Canada. Parl. H.of C. Standing Comm.on Banking and Commerce.
Bill no.149.

HOUSE OF COMMONS

1949

SECOND SESSION

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Bill No. 149 (Letter F of the Senate) An Act Respecting Bankruptcy

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MINUTES OF PROCEEDINGS AND EVIDENCE

No. 1

WEDNESDAY, NOVEMBER 23, 1949
THURSDAY, NOVEMBER 24, 1949
FRIDAY, NOVEMBER 25, 1949

WITNESS

T. D. MacDonald, Esq., K.C., Superintendent of Bankruptcy, Department of Justice, Ottawa.

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

REPORT TO THE HOUSE OF COMMONS

WEDNESDAY, 23rd November, 1949.

The Standing Committee on Banking and Commerce begs leave to present the following as a

FIRST REPORT

Your Committee recommends:

1. That its quorum be reduced from 15 to 10 members and that in relation thereto Standing Order 63(1)(*d*) be suspended.

2. That it be empowered to print from day to day, 700 copies in English and 250 copies in French of its minutes of proceedings and evidence and that Standing Order 64 be suspended in relation thereto.

All of which is respectfully submitted.

HUGHES CLEAVER,
Chairman.

ORDERS OF REFERENCE

HOUSE OF COMMONS,
WEDNESDAY, 12th October, 1949.

Resolved,—That the following Members do compose the Standing Committee on Banking and Commerce:—

Messrs.

Adamson,	Fournier (*Maisonneuve-Rosemont*),	McCusker,
Argue,	Fraser,	McLean (*Huron-Perth*),
Arsenault,	Fulford,	Picard,
Ashbourne,	Fulton,	Prudham,
Beaudry,	Gibson (*Comox-Alberni*),	Quelch,
Belzile,	Gour (*Russell*),	Richard (*Gloucester*),
Benidickson,	Harkness,	Richard (*Ottawa East*),
Bennett,	Harris (*Danforth*),	Rowe,
Blackmore,	Hunter,	Sinclair,
Bradette,	Isnor,	Smith (*York North*)
Breithaupt,	Laing,	Smith (*Moose Mountain*),
Brooks,	Leger,	Stewart (*Winnipeg North*),
Cannon,	Lesage,	Thatcher,
Cleaver	Low,	Weaver,
Coté (*St. Jean-Iberville-Napierville*),	Maltais,	White (*Hastings-Peterborough*),
Dumas,	Macnaughton,	Winters—50.
Fleming,	Maybank,	

(Quorum 15)

Ordered,—That the Standing Committee on Banking and Commerce be empowered to examine and inquire into all such matters and things as may be referred to them by the House; and to report from time to time their observations and opinions thereon; with power to send for persons, papers and records.

WEDNESDAY, October 26, 1949.

Ordered,—That the name of Mr. Hellyer be substituted for that of Mr. McLean (*Huron-Perth*) on the said Committee.

TUESDAY, November 22, 1949.

Ordered,—That Bill No. 149 (Letter F of the Senate), intituled "An Act respecting Bankruptcy", be referred to the said Committee.

Ordered,—That the said Committee be empowered to sit while the House is sitting.

WEDNESDAY, November 23, 1949.

Ordered,—That the name of Mr. Macdonnell (*Greenwood*) be substituted for that of Mr. Rowe, and

That the name of Mr. Riley be substituted for that of Mr. Leger on the said Committee.

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WEDNESDAY, November 23, 1949.

Ordered,—That the quorum of the said Committee be reduced from 15 to 10 members and that in relation thereto Standing Order 63(1)(*d*) be suspended.

Ordered,—That the said Committee be empowered to print from day to day, 700 copies in English and 250 copies in French of its minutes of proceedings and evidence and that Standing Order 64 be suspended in relation thereto.

THURSDAY, November 24, 1949.

Ordered,—That the name of Mr. Helme be substituted for that of Mr. McCusker on the said Committee.

ATTEST.

LÉON J. RAYMOND,
Clerk of the House.

EXTRACT from Votes and Proceedings, House of Commons, Tuesday, 22nd November, 1949, at page 270:—

By leave of the House, on motion of Mr. Cleaver, it was ordered, That the Standing Committee on Banking and Commerce be empowered to sit while the House is sitting.

MINUTES OF PROCEEDINGS

HOUSE OF COMMONS,
Wednesday, November 23, 1949.

The Standing Committee on Banking and Commerce met this day at 4.30 p.m. The Chairman, Mr. Huges Cleaver, presided.

Members present: Messrs. Arsenault, Ashbourne, Beaudry, Belzile, Benidickson, Bennett, Breithaupt, Cleaver, Dumas, Fulford, Hellyer, Isnor, Laing, Lesage, Macnaughton, Picard, Quelch, Richard (*Gloucester*), Riley, Sinclair, Smith (*York North*), Stewart (*Winnipeg North*)—22.

In attendance: Mr. T. D. MacDonald, K.C., Superintendent of Bankruptcy, Department of Justice, Ottawa.

The Chairman expressed appreciation of his re-election as Chairman of the Committee.

On motion of Mr. Isnor:

Resolved—That Mr. Lesage be Vice-Chairman.

The Chairman advised that as the Committee was empowered by the House, yesterday, to sit while the House is sitting, the usual motion asking for such leave was not required.

