are made.

Mr. BERTRAND: Mr. Chairman, in companies where there is an issue of bonds and a trustee, there is machinery where the creditors can come in and check everything and see where their interests should go or be left out; while in companies with no trustee and no bonds, the debtor is the only man that can come before the court and choose this law; and there is nobody to check up whatever he may say or whatever he may do, and that is why the trouble came up. Mr. Piper has forgotten to give to this committee the list of the cases in Montreal. You have 206 cases. It would be most important to have it.

The CHAIRMAN: Thank you, Mr. Bertrand.

Hon. Mr. STEVENS: What is puzzling me is this: as far as I understand, our order of reference is a bill, Mr. Bertrand's bill, which is a very simple bill calling for the repeal of the Companies' Creditors Arrangement Act. We have heard the Montreal Board of Trade and the Toronto Board of Trade. But there is a marked difference of opinion between these two important bodies on one part of the subject that has arisen, and that is amendments to the Bankruptcy Act. We all know that the bankruptcy law is an exceedingly difficult and delicate law. It is one that has been hard to design and very difficult to administer. It has taken many years to work it into what I might call smooth working condition—not perfect, but in fairly good condition. If we are going to launch into amendments of the Bankruptcy Act, I think this committee ought to go very slowly; not that I am for a moment criticizing any proposal that is made. But I do say that we should approach the question as a major subject, an important subject. Before the committee considers opening the question, I think they ought to have it studied by Mr. Finlayson, Mr. Reilley and others who are affected by these subjects—officers of the crown.

Mr. HOWARD: Yes.

Hon. Mr. STEVENS: And we should come here prepared, or at least with our officers prepared, so that when proposals—very definite and distinct pro-

posals—are made, we will at least know what we are talking about. It strikes me that we are travelling far afield from our order of reference which, as far as I know, is simply this bill of Mr. Bertrand's. Mr. Bertrand will understand I am not opposing his bill. I am saying that we are entering a field that may lead us into some pretty wide considerations. For my part, I do not feel at all equipped to proceed with very serious consideration of the amendments. Then I would like to say this, that if we are going to abandon what is before us, namely the repeal of this Act, and then if we are going to amend the Companies' Creditors Arrangement Act in a manner which appears to me to be altogether different from what parliament had in mind when they referred the bill to us, again I say we ought to approach the question very cautiously, and after full preparation. I was pretty much perturbed by an answer given a moment ago when, I think, Mr. Kelly rather emphasized, speaking from his standpoint, that the Companies' Creditors Arrangement Act is in the interest of the creditors, that it is wholly a creditors' act. But I do not look upon it as that.

The WITNESS: I did not mean that.

Hon. Mr. STEVENS: No? That was the answer that was given a moment ago.

The WITNESS: I am sorry, sir. May I explain?

Hon. Mr. STEVENS: Yes.

The WITNESS: I think that the only person whom we would find complaining would be a creditor, because a debtor chooses the Act or not, as he pleases; but the creditor, the one who has chosen the Act, may have a complaint, and I say they are the only ones who would complain.

By Hon. Mr. Stevens:

Q. But it is open to a company to take action under the Act?—A. Yes.

Q. In anticipation of that approaching bankruptcy which he desires to avoid?—A. Yes.

Q. Which, I think, was the real meaning or intent of the Act; and, personally, I am rather favourably impressed with that type of legislation. If we can avoid bankruptcy by compromise, certainly it is a desirable thing to do?—A. Yes.

Hon. Mr. STEVENS: Therefore, before we repeal this, or before we consider very serious amendments, I think the question should be referred to the officers of the government who are very familiar with it, and then we can approach the question. I think we should get a new order of reference telling us what parliament authorizes us to do; because I certainly think parliament would hesitate to instruct us to amend the Bankruptcy Act. In any case, before we approach the question we ought to have a proper order of reference, and come here equipped and with our officers prepared to discuss the matter and advise the committee, so that we can discuss it intelligently. In saying that I do not wish either of the gentlemen representing these two boards of trade to think that I am in any sense unmindful of the importance of their views. Not at all. But I think we have drifted in here this morning without really knowing what we were going to do or what we were going to be confronted with. I am certainly not prepared to go on with an intelligent study of these bills at the moment.

Mr. BERTRAND: Mr. Chairman, Mr. Reilley is here and has something to say to the committee, if you want to hear him. The resolutions were so numerous that something had to be done. As the bankruptcy law was not referred to this committee, it cannot be amended. If we listen to the representations of these different bodies here, we will know exactly what they want. If your committee then desires to make a recommendation to the government, I

can easily, after that, withdraw the bill, and allow the Minister of Justice or the Minister of Trade and Commerce to deal with the matter.

Mr. LANDERYOU: The witness stated that a letter had been written to the Minister of Justice regarding the regulations or amendments to the Act which they proposed in conjunction with the Montreal Board.

The WITNESS: Yes.

Mr. LANDERYOU: Would you give us the list there? Have you got it with you?

The WITNESS: Yes. We have it. I have just one copy here.

Mr. LANDERYOU: It should be placed in the record, I think.

Mr. HOWARD: Put it on the record.

The WITNESS: It is the memorandum that was followed by the rules on the second page.

The CHAIRMAN: Do you want it put on the record? It is very lengthy. I do not know. Is it the pleasure of the committee that the statement should be put on the record?

Mr. BERTRAND: I think, Mr. Chairman, it might not be necessary to print it, but it should be filed with the clerk.

Hon. Mr. STEVENS: What is it?

The CHAIRMAN: You might describe it, Mr. Kelly.

The WITNESS: The general purposes of the rules are these: We felt that the unsecured creditors were not adequately protected; being divided, not having a trustee or anybody to organize them, they very often had no voice and no way of getting at the facts. The rules are designed somewhat similarly, I gathered—although I have only heard them once—to the amendments to the Bankruptcy Act; to install a trustee as chairman of the meeting under the Companies' Creditors Arrangement Act to preside at the meeting, to investigate if necessary the statement of affairs provided by the company in applying to the court; to report to the creditors where he has verified the statement and to the court where there is any reason why the proposal should not be approved. It is all done without interfering with the Act at all, but merely to bring light, daylight, into every step that a debtor takes when he seeks to avail himself of the Companies' Creditors Arrangement Act. It is not hampering him at all; but still if he is going to do any of the iniquitous practices that Mr. Piper has spoken about, at least he will be conscious that there is a licensed trustee looking over his shoulder, watching him, and ready to tell the creditors when the meeting comes along.

By Mr. Bertrand:

Q. They form part of your submission?—A. They form part of our submission, except that we are content to allow the whole matter to stand with an amendment to the Companies' Creditors Arrangement Act. I think Mr. Piper introduced bankruptcy amendments which, frankly, appal us; because we think, as one of the members of the committee said, that it is a very delicate thing.

Q. In that case, I think it should be printed, Mr. Chairman.

THE COMPANIES' CREDITORS ARRANGEMENT ACT

Memorandum on Certain Weaknesses Experienced in the Operation of the Act as to the Claims of Unsecured Creditors Together with a Draft for General Rules under the Act for the Purpose of Affording Better Protection to Unsecured Creditors.

Although Section 17 of this Act contemplates that General Rules of procedure thereunder would be made, none have been laid down yet.

The Act provides amongst other things that:—

(*a*) The Court may, upon the summary application of a debtor Company, order a meeting of its unsecured Creditors to be summoned in such manner as the Court directs to consider a proposal or arrangement between the debtor and its Creditors.

(*b*) The Court may stay all proceedings against the debtor until such compromise or arrangement has been considered by the unsecured Creditors.

(*c*) If a majority in number representing three-quarters in value of the unsecured Creditors *present and voting either in person or by proxy at the meeting* agrees to any compromise or arrangement *either as proposed or as altered or modified at such meeting*, the compromise or arrangement may be sanctioned by the Court and if so sanctioned shall be binding on all the unsecured Creditors.

As proceedings under this Act are more expeditious than proceedings under The Bankruptcy and Winding-Up Acts, it has been used extensively by financially embarrassed Companies and owing to the lack of General Rules of procedure thereunder, it has been applied by some debtor Companies in a manner which was both unfair and detrimental to Creditors. In a number of cases, companies have obtained Court Orders under this Act summoning meetings of Creditors to consider proposals for payment of liabilities in full and copies of such orders and proposals have been sent to Creditors with a proxy form made out in favour of the debtor's nominee. In many cases, neither a statement of the debtor's affairs nor a list of its Creditors were sent with the proposals. As it is frequently inconvenient for Creditors, particularly distant Creditors, to attend meetings to consider debtors' proposals, and as there is often insufficient time between the receipt of the notice and the date of the meeting to investigate a debtor's affairs, and as a Creditor may lose his vote unless he acts promptly, many Creditors who have but a slight knowledge of the existing condition of the debtor's affairs, have completed and returned proxies in favour of the debtor's nominee with the intention that such proxy would be voted in favour of the debtor's proposal for an extension. During the depression, many Creditors were willing to consent to an extension rather than risk either a bankruptcy or being forced to accept a compromise.

In a number of cases where debtors had submitted proposals for extensions under the conditions mentioned in the previous paragraph, their representatives informed the meeting of Creditors convened to consider such proposals, that after reviewing the position of the debtor's affairs, it appeared impossible to pay its Creditors in full over an extended time and that an amended proposal for a compromise of its debts at a rate on the dollar would therefore be submitted to the meeting. In certain cases, such amended proposals have been voted on and carried without notice of the proposed compromise being given to the absent Creditors. In such cases, the debtor's nominee holding Creditors' proxies has generally refrained from voting on the amended proposal and has thereby facilitated the debtor to obtain the required favourable majority of those *present and voting*. As the Act permits the debtor to make application to the Court to sanction a proposal, without notice to the debtor's Creditors, it appears that certain compromise proposals have been carried through and sanctioned by these methods when such might not have been the case if the intention to ask for a reduction had been disclosed by the original proposal.

Another objection to the present Act is that between the date upon which the Court makes an order staying proceedings against a debtor and the date of the Creditors' meeting, any debtor in the manufacturing business which desires to take advantage of its Creditors may cut up or convert its readily salable raw or bulk supplies into goods in process and thereby place itself in a position where its Creditors would have difficulty in realizing upon the debtor's

assets if the debtor's proposal were to be refused. Creditors should be given some control over the conduct of the debtor's business during this period.

Careful consideration of the terms of the Act does not indicate any completely satisfactory means of controlling this possibility. It is felt, however, that the provisions for appointment of a Trustee, as suggested in the proposed General Rules, go some distance towards controlling the debtor's affairs pending consideration of the proposal by the creditors and constitute a strong moral check on undesirable conduct by the debtor.

The Act does not provide for the appointment of an independent person to give all Creditors or possible Creditors reasonable and proper notice of the debtor's proposal and of the meeting to consider it, or for the appointment of an independent party to receive Creditors' proxies and to record Creditors' votes. The Act does not require statements of the debtor's affairs to be verified by affidavit and filed with the Court or for a summary of such statement and a list of Creditors to be sent out with the original proposal or to be submitted to the meeting of Creditors. A statement of affairs prepared by the debtor but unaccompanied by any declaration as to its accuracy is generally produced at the meeting of Creditors but unless some licensed Trustee has been consulted by the debtor, the statement submitted often fails to classify the Creditors (secured, preferred and unsecured) or to disclose the true position of the debtor's affairs. Investigations made by Creditors indicate that certain debtors' statements used in proceedings under this Act failed to make a complete disclosure of the debtors' assets or undervalued them. As the assumption is that the debtor will go into bankruptcy if the proposal is rejected, Creditors are reluctant to incur expenses on their own account to ascertain the actual value of the debtor's assets and the amount of its liabilities, including the validity of doubtful claims and of the preferences and securities attributed to certain Creditors when no provision is made in the Act for the payment of such expenses in the event of the proposal being rejected or the debtor being forced into bankruptcy.

With a view to eliminating these abuses and objections, it is suggested that the following General Rules, or General Rules to the like effect, shall apply to all proceedings respecting compromises or arrangements in which a proposal is made for modification of the rights of unsecured Creditors or any of them.