On motion of Mr. Beaudry:

Resolved—That the Commiteee recommend that its quorum be reduced from 15 to 10 members.

On motion of Mr. Picard:

Resolved—That the Committee ask to be empowered to print, from day to day, 700 copies in English and 250 copies in French of the minutes of proceedings and of the evidence taken before the Committee.

In view of the imminent termination of the Session, it was agreed that the Committee would meet frequently, so that the passage of Bill No. 149(F) "An Act respecting Bankruptcy", may be expedited.

To facilitate the work of the Committee, the Chairman provided the Committee with copies of the proceedings of the Senate Banking Committee, 1949, in relation to Bill N, "An Act respecting Bankruptcy". The proceedings of the Senate Banking Committee in 1946 will also be made available, if required.

On motion of Mr. Breithaupt:

Resolved—That a Steering Committee of seven members be named by the Chairman. The Chairman advised that he had consulted party whips and then named the following to be members of the said Committee: Messrs. Cleaver, Isnor, Laing, Lesage, Macdonnell, Quelch, Stewart (*Winnipeg North*).

The Committee adjourned at 5.30 p.m., to meet tomorrow, Thursday, 24th November, at 11.30 a.m.

HOUSE OF COMMONS,
Thursday, November 24, 1949.

The Standing Committee on Banking and Commerce met at 11.30 a.m. The Chairman, Mr. Huges Cleaver, presided.

Members present: Messrs. Arsenault, Ashbourne, Belzile, Benidickson, Bennett, Cleaver, Dumas, Fleming, Fournier, *(Maisonneuve-Rosemont)*, Fraser, Fulford, Gour *(Russell)*, Harkness, Hellyer, Hunter, Isnor, Laing, Lesage *(Vice-Chairman)*, Macdonnell, Macnaughton, Maltais, Quelch, Richard *(Gloucester)*, Richard *(Ottawa East)*, Smith *(Moose Mountain)*, Stewart *(Winnipeg North)*—26.

In attendance: Messrs. T. D. MacDonald K.C., Superintendent of Insurance; J. S. LaRose, office of Superintendent of Insurance.

The Superintendent of Insurance made a statement and was questioned thereon.

The Chairman asked members of the Steering Committee to meet at 12.30 p.m.

The Committee adjourned at 12.30 p.m., to meet again this day at 3.30 p.m.

AFTERNOON SESSION

The Committee resumed at 3.30 p.m. The Chairman, Mr. Hughes Cleaver, presided.

Members present: Messrs. Ashbourne, Beaudry, Belzile, Bennett, Cleaver, Dumas, Fleming, Fulford, Gour *(Russell)*, Isnor, Laing, Lesage, Macdonnell, Quelch, Richard *(Gloucester)*, Riley, Smith *(Moose Mountain)*, Stewart *(Winnipeg North)*—18.

In attendance: As at morning session.

The Chairman reported that at a meeting of the Steering Committee he was instructed to draft a letter to be sent to persons who gave oral evidence before the Senate Committee. The Chairman read the proposed letter. (For text, see Evidence, page). It was agreed that this letter be sent.

It was further agreed that pending replies to this letter, the Committee will proceed with the consideration, clause by clause, of Bill 149. Clauses will be carried, subject to the reservation that if any member asks for reconsideration of any clause, that will be done.

The following clauses were considered and carried, subject to reconsideration: 1; 3 to 9, both inclusive; 11; 12 (subject to amendment to clause 94); 13 to 20, both inclusive; 21 (except subclause 15).

The following clauses stand: 2, 10.

The Committee adjourned to meet tomorrow, Friday, November 25, at 11.30 a.m.

HOUSE OF COMMONS,
Friday, 25th November, 1949.

The Standing Committee on Banking and Commerce met this day at 11.30 a.m. The Chairman, Mr. Hughes Cleaver, presided.

Members present: Messrs. Ashbourne, Belzile, Benidickson, Bennett, Cleaver, Dumas, Fournier (*Maisonneuve-Rosemont*), Fulford, Hellyer, Helme, Isnor, Laing, Lesage (*Vice-Chairman*), Macdonnell, Quelch, Richard (*Gloucester*), Riley, Stewart (*Winnipeg North*)—18.

In attendance: Messrs. T. D. MacDonald, K.C., Superintendent of Bankruptcy and J. S. LaRose, office of the Superintendent.

Consideration resumed of Bill No. 149, "An Act respecting Bankruptcy".

The following clauses were carried, subject to reconsideration: 22, 23, 24, 26 to 35 (both inclusive); 37, 38.

The following clauses stand: 25 and 36.

The Committee adjourned at 12.55 p.m., to meet again on Tuesday next, 29th November, at 11.30 a.m.

T. L. McEVOY,
Clerk of the Committee.

EVIDENCE

HOUSE OF COMMONS,
NOVEMBER 24, 1949.

The Standing Committee on Banking and Commerce met this day at 11.30 a.m. The Chairman, Mr. Hughes Cleaver, presided.

The CHAIRMAN: Gentlemen, we have a quorum. Is it your wish to hear first Mr. MacDonald, the Superintendent of Bankruptcy?

Some Hon. MEMBERS: Agreed.