General Rules

1. Upon an application being made to the Court under Section 3 of this Act, a statement of the debtor's affairs substantially in Form I or in such other form, accompanied by a list of unsecured creditors, as the Court may approve, verified by the affidavit of a Director of the debtor company, and the debtor's proposal for a compromise or arrangement, shall be filed with the Court.
2. When the Court orders a meeting of the debtor's unsecured creditors to be summoned the Court shall select and appoint a Trustee licensed under The Bankruptcy Act to convene such meeting, in such manner and at such time as the Court may direct. The Court shall, as far as is possible, select a Trustee by reference to the wishes of creditors having substantial claims, if ascertainable at the time. The Chairman of the said meeting shall be the Trustee or such other person as the Trustee may in writing appoint.
3. When the Court orders a meeting of the debtor's unsecured creditors to be summoned, copies of the said Court Order, debtor's proposal and statement of affairs, Form I or other approved statement with a list of unsecured creditors shall fortwith be served upon the said Trustee.
4. Copies of the said proposal and notice of the meeting of creditors to consider the proposal, together with a summary of the debtor's state-

ment of affairs, Form I or other approved statement and, unless otherwise directed by the Court, a list of the debtor's unsecured creditors having claims in excess of $50 each with their addresses and amounts of their claims, a proxy form in blank and a form for proof of debt shall be transmitted by the Trustee to all unsecured creditors of the debtor of whom he has notice in such manner as the Court may direct.

5. The Chairman of the meeting may disallow or reserve for consideration of the Court the vote of any person claiming to be an unsecured creditor who shall not have filed proof of claim, to the exent that the Chairman has reason to believe such person is not entitled to rank as an unsecured creditor.

6. The Trustee shall forthwith make such investigation as shall seem to him reasonable under the circumstances in respect of the verification of the assets and liabilities disclosed by the debtor's statement and report the result of his investigation to the meeting of unsecured creditors summoned to consider the proposal. In case the meeting desires an appraisal or inventory of the debtor's assets, or other investigation of the debtor's affairs, before voting upon the proposal, the Trustee may be instructed by a resolution passed by a vote representing a majority in value of the claims of the creditors present and voting either in person or by proxy at the meeting to perform such lawful duties as may be designated, and the meeting shall be adjourned for such time as is considered necessary for these purposes, provided that the Court, on the application of any interested person, may direct that the meeting be continued at such place on such date and after such further notice as it may prescribe and may dispense with compliance by the Trustee with such resolution.

7. The Chairman shall record the vote of each unsecured creditor upon the debtor's proposal and shall file a copy of such record with the Court. Such record shall also include a list of the unsecured creditors as shown on the debtor's statement whose votes were not recorded upon the debtor's proposal. In the event of the proposal being accepted by the required majority of the creditors the Trustee shall report such facts as in his judgment might justify the Court in refusing to sanction the proposal.

8. The Order of the Court shall provide that the proper remuneration and disbursements of the Trustee shall constitute a charge on the assets of the debtor prior to the claims of unsecured creditors and any dispute in respect of the amount thereof shall be determined by the Court upon summary application of the Trustee or any interested person.

9. The Trustee appointed by the Court shall promptly after their receipt or preparation mail to the Superintendent of Bankruptcy and to the Dominion Statistician, Department of Trade and Commerce, Ottawa, a true copy of

   (*a*) the notice calling the meeting referred to in general rule No. 4;
   (*b*) the statement of the debtor's affairs referred to in general rule No. 1;
   (*c*) the debtor's proposal for a compromise or arrangement referred to in general rule No. 1;
   (*d*) the Trustee's report referred to in general rule No. 6;
   (*e*) every order made by the Court in final disposition of the proposal.

By Hon. Mr. Stevens:

Q. I was going to ask a question there. Are you not really proposing to transform the Companies' Creditors Arrangement Act into a sort of junior

bankruptcy act?—A. No. There is this difference. This is why the amendments are designed, or the regulations. Bankruptcy involves the control of a debtor's business and of his estate. It involves the interposition of a trustee, custodian or interim receiver, who checks, who looks after and takes control out of the hands of the company or of the debtor. We say that is one of the things that makes it bankruptcy, as you suggested, sir. We say, however, that we will not do that. We will give no control, nothing involving liability or obligation, but we will put up there a man who must be shown—to whom everything must be disclosed, who will preside at the creditors' meeting and who will see to it that the creditors get a fair break, without in any way taking over the debtor's estate.

Q. Yes, but you would, I think, in practice. That trustee which you visualize in such delicate terms would develop really into a receiver. He might not have the powers; but I am speaking of, in practice, the effect of it.—A. I do not know, sir.

Q. That is my conclusion.

Mr. BERTRAND: I might say that in practice the Companies' Creditors Arrangement Act is the major bankruptcy law.

The CHAIRMAN: May I say that the proceedings of the committee are being recorded, and it is very difficult to record it unless the members speak so that the reporters can hear them.

Mr. LANDERYOU: Is it the intention to have this printed for the members?

The CHAIRMAN: Yes. Gentlemen, is it your pleasure to hear a representative of the Dominion Mortgage and Investment Association?

Mr. VIEN: I move that we hear him, Mr. Chairman, I agree with Mr. Stevens that we are a fit afield; but the whole thing has developed in connection with discussion of this bill, and I think that it will be instructive for the officers of the Crown to have this record before them when they study the matter, and these gentlemen are here.

Mr. W. KASPAR FRASER, K.C., called.

The WITNESS: We feel that when this Act was passed in 1933—

By Hon. Mr. Stevens:

Q. Who are "we," please?—A. We are the Dominion Mortgage and Investment Association, and I would like to explain just who we are. We are an association with a representation—we have members consisting of the important insurance companies, loan companies and trust companies throughout Canada. We are here as investors. We have very substantial investments in bonds, companies of this sort; and we have had a great deal of experience in the last two years in connection with defaults and anticipated defaults, because we are called in to consult and advise upon plans, to criticize plans and to oppose plans that may not recommend themselves to members of our body as investors. In that way we have had a great deal of familiarity with the legislation that is available in this situation of default. When this Act was passed in 1933 it filled a gap there. But there was no provision at that time to enable reorganization of companies to be effected in certain situations, that is to say, where you did not want or did not have to have a receivership or a liquidation or a realization sale; and there were other situations too, which I will refer to. There is nothing new about this Act. It is in exactly the same terms as the English legislation that has been in force since 1870 and was made applicable to companies without requiring them to go into liquidation in 1907, so that you have almost 70 years of experience under that Act, which has been satisfactory in England and we feel ought to give

satisfaction here. We feel that it is most important that this Act should be retained, certainly as far as securities and obligations of corporations are concerned.

By Mr. Martin:

Q. That is, retained without this amendment?—A. We are in agreement with the amendment, because the amendment retains the Act for corporate securities and obligations. In certain situations there is no other legislation available which will meet the requirements. Very often a sale or realization can be avoided, and the Act provides a ready means for reorganization which will preserve the credit and standing of the corporation, preserve the value of its securities, and will enable the reorganized corporation to go on without any disturbance; and it is absolutely essential from the standpoint of the investor that such a reorganization should be carried through, when you once start to carry it through, without any delay or litigation, without any liquidation or bankruptcy. If there is the slightest prospect or fear of a company going into bankruptcy, you will find that the holders of the securities are simply not interested in any reorganization that will be put forward. There are many issues of bonds of Canadian companies which do not contain any provision for modification by vote of the majority; and that is necessary, unfortunately, because a great many of our securities are held in the United States, and the American institutions will not purchase bonds that are secured under a trust deed which enables the majority to coerce the minority. The reasons they give are perhaps somewhat technical; but they are advised, and they take the position, that if you have such a position, it affects the negotiability of the bonds. And the fact remains that the American investor will not purchase such securities; his legal advisors will not permit him to do so.

By Mr. Martin:

Q. Have the Americans any scheme corresponding to this?—A. They have what is called section 77 (*b*) of the Bankruptcy Act.

By Mr. McLarty:

Q. It is receivership?—A. No, there is no receivership. The procedure is really quite simple. You have a plan. The plan is put forward by the company. The plan is prepared. It is submitted to the court. The court gives the plan a very preliminary hearing, and then permits the company to circulate the plan and to obtain the consent of the different classes of creditors. If two-thirds of each class of creditors affected consent in writing to the plan, the plan is then submitted to the court for consideration, when any one who wishes to oppose it can do so. The court makes an order and the plan then becomes effective. It is substantially the same procedure as we have, except that the consents of the creditors are substituted for a meeting of security holders. I think, personally, that that is undesirable, because I think it is desirable that the persons affected should have the opportunity of going and hearing arguments for or against the plan, rather than that they should simply be asked to sign a paper consenting to it or failing to consent to it. Under section 77 (*b*) there are no bankruptcy proceedings necessary at all.

By Mr. Bertrand:

Q. Mr. Fraser, in the English law there is nothing corresponding to subsection 2 of section 11 of our Companies' Creditors Arrangement Act?—A. What is that?

Q. I say in the English law there is absolutely nothing that corresponds to subsection 2 of section 11 of the Companies' Creditors Arrangement Act, which is a new departure altogether. As I said at the outset, it is an open door to

fraud. The company may accept any claims for the purpose of voting and reject those claims after that when they have settled with the creditors. This is a departure from the bankruptcy law, which has limited the claims of the creditors and many others, so far as the dividends and votes are concerned.—A. Under the English Act, as I understand it, that is a matter for the chairman, in the first instance, to reject or allow proofs. If anyone objects to it later on, when the application comes for the approval of the plan, the court then and there will go into these contested proofs. But in the situation with which we are familiar, nothing of that sort arises, because the people who are called to the meetings are bondholders. There is a procedure provided in their trust deed whereby they prove their ownership by either bringing their bonds with them or depositing their bonds or exhibiting them to the bank. In the bondholders reorganization, this difficulty never arises. You are either a bondholder or you are not a bondholder.

Q. I understand where there are debentures, you have a trustee dealing with the company?—A. Yes.

Q. And there are two to deal with—one representing the interests of the creditors and the other one representing the company?—A. Yes.

Q. Where there are no bonds and no trustees, the debtor company is doing almost what it wants to without any check whatsoever.—A. Well, I am afraid those are situations with which we are not familiar. We are here as representing bondholders and holders of securities who can easily prove their claims.

By Mr. Vien:

Q. But the amendment in which you concur takes care of that position?—A. Yes, exactly.

Mr. MARTIN: Except it leaves out some classes of debtors.

By Mr. Kinley:

Q. They do not interfere with you. That is the reason you do not object to it?—A. No, I would not put it that way.

Q. What about the man that has common stock in his company, who places money in common stock; should he be left out?—A. No. He is provided for in the Act. The Act permits him to be taken care of.

Mr. VIEN: The court may order that they be invited to attend.

The CHAIRMAN: Order, gentlemen. Mr. Kinley has the floor.

Mr. KINLEY: I would like to be clear on this point. I read here:—

> The provisions of this Act shall not apply in the case of any debtor company unless there is outstanding an issue of bonds, debentures, debenture stock or other evidences of indebtedness of such company or of a predecessor in title of such company issued under a trust indenture running in favour of a trustee . . .

That is a great departure from the original Act, because the original Act includes all companies—any company in this country. Now you have a selective kind of company who can come under the Companies' Creditors Arrangement Act under this amendment.

Mr. VIEN: The point raised by Mr. Bertrand was that, in the case of companies where there are debentures or bonds, any trustee can take care of the interests of the debenture holders or bondholders. There is that trustee to take care of creditors; whereas, where there is no such thing, the ordinary creditors of the company which has no trustee, no bond or debenture issues, are not protected by anybody there to take care of their interests.

The WITNESS: Quite so.

Mr. VIEN: Therefore, the amendment proposes to limit the Act to such companies as have a bond or debenture issue and for which there is a trustee appointed.

Mr. KINLEY: Mr. Chairman, I have in mind just at this moment a case that I am interested in now. A man made an improvident contract. He contracted to build a ship and he could not finish the work because he took the job too cheaply. Now, his creditors got together; instead of putting him into bankruptcy and destroying his shipyards and his plant in the community, they all got together and gave him an opportunity to try to work the thing out and make certain arrangements. That man had no bond issue. He had no debentures. He had common stock in his company. I do not want that man eliminated from any such arrangement as this, because I think it is a mistake. When I say "that man," I mean that class of men.

The WITNESS: I understand.

Mr. MCLARTY: That class of company.

By Mr. Martin:

Q. What do you say about that?—A. What we say is that Mr. Piper has represented that there have been abuses which have existed in the cases of that type of man where there are only unsecured creditors. We regret that we have to concede that that is the case. We are sure there are no such abuses in the type of transactions which are still preserved under the amendment and which are of the utmost importance to the investors.