The CHAIRMAN: Mr. MacDonald:

T. D. MacDonald, K.C., Superintendent of Bankruptcy, called:

The WITNESS: I am not sure just where I should start, Mr. Chairman. I do not want to waste your time going over matters you already know and on the other hand I don't want to omit background that you may expect to have from me. Would it be useful for me, Mr. Chairman, to outline briefly the purpose and scheme of the Act?

The CHAIRMAN: I would suggest, Mr. MacDonald, that you use your own good judgment; but do not miss anything that you think the committee should know about this bill.

The WITNESS: There is a very brief summary of the purposes of the Act, as referred to by the Minister on second reading. It will not take a moment and perhaps we might just run over it, and if I may go into that now it might perhaps assist you in dealing with the matter.

The purpose of this bill is to revise and consolidate the Bankruptcy Act.

The purpose of the Bankruptcy Act, generally speaking, is to provide a procedure whereby the assets of an insolvent debtor may be distributed equitably among his creditors and the debtor himself be released from further liability. There are exceptions and modifications which will be noted when we come to examine particular sections.

The Act applies to business and commercial ventures and to certain wage-earners. It does not provide for a compulsory bankruptcy in the case of a farmer but permits a voluntary bankruptcy except in the province of Quebec, an exception that is left out of the new Bill. It may be noted that other provisions relating to the insolvency and bankruptcy of farmers are contained in the Farmers' Creditors Arrangement Act. The machinery by means of which the Act functions consists chiefly of the following:

(1) The Bankruptcy Court, comprising in the first instance a judge and registrar, to whom the creditors may apply to have the debtor put into bankruptcy.

(2) The official receiver, to whom the debtor can go voluntarily for the purpose of putting himself into bankruptcy.

(3) The trustee who then takes over and realizes the assets and distributes the proceeds among the creditors.

(4) The superintendent who supervises the work of the trustees.

At this point I might also mention "proposal" which is an arrangement offered by an insolvent debtor to his creditors whereby he secures some postponement or reduction of his liabilities; and the "inspectors" who are the persons selected by the creditors from among themselves to work closely with the trustee. The exact conditions under which a debtor may be put or may go into bankruptcy as well as the details of the procedures followed, will be dealt with as we proceed to examine the bill section by section.

Now, so much for the purposes of the bill.

You may wish me to say just a word about the history of this Bill.

In 1946 a Bill—Bill A[5]—was introduced in the Senate. It contained a number of new principles which turned out to be very controversial. For example, it provided for the accounts of trustees to be passed by the Superintendent instead of the Court and for the trustee to be granted his final discharge by the Superintendent instead of the Court. It also brought the scheme of the Companies' Creditors Arrangement Act and the Winding-up Act under The Bankruptcy Act. That Bill died in the Senate after extensive committee hearings and no Bill was reintroduced until February 1949 when Bill N, the original of the Bill now before you, was introduced. It, too, was the subject of extensive hearings before the Banking and Commerce Committee of the Senate. The proceedings of that Committee are before you and will show you the different organizations and persons who made representations. That Bill died in the Committee when Parliament was dissolved this Spring.

This Fall, Bill N was reprinted and introduced in the Senate as Bill F and that, with the modifications made by the Senate, is the Bill now before you. Bill F, as introduced, incorporated some of the changes proposed to the Senate Committee this Spring. Some of the persons and organizations that appeared in the Spring appeared also in the Fall, and all the other submissions made to the Committee in the Spring were before it in the Fall in the form of a memorandum which indicated all such submissions and whether or not and why, they had been incorporated in Bill F. The Senate adopted a number of submissions and they are incorporated in the Bill before you. Notably they include certain submissions by the Canadian Bankers Association. If it will be of any assistance, tables can be placed before you showing

(*a*) submissions made to the Senate Committee in the Spring and how dealt with;

(*b*) a list of changes between Bill N and Bill F as introduced;

(*c*) a list of changes made by the Senate.

Lists (*a*) and (*b*) have already been prepared and it will merely be a question of preparing more copies.

Mr. FLEMING: Excuse me a moment, Mr. Chairman; I was wondering if the memoranda to which Mr. MacDonald has referred just now are going to be placed on the record or circulated to the members; and I was wondering if they will be available this morning.

The CHAIRMAN: I would hope that they would be available for a later sitting. They are not available now but they will, I believe, be available tomorrow, or later.

The WITNESS: We will get them out just as soon as we possibly can.

Mr. FLEMING: You haven't got them with you at the moment?

The WITNESS: No.

The next thing you will want to know, I think, is: what are the principal changes between this bill and the present Act. I would describe the major differences between the bill before you now and the present Act as follows:

1. The bill provides a system of "summary" administration for small estates, whereby the formalities and expenses are reduced below those considered necessary to safeguard the administration of larger estates. The characteristics of this summary administration, which is an important matter and which perhaps I may refer to in a little detail, are contained in sections 26, subsection 6—on page 39 of the bill and in section 114 on page 91. The only significance of section 26 (6) is to define the kind of estate that may be summarily administered. It is an estate where in the opinion of the official receiver the realizable assets after deducting the claims of secured creditors will not exceed $500.

Now, if from there you will go to section 114, you will see special provisions governing summary administration. First of all, the security to be deposited by the trustee under section 8 and that is not the general security which the trustee gives by way of a general bond, but the security that he gives in respect of a particular estate, is not required. Second, the trustee applies to the court to fix the date for the hearing of the application for the discharge of the bankrupt and includes notice thereof in the notice of the first meeting—that is to accelerate the final discharge. Third, notice of bankruptcy is published in the *Canada Gazette* in the prescribed form, but not in the local newspaper, unless deemed expedient by the trustee or ordered by the court. Fourth, notices and statements and other documents are sent by ordinary mail rather than by registered mail; and other than notices of the first meeting, are sent only to creditors who have proved claims amounting to $25 or more. Fifth, the bankrupt may submit a proposal at the first meeting of the creditors; that provision is perhaps more of a suggestion than a substantive enactment. Sixth, there are no inspectors. The trustee in the absence of direction from the creditors may do all things that may ordinarily be done by a trustee with the permission of an inspector. Seventh, the examination of the bankrupt takes place at the first meeting. And the others are more or less incidental.

Well, that covers the leading characteristics of summary administration.

Now, with regard to the second important change in the Act, it is perhaps hard to compare it with the first, and to say that one is more important than the other, because they are entirely different in character. The second change is this:

2. The bill permits a debtor to offer, and the creditors to accept, a proposal or composition without the debtor going into or being put into bankruptcy. Something that was not possible before is made possible by the present Act. Under the Act as it now stands, any arrangement about a composition must follow upon a receiving order being made or an assignment being made. The procedure proposed in this bill is more convenient; it is cheaper and obviously more desirable for the debtor than was the previous situation where a composition had to be preceded by formal bankruptcy.

Mr. HUNTER: Pardon me, what section is that?

The WITNESS: That is section 27. This extends to individuals and corporations—a procedure somewhat similar in principle to that now available to corporations under the Companies' Creditors Arrangement Act except that proposals under the Bankruptcy Act are supervised in much the same way as the administration of estates under the Bankruptcy Act are supervised. It is a procedure that is subject to the supervision of the superintendent. The provisions relating to a proposal will be found beginning on page 30 with section 27. As you will see by subsection (1), a proposal may be made by (*a*) an insolvent person, and (*b*) a bankrupt. An insolvent person is defined in section 2 (*j*); and the

leading consideration there is that he is unable to meet his liabilities and that they amount to $1,000. Section 38, subsection (2), is important in this regard because it permits the court in a proper case to take proceedings out from under the Bankruptcy Act and to place them under the Companies' Creditors Arrangement Act, where for example it appears from their complicated nature, as where the interests of bondholders are affected, that that is a more convenient way to deal with the proposal. That finishes the matter of proposals.

3. Now, the third thing is that the bill makes an effort to clarify at least to some extent—and I do think to a very large extent—the vexed questions of priorities to be accorded different classes of claims in distributing a debtor's assets. This is something which has always caused a great deal of worry and a great deal of confusion and a great deal of difficulty both to the trustee and to the court and to the creditors, in the distribution of the assets of the estate as dividends. If you will refer to section 95 (page 63) you will see that the priorities are all set out consecutively in one section. In the present Act they are to be found in different sections. The sections sometimes show no exact relationship, the one with the other, and it sometimes proves very confusing and difficult to follow. In the present Act the Crown instead of being listed in its place in the priorities comes under a section found later in the Act, and you have to read all through the Act to find just what the rights of the Crown in a matter of this kind are. What we try to do in the amendment now before you is to list the priorities consecutively and group them all in section 95. Among the things which this new section does do, substantially, besides arranging and settling things, is to state definitely where the Crown fits in the case where it is an unsecured creditor. That will be found in section 95, subsection (1), paragraph (*j*). You will see that the Crown as an unsecured creditor comes immediately after the preferred creditors and before any of the ordinary unsecured unpreferred creditors.

So much for priorities.

4. Then there is the matter of increased creditor control which I will touch on lightly at the moment. It is probably a less important factor than the one which I have just mentioned. It is to be found in a considerable number of small changes that occur throughout many different sections of the Act, and which have the general tendency of settling more control upon the creditors over the trustee and the administration of the estate.

5. And then I think I should perhaps touch on a number of smaller things that will be of interest, of particular interest to you, but which have not been classified in the four or five most important changes.

First of all, the powers of supervision of the superintendent have been tightened up to a certain degree, as you will see when we come to a consideration of section 3 of the bill; chiefly, perhaps, this is a clarifying and confirming of powers of inspection and examination, some of which might be in doubt under the present Act. As appears from section 17, the remuneration of trustees when not expressly set by the creditors has been increased from 5 per cent to 7½ per cent.

Mr. FOURNIER: Is that the maximum?

The WITNESS: No, it is not the maximum. It may be increased by the Court or the creditors.

For instance, in subsection 5 of section 17—I am reading at page 21 of the bill—

> (5) On application by the trustee, a creditor or the debtor and upon notice to such parties as the court may direct, the court may make an order increasing or reducing the remuneration.

That would be over or under the seven and one-half per cent. The seven and one-half per cent is the amount which, if no other arrangement is made for remuneration by the creditors, will be automatically inserted by the trustee in his accounts.

The amount of debts required to authorize an assignment or a petition is increased from $500 to $1,000, as appears in section 21, subsection (1) relating to a petition, and in section 2 (*j*). The minimum annual salary required before a wage earner can be petitioned against—

By the Chairman:

Q. Would you mind letting me have that last clause number again, please? —A. Yes. It is section 2 (*j*), and section 21 (1); and as appears in section 25 the minimum salary for a wage-earner before he can be proceeded against and put into bankruptcy by his creditors is raised from $1,500 to $2,500. That does not affect the circumstances in which he can go into bankruptcy voluntarily, which would throw you back to the ordinary provisions of $1,000 debts.