Mr. MCLARTY: Mr. Piper went a little further, I think; to meet this situation which Mr. Kinley raises, he makes a definite suggestion as to amendment of the Bankruptcy Act.

The WITNESS: Yes.

Mr. MCLARTY: It is true that we in this committee have no power over the Bankruptcy Act or any amendment thereto, but I am inclined to agree with Mr. Kinley; I would not want to see an amendment of the Companies' Creditors Arrangement Act adopted unless we had some definite guarantee that that class of corporation that Mr. Kinley mentioned will be protected. Of course, amendment to the Bankruptcy Act goes even further, including partnerships as well as corporations. I think that is pretty generally the feeling of the committee, that we are almost stymied, so to speak, Mr. Chairman. The order of reference clearly does not cover anything in the Bankruptcy Act. As Mr. Stevens said, we are in this position: I think we are willing to agree to the amendment to the Companies' Creditors Arrangement Act provided we can receive some assurance somewhere that the other class is going to be taken care of.

I have a great deal of sympathy with a great many companies that can avoid bankruptcy under the provisions of the Companies' Creditors Arrangement Act. I have had several applications and in each case they worked out successfully in the end, but here is my difficulty: under our reference we have not power to deal with the Bankruptcy Act. I do not see how we can deal with these amendments unless we get that power.

Mr. VIEN: We cannot.

Mr. MARTIN: Oh, yes, we can, easily.

Hon. Mr. STEVENS: Mr. Chairman, I very much dislike to appear to be discourteous to the gentlemen who are appearing here. But this is the first time I have even seen these proposed amendments to the Companies' Creditors Arrangement Act. These are very important amendments; they need to be studied. I have just glanced at them, but I can see from just a glance that they are far-

reaching. Apparently they are in the interest of one class of security holder or creditor. I think we should be extremely careful.

Where I think we made a mistake in procedure is that all this matter regarding the Bankruptcy Act and the amendments to this act ought to have been studied by the officers of the Crown before being brought to this committee. It is quite possible that the commissioner in bankruptcy, or whatever his title is, or Mr. Finlayson, might be able to offer some very simple amendments that would meet the situation. I feel very poorly equipped here this morning to discuss this matter. We have got to watch it and catch some observations here and there in order to have any appreciation of where we are drifting.

The CHAIRMAN: Mr. Reilley, will you come forward to the table, please.

By Mr. McLarty:

Q. You have not completed your statement, have you, Mr. Fraser?

The WITNESS: No.

Mr. MCLARTY: Mr. Chairman, I wonder if Mr. Fraser could not complete his statement before calling Mr. Reilley?

The CHAIRMAN: Yes.

Mr. VIEN: Mr. Chairman, we cannot adopt either the amendments to the Companies' Creditors Arrangement Act, nor the amendments suggested to the Bankruptcy Act. We have no power. Our reference does not permit that. I agree with Mr. Stevens on that point. Mr. Bertrand having intimated that his bill will be withdrawn, there is now only one question before the chair: is it advantageous for us to hear these gentlemen further, or would it be preferable for the committee to refer them to the officers of the Crown to work out some legislation for a further sitting.

Mr. HOWARD: That is the idea.

Mr. VIEN: We have no jurisdiction even to amend the Companies' Creditors Arrangement Act. It is not before us.

The CHAIRMAN: Gentlemen, I have consulted the law officers of the Crown and it is their opinion that it would be extremely helpful to them to place the evidence of the representatives of the associations on the record, and, after that, we will decide what should be done.

The WITNESS: We say that there is no other legislation that is satisfactory or available which will meet the situation such as the Companies' Creditors Arrangement Act, because if a company goes into bankruptcy or into liquidation the bondholders will prefer to have their own receivership proceedings. They will prefer to go ahead and have a realization and, as everyone knows, receivership proceedings are expensive. They are damaging to the business of the company and are in other ways undesirable. Secured creditors take the position, rightly or wrongly, that neither the Winding-up Act nor the Bankruptcy Act is effective or satisfactory for the reorganization of capital structures of companies. For that reason they are unwilling to go into a reorganization that is attempted under the Winding-up Act or under the Bankruptcy Act. They would prefer to carry out their own reorganization which will usually be by way of sale.

As soon as you proceed to a reorganization by way of sale, you are in difficulties right away without the assistance of legislation of this sort, because in these large undertakings where you have to make a sale for cash, and under our procedure in Ontario, the ordinary mortgage sale, you can only sell for cash, and it is an absolute impossibility to get an adequate price.

It is true that the bondholders themselves can join together and deposit their bonds and tender their bonds in payment, but there again injustices result because the bondholder who does not deposit is paid off in cash on a prorated monthly basis. And that type of reorganization is liable to eliminate entirely unsecured

creditors, because the bondholders have charge of it and if things have reached that stage they are not likely to do anything or feel that they can do much for the unsecured creditors.

In Ontario the only other alternative that we have is the amendment to the Adjudicature Act permitting the sale for a consideration other than cash, that is, securities or shares of a new company. But it has been held that if a company is insolvent, the provisions of that Act are not applicable. It has been so held by Mr. Justice McTague in the Abitibi case, and the case is now pending for judgment in the Court of Appeal. If the judgment of Mr. Justice McTague is sustained, the only Act under which a bondholders' reorganization can be effective is the Companies' Creditors Arrangement Act.

By Mr. Vien:

Q. In your opinion, should Judge McTague's opinion be sustained or should the Act be amended?

Mr. MARTIN: Well,—

By Mr. Vien:

Q. I mean to say, are you suggesting that legislation should be so framed as to permit even an insolvent company to be able to deal under this Act?—A. Under the—?

Q. Under the Companies' Creditors Arrangement Act?—A. Yes, of course it should. It is a necessary condition that the company be insolvent. It is only if it is insolvent that it comes under the Act. I am quite in agreement with that. That is the only way by which the Dominion would have jurisdiction.

We say that this Act in the short time in which it has been really used has given very good service. The Act was passed in 1933. It was not until 1934 that the Supreme Court of Canada held that the Act was valid. And in 1936 the Farmers' Creditors Arrangement Act was held to be valid in a decision which supported and affirmed the decision under this Act.