By Mr. Isnor:

Q. Before you leave clause 25, is there any mention made of fishing as there is in the case of farming?—A. No, Mr. Isnor.

Q. Would you mind considering it?—A. I would be glad to make a note of it. Finally, the office of custodian is abolished, as will appear from section 21(9). That is a change which is perhaps more apparent than real. It means in practice that you drop the name of custodian which applied until the time of the first meeting, and you call the trustee a trustee for the whole time. I think Mr. Chairman, that this gives the salient points of the bill. Finally, there is the rearrangement and the redrafting that is of course to be expected in any consolidation of this nature.

The CHAIRMAN: Thank you, Mr. MacDonald. I assume that the correct procedure would be for the members of the committee to have an opportunity to question Mr. MacDonald on his statement. I would like to announce at this time, just in case some of the members want to make plans, I am suggesting that we shall adjourn the meeting at 12.30 in order to permit a meeting of the steering committee at 12.30. The committee will meet again today at 3.30 o'clock this afternoon and we will meet then in room 429 where we have more space. That room is not available this morning. Now, the witness is yours.

Mr. LESAGE: Mr. Chairman, the witness has referred to specific clauses of the bill. I wonder if, instead of questioning the witness, we should not wait until we have studied the specific clauses concerned? Otherwise, since the members have had little opportunity to read and peruse the bill, I am afraid what would happen would be that we would make little progress. The great amount of discussion, which took place in the Senate, I think, might dispose of many of the questions which would be asked here.

The CHAIRMAN: I entirely agree. However, I felt that the members of the committee might have general questions to ask the witness, and that they should have an opportunity now of asking them.

Mr. LESAGE: Oh yes, general questions.

By Mr. Isnor:

Q. I have a general question. Where did the opposition to bill A5 which was withdrawn originate and what was the nature of that opposition? —A. I cannot give you that information offhand because I did not go fully into the sources of the opposition to bill A5. But I believe as far as the supervision of the superintendent is concerned, a large amount of the opposition came from many sources including the trustees.

Q. When you speak of the "trustees" you refer to an organized group representing the trustees, is that it?—A. The opposition from the trustees, I understand, was not a general or organized opposition. I merely mention trustees as included among the people who made representations to the contrary. If you are interested in perusing it, I can dig it out for you. I can get you the actual names of the people who did make representations against the bill.

Q. I do not think it is very important. May I turn now to something definite in regard to section 25?—A. I think I could give you a little more information about the opposition to the Companies' Creditors Arrangement Act, if you wish to have it.

The CHAIRMAN: Yes. I think your question on section 25 would be obviously general in character, Mr. Isnor, and I think it is quite proper to ask it right now.

Mr. ISNOR: Thank you.

The WITNESS: The proposal to abrogate the above Act, the Companies' Creditors Arrangement Act, which was implied in the provisions of the Bankruptcy Act as contained in bill A5 was strenuously opposed by the following when they came before the committee of the Senate on the Bankruptcy Bill:

Mr. Terence Sheard representing the Canadian Mortgage and Investments Association.
J. M. Bullen, K.C. representing the Canadian Creditman's Trust Association Limited.
R. O. Daly, K.C. representing the Investment Dealers Association of Canada.
A. C. Crysler, Legal Secretary of the Board of Trade of the city of Toronto.

I am informed by this note—of course, I was not there at that time—that some of the arguments against the measures being placed in the Act proceeded along the lines of this argument: that the Companies' Creditors Arrangement Act is primarily concerned with the rights of investors such as bond and debenture holders described by the Act as secured creditors, while the Bankruptcy Act is concerned with the rights of ordinary creditors and that the two should not be intermingled.

By Mr. Isnor:

Q. I think that clears up the question I had in mind. Now would you turn to section 25 of the new bill F at page 28 which refers:

...to persons engaged solely in farming...

I would like to see inserted there the words: "in fishing". I consider that fishermen should be in the same preferred position as farmers in their relation to that particular section.—A. That comes to me as a new suggestion, Sir, and I have no comment that I could usefully make right now.

The CHAIRMAN: You can make a study of it and when the section is read, you will then be in a position to answer.

By Mr. Stewart:

Q. I wonder if the witness can tell us if the superintendent is satisfied with the Act as it stands, or would he like to have some additional changes made?—A. My answer is that I am, as presently advised, satisfied with the bill as it now stands.

Mr. FLEMING: I have a couple of general questions to ask, if Mr. Stewart is finished.

Mr. STEWART: Yes.

By Mr. Fleming:

Q. In the first place, I take it that this revision was a departmental revision. Am I right?—A. I think that is a proper description of it.

Q. In other words, it is a revision which has taken time and which represents the experience of the department, as well as representations made to the department from a number of sources, rather than pressure from any particular quarter of the public?—A. That is quite true. It was studied. It was a bill which evolved through long study, as I understand it by succeeding superintendents, including Mr. W. J. Reilley, K.C.