In 1936 and 1937 there were very important reorganizations. There are at least six important reorganizations in which securities, debt securities,—I am not speaking of shares and other things that were reorganized,—amounted to $61,200,000, starting in 1935 with the Gurney Foundry Company, the Winnipeg Electric Company, the Insurance Exchange Corporation of Montreal, the Canada Steamship Lines, the Western Steel Products Limited, and the Connaught Hotel Company Limited. So that you have had all over Canada important reorganizations, some of which, in the case of the Gurney Foundry Company, could not have been carried out at all under any other legislation that was available because the bonds did not provide for modification by a majority. It would have been necessary to have effected a sale.

The same was true in the case of the Insurance Exchange Corporation wherein, in connection with the circular that went forward to the bondholders, it was pointed out that if they wanted to accomplish the same result in the ordinary way by a realization sale, the additional costs and taxes, particularly taxes, would have amounted to $65,000.

The Act is cheap and effective, and it enables reorganizations to be carried out which cannot be carried out in any other manner. It also preserves the investments and enables the Company to carry on.

In our experience, which is limited to corporation securities, we have found that the Act has been satisfactory. We find that these reorganization plans are only put forward after the fullest examination of the financial position and the prospects of the company. The plans are canvassed by the different committees representing different interests, and they go forward invariably with

the recommendation of every committee. If they do not go forward with the recommendation of the committees, they just simply do not carry.

And we find, further, that if there is any question when it comes to the court of there being any unfairness in the plan, or any unfairness in the way the vote was brought about, or any doubt as to the sufficiency of the vote, the plan is simply not approved.

I think that terminates what I have to say, except I would like to file with the committee a summary of these six important reorganization plans.

Mr. HOWARD: Mr. Chairman, I move that they be filed.

The CHAIRMAN: Carried.

Mr. VIEN: I think they should be printed, Mr. Chairman.

The CHAIRMAN: Mr. Howard, will you move that they be filed and printed?

Mr. HOWARD: Yes; filed and printed.

SUMMARY OF IMPORTANT REORGANIZATION EFFECTED UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT

Gurney Foundry (1935).

The bonds of this issue which matured serially had been sold in the United States. The trust deed, in conformity with the American practice, contained no provision for modification by extraordinary meeting of bondholders. The bonds had been in default as to interest and payment of serial maturities for some years. The earnings of the company did not justify the expectation that the defaults could be cured. An attempt had been made to meet the situation by obtaining the deposit of bonds under a deposit agreement. Unless all the bonds had been deposited, it would have been necessary to proceed to an ordinary mortgage sale and pay the non-depositing bondholders their pro rata proportion of the purchase price realized. A compromise was clearly indicated, which could only be effected under the Act if liquidation or receivership was to be avoided.

The due date of the bonds was extended to 1949; past due interest was funded by the issuance of non-cumulative preference shares; the rate of interest was reduced. Until 1939 interest was to be payable only if earned and unpaid interest to be funded by the issuance of preference shares. After 1939 part of the interest was made payable in any event and the balance was to be payable if earned. New bonds were issued under a trust deed giving effect to the proposals, which trust deed contained provisions for future modification of the bondholders' rights by extraordinary resolution. The plan was accepted and no further default has occurred.

That was a case where the Act had to be invoked because the trust deed contained no adequate provision for modification of the rights of the bondholders by action taken by themselves. There are a number of such trust deeds in existence under which many millions of dollars of bonds are outstanding in the hands of the public.

Winnipeg Electric and subsidiaries (1935).

The plan involve a consolidation and re-adjustment of the funded debt and share capital of Winnipeg Electric and four subsidiaries and the consolidation of the properties and operations of the parent company and two of the subsidiaries into the parent company, making the two remaining subsidiaries wholly owned and the substitution of securieites and shares of the parent company for the securities of the subsidiaries outstanding in the hands of the public. The situation was a very complicated one and was further complicated by the existence of guarantees by the parent company of bonds and other obligations of the subsidiaries. This was a case where provisions

were contained in the relevant trust deeds or some of them for modification of the rights of the bondholders under the trust deeds. However, there were agreements in existence on the part of the parent company in respect of its guarantees given to holders of securities of the subsidiaries which were to be released and it was found necessary or convenient to hold meetings of security holders under the Act.

It appears from the note at the foot of page 20 of the Plan that it was considered desirable to take advantage of the provisions of the Act, notwithstanding that the trust deeds may have contained provisions for modification. It is pointed out that the majorities under the Act were less than those required under certain of the trust deeds but that court sanction under the Act was necessary though not necessary under the provisions of the trust deeds.

Court sanction is a very desirable protection.

Committees of various classes of security holders had been formed and the plan carried their endorsation. Accordingly, this was a case where the provisions of the Act facilitated the carrying into effect of a comprehensive reorganization.

Insurance Exchange Corporation Limited (1936).

There were outstanding in the hands of the public first mortgage bonds maturing serially. Defaults in payment of maturities from 1932 on had occurred; interest was in default for several years; the revenue from the property which was an office building had decreased materially and a further reduction in revenue was expected.

The issuing house claimed to rank as a bondholder in respect of a substantial amount of bonds acquired by it and for interest coupons paid by it at maturity, which claim was not admitted. In addition, the issuing house held junior bonds, a junior mortgage, a substantial amount of unsecured indebtedness and all the capital stock. Under the plan the claim of the issuing house was settled on the basis of its ranking as a bondholder for a reduced amount.

The trust deed contained no provision for modification.

If the bondholders had pursued the only other remedy open to them, viz, realization by judicial sale, it would have been unlikely that any reasonable bid would have been forthcoming; the bondholders would have had to bid in the property and the procedure would have involved the payment by the bondholders in cash of a special provincial tax and costs and expenses which were estimated to amount to not less than $65,000.

The scheme of arrangement (in addition to the settlement of the claims of the issuing house) involved an exchange par for par of the existing bonds for new bonds carrying a reduced rate of interest part of which was at a fixed rate and the balance was payable if earned.

In addition the bondholders received approximately two-thirds of the equity in shares of the company represented by voting trust certificates issued under a voting trust agreement ensuring control of the company's operations by the bondholders.

The trust deed contained no provision for modification of the rights of the bondholders and accordingly the scheme could only have been carried out under the provisions of the Act.

Canada Steamship Lines (1937).