Q. And with that in view, can you say that there is any special urgency attached to the enactment of the bill so far as public interest is concerned. I mean an urgency, such as a matter of two weeks' time or six months?—A. Well, no. I cannot say; I cannot point to anything that is going to suffer specifically if this Act is not changed within the next six months. I cannot point to anything of an emergency nature about it. I mean emergency in the sense that we ordinarily speak of emergency legislation. I would not attempt to describe it as such. But we are coming to a period, in fact we are in a period of increasing bankruptcies. I can get for you this afternoon, if you want to have them, the specific figures showing the increase from 1946. The figure has grown considerably.

By Mr. Isnor:

Q. Would it be due to mushroom growth?—A. I would say the rate of increase is somewhere between 200 and 300 per cent., subject to verification this afternoon.

By Mr. Fraser:

Q. Have you got the bankruptcy figures for the United States showing their increase during the last year?—A. No, I have not got them here.

Q. I think it would be as well, when we get them for Canada, to get them for the United States. They may be obtained, I think, from the statistical department. They would show the trend for the last two years.

Mr. FLEMING: I have not quite finished my general questions, Mr. Chairman.

The CHAIRMAN: Mr. Fleming now has the floor and Mr. Fournier will be next.

By Mr. Lesage:

Q. After the question of urgency, would it not be well if we discussed it now, unless the witness has not finished his answer?—A. I was saying that we are in a period of very increasing bankruptcies, a period when the Act is of increasing importance. And from that standpoint, and having regard to changes in the bill which I outlined a few minutes ago, I would say that it is urgent legislation, even if it cannot be classed as emergency legislation.

By Mr. Fleming:

Q. But a few minutes ago you said it was not urgent. My question asked: if it is urgent in relation to public interest? And you said it was not. I said I was speaking in terms of two weeks as against six months. I understand that was your position.

Mr. LESAGE: The witness said there was no emergency with regard to further revision. That would be different.

Mr. FOURNIER: It is a matter of importance, I believe.

By Mr. Richard (Gloucester):

Q. If we feel that these changes are necessary, is there any reason for delay?—A. None.

Mr. LESAGE: A lot of people, including many members of the Bar have asked that they be enacted as soon as possible. Then we have the reasons given by the witness and the simplification of the procedure. They all say it is a very good bill.

By Mr. Benidickson:

Q. Were you here in 1946 when the earlier bill was proposed?—A. No, I was not.

By Mr. Laing:

Q. What would be gained by leaving the matter over? This bill seems to be the result of a great number of submissions made by a large number of organizations. Is there anything that could be gained by holding further hearings? What could be gained by generally setting the matter back by six months? Is there anything to be gained by doing that?—A. I can see nothing to be gained by setting the matter over for six months. I would like very strongly to have the advantage, since you ask me for my reaction, of the present changes, as soon as possible.

By Mr. Fleming:

Q. I have not quite finished my question. The bill in its present form before us now represents not only the original draft which was submitted by the department to the Senate, but also the considered review, the considered judgment of the Senate in the light of a great many representations which were made, some of them orally, to the Senate Banking and Commerce Committee. Some representations were made in writtend form too. Is that correct?—A. Yes.

Q. And in some cases effect was given to changes or revisions requested by those who appeared; while in many other cases proposed changes or present changes were adjusted?—A. Yes.

Q. There were representations made. For instance, the committee heard from Mr. Justice Urquhart, the judge who presides in bankruptcy in the Supreme Court of Ontario. Representations were made by the Canadian Manufacturers' Association; the Montreal Board of Trade; the Toronto Board of Trade; your predecessor as superintendent in bankruptcy; the Canadian Bankers' Association; the Canadian Credit Men's Trust Association Limited; the National Committee of Canadian Commercial Travellers; the Law Society of Upper Canada; and by a large number of others. Is it not a fact that in practically every case—perhaps I should say in most cases—the bill as it now stands represents the acceptance of some of the changes requested by those who appeared, and a rejection of others, after hearing?—A. Oh yes, definitely. The nature of those changes, the ones that were proposed, and an indication of whether or not they were embodied in the reprint (Bill F) together with a short indication of the reason is contained in the memorandum which you now have, Mr. Fleming. I said that I would try to get more copies later for the rest of the committee members.

By Mr. Lesage:

Q. It is called "Compendium".—A. That is correct. And an examination of the changes in that compendium, as it is called, will give you an idea of the nature of the changes that were suggested as well as the treatment that was given.

The CHAIRMAN: Are you through now, Mr. Fleming?

Mr. FLEMING: Yes.

The CHAIRMAN: Mr. Fournier is next. But before calling on him, I would like to make one suggestion. If the members would refer to page 10 of volume I of the Minutes of the Standing Committee on Banking and Commerce in the Senate, the meeting held on the 10th of March, they will find a statement reading as follows:

> In 1948 according to statistics prepared by Dun & Bradstreet of Canada, Limited, the number of commercial failures in Canada was 493, with liabilities $11,755,000, the highest amount since 1935.

Mr. QUELCH: Are we going to leave that point?

The CHAIRMAN: Mr. Fournier has been trying to get my eye, so I shall call on him next. But we won't leave that point until every member is content.