The principal feature of interest as regards this reorganization for the purposes of the present discussion, apart from the sums involved, was that the plan was the result of long continued negotiations between the bondholders' committee and the Company and that the plan was recommended by the committee as being preferable to the alternative of expensive proceedings to enforce the security. I do not know whether the trust deeds contained provisions for

modification by the debenture stockholders or the bondholders. The powers given by the scheme to the Bondholders Re-organization Committee would have been of doubtful validity under a scheme effected by extraordinary resolution only. The following is a summary of the effect of the plan taken from The Financial Post Corporation Service of March 29, 1938.

In April, 1936, the bondholders' protective committee for the 6 per cent first and general mortgage bonds issued a plan of reorganization, which proposed the creation of new first and general mortgage bonds, new preference and new common shares, with no change being made in the 5 per cent first mortgage debenture stock. This plan did not meet the approval of the directors, however, and changes were suggested which included the redemption of the 5 per cent consolidated mortgage debenture stock, thus making the 6 per cent first and general mortgage bonds a first charge on the company's assets.

The final reorganization plan which was approved by security holders on Jan. 21, 1937, provided for the following:

(1) The redemption of the existing 5 per cent consolidated mortgage debenture stock on Aug. 15, 1937. This stock, amounting to $2,128,616 at Dec. 31, 1936, was redeemed out of the company's cash resources.

(2) The creation of the following new securities which were distributed to holders of the old securities as shown below:

(a) An issue of $10,500,000 of 5 per cent bonds, due Jan. 2, 1957, being part of an authorized issue of $17,500,000 which became first mortgage bonds when the old consolidated mortgage debenture stock was redeemed.

(b) An issue of 5 per cent preference shares, 229,250 shares of $50 par value, making a total of $11,462,500.

(c) An issue of 300,000 no par value shares, with a book value of $3,391,500.

Basis of Distribution:

The new securities were distributed as follows:

(1) Holders of old 6 per cent first and general mortgage bonds received $600 principal amount of new 5 per cent bonds, 13 1/10 shares ($655 principal amount) of new preference stock and 3 new common shares (a total of 52,500 shares) for each $1,000 principal amount of old bonds held. Arrears of interest on the old bonds were extinguished.

(2) Holders of old 6 per cent preference shares received 1 1/4 new common shares for each old preference share held, a total of 187,500 new common shares. Arrears of preference dividends were extinguished.

(3) Holders of old common shares received one-half of one new common share for each share held, a total of 60,000 shares.

Revaluation of Assets:

Under the plan the paid-up capital was reduced from $18,084,523 to $14,-854,000; total deficit as at Dec. 31, 1936, was eliminated and certain fixed assets revalued.

Savings to be Realized:

Savings to be realized from adoption of the plan were estimated as follows:

Elimination of annual interest and sinking fund on the debentures to be retired, $462,000;

Saving in depreciation charges from writing down of assets, $507,000.

Saving in interest charges from new 5 per cent bonds, $525,000;

Additional reduction in annual charges, $275,000;

Total estimated savings, $1,769,000 per annum, of which $1,419,000 would go to improve the company's net income.

[Mr. W. Kaspar Fraser, K.C.]

Western Steel Products Limited (1937).

This was a case where the Company was in receivership and liquidation. In addition to the bonds, there were advances by the bankers against the security of receiver's certificates, current liabilities of the receiver and manager and substantial unsecured obligations of the Company. The existence of such unsecured creditors for whom provision was made in the plan made it necessary to proceed under the Act.

The bankers accepted $700,000 General Mortgage Bonds in payment of that amount of advances made against receiver's certificates; the Company authorized $1,500,000 new first mortgage Bonds which were not issued; the Company assumed the balance ($300,000) of the indebtedness of the receiver to the bankers and gave the bankers security for such indebtedness; bondholders, unsecured creditors and shareholders got common shares in various ratios.

The compromise had to be carried out under the Act because the Company was in liquidation and section 18 of the Act provides that sections 65 and 66 of the Winding-up Act are not to apply to a compromise or arrangement to which the Act applies.

Connaught Hotel Company Limited (1937)

The Company had mortgages outstanding on separate properties aggregating $544,000; Bonds and general mortgage debenture stock were also outstanding. A new first mortgage for $700,000 was placed on the property.

The holders of Bonds got $25 cash and $75 new second mortgage Bonds for each $100 principal and also received back interest.

Series A debenture stock was created but was to be held for later issuance to complete unfinished portion of new additions.

The holders of debenture stock received $50 debenture stock Series B for each $100 principal of debenture stock held.

Additional debenture stock Series B was issued for cash.

NOTE.—Under the above plans where provision was made for shareholders, the appropriate proceedings under the relevant Companies Acts were taken at the same time for that purpose.

The CHAIRMAN: Is it the pleasure of the committee to hear the representative of the Canadian Credit Men's Trust Association?

Some Hon. MEMBERS: Yes.

LEE A. KELLEY, K.C., counsel for Canadian Credit Men's Trust Association Limited, called.

The WITNESS: Mr. Chairman and gentlemen, the Canadian Credit Men's Trust Association, Limited, is a nation-wide association representing very largely unsecured creditors. But it acts in two capacities, both as a trustee in bankruptcy and also as representative of its association members in looking after their claims in bankruptcy in which the Association itself may not be a trustee.

I am not going to labour you with any great amount of facts, because our clients have worked out this situation together with the Toronto board of trade, and we are in support of the allegations made by them.

The regulations which have been filed by the Toronto board of trade have been worked out with ourselves. Our contention is that we are even satisfied with the Companies' Creditors Arrangement Act, if those regulations are put into effect. We think it is workable so as to protect the unsecured creditor.

Confirming what the Honourable Mr. Stevens said, I do want to state that if there is going to be anything done along the lines of amendments to the Bankruptcy Act, then we are very urgently asking you not to do any such thing

until we have a full opportunity of considering those amendments, because we do feel that while even amending the Companies' Creditors Arrangement Act may not touch us—perhaps it is a selfish motive altogether because we are unsecured creditors—we do feel that if it would interfere with the working of the Bankruptcy Act, then we are going to be very vitally affected. I should like it to be left at that for the time being. Anyone going to bankruptcy has to make an assignment before he can take advantage of the compromise section of the Bankruptcy Act. We feel that that gives us some hold.

We would like to make further recommendations, and we would like the opportunity of working out some suggestions with the crown officers, if any suggested amendments are going to be made.

My whole position can be summed up by saying that we are backing up the position that we have worked out with the Toronto board of trade.

The CHAIRMAN: Are there any other witnesses who desire to be heard?

Mr. Stevens, will you make a recommendation as to further procedure?

Hon. Mr. STEVENS: I think, Mr. Chairman, what we ought to do—of course, we have got this before us yet; the bill is here. I do not know what we are going to do. If it is withdrawn, I should say that we ought to report to the House that in the consideration of this committee we received very important suggestions involving the amendment of this Act, and possible amendments to the Bankruptcy Act, and ask the House for instructions to give it consideration, because we have no instructions at present to do so. That could be done in an interim report and, in the meantime, the officers of the crown could confer with the gentlemen who are here this morning and any others, and could come prepared to suggest some definite matter that we could consider—amendments in a proper form.

Mr. BERTRAND: Would it not be appropriate to hear Mr. Reilley on this point?

The CHAIRMAN: What is the pleasure of the committee?

Mr. VIEN: I so move.

The CHAIRMAN: Mr. Reilley will make a statement as to the Winding-up Act which is also concerned in the matter. Mr. Reilley.

W. J. REILLEY, called.

The WITNESS: Mr. Chairman and gentlemen, I am rather at a loss to know what I can say under the circumstances. It is hardly appropriate for me to make any comments at this time on the suggestions that have been made. But if I may say so, from my experience of the last five years as Superintendent of Bankruptcy, there is, in my opinion, a very wide field to be looked into. I have, I may say, as probably the only official dealing with insolvency matters, received a great many complaints regarding the Companies' Creditors Arrangement Act. They write to me because they do not know who else to write to. I have to reply that it is not within my jurisdiction. But, nevertheless, they set out in full very clearly the difficulties and abuses that have arisen. I have also received at times similar complaints in regard to the Winding-up Act, and for that reason, the whole question, in my opinion, should be studied, because it is not desirable, I am sure, from the standpoint of the legal profession who largely have to deal with this, or more particularly the laymen as well who try to understand these acts, that we should have too many acts dealing piecemeal with one subject. Winding up, insolvency, bankruptcy and reorganization is all part and parcel of the one subject of insolvency. The Companies' Creditors Arrangement Act refers only to insolvent companies. Without presuming to intimate what can be done, I would say there is a problem which I think should be dealt with in a manner that would effectively deal with the whole situation.

By Mr. Vien:

Q. And it would take time to evolve such a scheme?—A. Not very long, perhaps.

By Mr. Plaxton:

Q. Have you had many complaints in connection with the operation of the Bankruptcy Act, Mr. Reilley?—A. Well, they are becoming less and less. There have always been complaints; that is, complaints come in in regard to matters which we are asked to make investigations into. I do not think I have had any complaints in regard to the general administration of the Act under our supervision and so on. The particular cases arise which I am asked to investigate in the nature of complaints.

By Mr. Vien:

Q. If a general reference were made giving this committee power to investigate the Bankruptcy Act, the Companies' Creditors Arrangement Act and the Winding-up Act at this session, would you be in a position properly to advise the committee in that respect at present?—A. Well, it would depend on how long the session is going to last.

Q. Let us assume that it would adjourn around the 1st of July. I do not know any more than you do about that, but it is a fair assumption, I think.

The CHAIRMAN: You are an optimist.

By Mr. Vien:

Q. Or say before the 1st of July. Would you think that the committee would have time to give proper attention to these matters?—A. I doubt if it could. I doubt if it could unless it were to meet every day and all that sort of thing, and get proceedings back and forward to parliament. I do not think it could hardly do it.

The CHAIRMAN: May I ask a question there? Is it the opinion of the committee that the Banking and Commerce Committee is the proper committee in which to deal with bankruptcy?

Mr. VIEN: I think it comes under this committee.

The CHAIRMAN: I am instructed that the last time the matter was under revision, it was referred to a special committee.

Mr. VIEN: A special committee?

Mr. MARTIN: That is what I agree with.

Mr. BAKER: There is power given by parliament to deal with this special request in this; why not then leave the general revision of the three acts until the next session, because it looks on the face of it to be too big a question to attend to this session. Would it be safe to go ahead with this item, or should it be put in with the others?

Mr. HOWARD: I would like to know what assurance Mr. Baker has that there will be a next session.

Mr. VIEN: At any rate, it will be for parliament to decide that. I think our report cannot be in other terms than what has been suggested by Mr. Stevens. I agree with Mr. Stevens that we have to report that this bill, whether it is withdrawn or not—

Mr. BERTRAND: It is withdrawn.

Mr. VIEN: It should be so stated. Mr. Bertrand, the sponsor of the bill, declares to the committee that he withdraws the bill. Is that correct?

Mr. BERTRAND: That is right.

The CHAIRMAN: Will you please repeat what is right?

Mr. BERTRAND: Well, I say, as I said before when we started, that I was ready to withdraw the bill, and I do so.

Mr. MARTIN: I think the bill has to be withdrawn in the House.

Mr. BERTRAND: I do withdraw the bill.

Mr. VIEN: Mr. Bertrand having moved for leave to withdraw his bill, I move that such leave should be granted.

Mr. MCLARTY: Does not that have to be done in the House?

The CHAIRMAN: Yes, I think that should be done in the House.

Mr. VIEN: And we should report to the House that Mr. Bertrand—

The CHAIRMAN: —asks to withdraw the bill.

Mr. HOWARD: I second that.

Mr. VIEN: I think we should say in our report that in the consideration of this bill, before its withdrawal or before application for its withdrawal, representations were made by the people who have been here along the lines that we have heard; I think our report should embody all that, and that the committee has considered that it has not power under its order of reference to go into this matter without any further reference from the House.

Mr. HOWARD: Carried.

The CHAIRMAN: Carried.

Mr. MARTIN: Mr. Chairman, before the committee adjourns, I have a bill, Bill 124, which has been referred to this committee; and it would be a matter of great convenience if we could name a date. I suggest to-morrow morning.

After further discussion *re* adjournment, the committee adjourned at 12.55 p.m., to meet again on Thursday, June 9, at 10 a.m.

(This completes the evidence taken with respect to the subject-matter of Bill No. 26, An Act to repeal the Companies' Creditors Arrangement Act.)