By Mr. Fournier:

Q. You stated a moment ago, Mr. MacDonald, that the number of bankruptcies in Canada has increased. Would it be possible to know if those concerns going into bankruptcy are new business or old business? It might not be surprising to find that some businesses which were organized during the war would go into bankruptcy; once the war was over it would seem rather normal that some of them might go into bankruptcy?—A. Yes. It would be possible to get that information for you, sir, and I am glad that you raised the point because it reminds me that I left unfinished what I started to say about the increased number of bankruptcies. I feel that those figures must be read with a great deal of care and with a considerable amount of reservation because of a number of factors. I won't attempt to exhaust them, but one is the factor upon which you have just put your finger, that of new businesses.

Another factor would be that having regard to the fact that many bankruptcies might be called marginal businesses, that is, businesses of marginal success; a very small falling off in average prosperity, in commercial prosperity, might mean a very large increase in the number of bankruptcies. So in regarding the figures of increased bankruptcies as an index of the state of commercial affairs you would have to be very, very careful. One thing you would have to do would be to segregate and to see what proportion of the bankruptcies were, let us say, wage earner bankruptcies; because, while I suppose they would have a certain bearing as an index of prosperity or otherwise, they certainly would not have as important a bearing as commercial failures would have.

By Mr. Benidickson:

Q. There would have to be some comparison between the volume, let us say, in 1935, as compared with the volume in 1948, when a reference is made back to 1935 as being the last precedent for that size?—A. Yes, sir.

By Mr. Maltais:

Q. Do you think this information could be given by provinces?—A. Yes, it could.

Mr. FOURNIER: When do you think we will receive the information?

Mr. ISNOR: They would likely procure their information from Dun & Bradstreet.

The WITNESS: Oh, no. We obtain our information direct.

By Mr. Isnor:

Q. What do you mean by "direct"?—A. By statistics in our own office.

Q. I was referring to information that you would procure from the provinces. —A. That is in our own office. We are the direct source of such information, really. The total number of bankruptcies I find reported in 1946 was 269.

By Mr. Fournier:

Q. What is that number again, please?—A. 269.

By Mr. Maltais:

Q. That is for the whole of Canada?—A. For the whole of Canada. And I can give you them by provinces. I have the same information here for 1947 and 1948; and I also have it for the first nine months of 1949.

By Mr. Isnor:

Q. Would you let us have it for 1947, 1948, and 1949?—A. In 1946 there were 269. In 1947 there were 509. In 1948 there were 799, And to date—

By Mr. Fulford:

Q. You mean for the first nine months up to date in 1949?—A. No, it is up to the 23rd of November, 1949, and the number is 868. I would like to repeat the word of caution I mentioned a moment ago with respect to how those figures are to be interpreted. I would not like to see them taken as *prima facie* evidence of anything.

By the Chairman:

Q. I take it, Mr. MacDonald, that what you are trying to tell the committee is that notwithstanding the large volume in number, this number does not necessarily indicate that the economic level of Canada is heavily deteriorating.— A. That is about the size of it, Mr. Chairman. I am not competent to speak as to the economic life of Canada, and I do not want these figures to be misinterpreted.

By Mr. Richard (Gloucester):

Q. The liabilities arising, however, are enlarged progressively about the same percentage as the number of bankruptcy cases?—A. I would not like to answer that question offhand. I would like to give it some little inquiry.

By Mr. Quelch:

Q. I was wondering if Mr. MacDonald could say from the information at his disposal whether he considers it a temporary situation? Does he consider that the increase in bankruptcies will continue? In other words, is it largely due to the depression caused by the transition from war to peace, as well as the dislocation in international trade taking place at the present time?—A. Any expression of thought on my part would be purely personal and not very well grounded so I would not care to express an opinion. I am afraid, as far as I am concerned, that the figures will just have to speak for themselves. I am sorry, but I do not feel qualified to answer.

Q. The reason it is considered vital to go ahead with the bill is not that you consider there is going to be an increase in bankruptcies above the present scale?—A. Well, sir, the trend is indicated by the figures that I have given you. You will see that there were 269 in 1946; 509 in 1947; 799 in 1948; and 868 in 1949 to date. So the number is increasing and there is no reason to believe that

the upward line is going to stop right here. I would not think that I am unduly trying to predict when I say that I should expect the increase to continue to some extent into the future.

Mr. FOURNIER: Could you give us the figures as to failures of all kinds in Canada? That is not shown here, is it?

An hon. MEMBER: That gives you the commercial failures in Canada.

The CHAIRMAN: Well, that one item there, as I understand it, relates strictly to commercial failures.

Mr. FOURNIER: Thank you. That is what I wanted to get at.

Mr. GOUR: I would like to ask Mr. MacDonald if it is not a fact that in a great many cases these failures represent the failure of persons who have, let us say, gone into business without any practical experience. Are they not people who have gone into a manufacturing business—let us say something like a sash and door factory—where they have had a little capital and have put it into a business and just taken advantage of high prices and good times, and not having had any business experience, since the boom has slackened off, find themselves in financial difficulties and they have had to fold up; isn't that fact largely the explanation? I am thinking particularly of that period of activity starting, I think, back in 1935 and continuing on during the war period when there were a lot of people who went into these small businesses of one kind or another, taking advantage of generally prosperous conditions, but who lately, and I believe in increasing numbers, are finding it impossible to carry on. Isn't that the fact?

The WITNESS: That may be, in part, the explanation.

Mr. MALTAIS: Do you happen to know what happens to people going into bankruptcy after the bankruptcy proceedings are over? Can they return to some other business? Can they continue a small business? Can they go back to the business they formerly had? Or do they just give up?

The WITNESS: To answer your question properly would be a matter of proportions. Some go back into the same business and some go into other businesses; and some do not go back into business at all. But to give you a valuable answer I would have to have more information than I have right now on the actual proportions.

The CHAIRMAN: Gentlemen, it is now 12.30. Shall we adjourn until 3.30; and, would the steering committee please remain, as well as the Superintendent of Bankruptcy.

AFTERNOON SESSION

—The committee resumed at 3.30 p.m.

T. D. MacDonald, K.C., Superintendent of Bankruptcy, recalled:

The CHAIRMAN: Gentlemen, we have a quorum. Your steering committee met at 12.30 this morning and I was instructed to send a letter to every association and everyone who had made any representation, oral or written, to the 1949 Senate committee. I have drafted this letter which I will read:

> The new Bankruptcy Bill, which was initiated in the Senate, received its second reading in the House of Commons and was referred to our Banking and Commerce Committee this week. All of the evidence taken by the Banking and Commerce Committee of the Senate, and the written

representations made to that committee, are in our hands, but since you have taken an interest in this bill, I thought best to write you so that in the event there is any further submission which you wish to make, either by way of written statement or oral evidence, you will have an opportunity to do so.

Since the session will end soon, would you please advise me by wire if you would like to present any additional oral evidence, and as to any additional written material, would you please see that this is mailed immediately to T. L. McEvoy, Clerk of Committee, House of Commons, Ottawa.

Yours sincerely,

HUGHES CLEAVER,
Chairman, Banking and Commerce Committee.

And the understanding is that in the meantime the committee recommends that we hold one meeting daily other than today. A meeting today has been called for this afternoon so we will meet this afternoon, and we will start going over the bill clause by clause. I would suggest that the second section should be adopted, subject to the reservation that additional subsections may be added to it as may be found necessary in a study of future sections. Is that carried?

Carried.

Mr. FLEMING: I take it that we are now only going over this in a preliminary way, that we will not now adopt or pass any clause finally, and that the clause will remain open for further consideration at a later stage.

The CHAIRMAN: I would suggest that clause should be carried, but subject to the reservation that if any member of the committee wishes to refer back we will refer back.

Mr. FLEMING: I do not know whether we are ready for this statement at the moment. There may be other matters which it would be desirable to take into consideration. I did not understand that you proposed to adopt that procedure, Mr. Chairman.

The CHAIRMAN: I would say so, with the firm reservation that if any member of the committee wants to refer back to any clause he will be permitted to do so, and my suggestion was that we would simply cover clauses of the bill now that are not subject to any question whatever.

Mr. FLEMING: So that if any member wants to refer back, it will be open for further discussion?

The CHAIRMAN: If you come to any clause about which there is any doubt it will be allowed to stand. We are simply making the best of the situation in which we find ourselves.

Shall clause 2 carry?

Carried.

Shall clause 3 carry?

Carried.

Mr. MACDONNELL: How in the world can we pass clause 2?

The CHAIRMAN: I called clause 2 and suggested that it should carry, subject to any additions which might become necessary as you study the future sections.

Mr. MACDONNELL: For instance, is there any change in the situation with regard to superintendents?

The CHAIRMAN: Those changes were all indicated by Mr. MacDonald in his submission. But I rather suggest that a study of this section now would not be of very much use to the committee. It relates to subsequent sections, you see, and that is why I suggested that it should only be carried conditionally.

Clause 3 is purely formal. We had better deal with subsections. Shall subsection 1 carry?

Carried.

Shall subsection 2 carry?

Carried.

Shall subsection 3 carry? Perhaps we should take a little time on that.

Mr. LESAGE: Yes, the Canadian Bankers' Association objected to that.

The CHAIRMAN: I think it will be helpful, Mr. MacDonald, if you would outline the objections which have been made. I do not think we should hurry consideration of this subsection 3.

The WITNESS: First, is was suggested by the Canadian Bar Association, this is a general observation on section 3, that the Superintendent be required to investigate the conduct of debtors before bankruptcy. That was not adopted by the Senate.

Mr. LESAGE: That is right. What are the considerations?

The CHAIRMAN: What do you do in that regard?

The WITNESS: Mr. Chairman, we have here now copies of the compendium to which I referred, and also copies of the other list showing the differences between the two bills.

Mr. LESAGE: Could you tell me what the considerations are in the examination of a debtor before he is put into bankruptcy? I understand that that is covered by other clauses of the Bill, but it is up to the creditors, especially to the inspectors. They decide the question anyway. That is in operation at the present time.

The WITNESS: No, not at the present time.

Mr. LESAGE: That would be taking away from the creditors some of the powers they must have.

The WITNESS: It will be giving to the superintendent an entirely new function as far as this Bill is concerned.

Mr. LESAGE: I do not see how it could work.

By the Chairman:

Q. What is your policy, Mr. MacDonald, in regard to the qualifications that are required of a trustee to have a licence granted to him?—A. It would depend somewhat on the district in which he finds himself or in which we find him; the other persons who are offering for such an appointment, and such factors as that. We try to get as much experience in business as possible. We look for experience of an accounting nature. And there are certain physical things required, such as office accommodation, safe accommodation, minor matters like that.

Q. How many trustees do you license in different localities? What is your practice in that regard?—A. The practice in that regard has varied from time to time. Up until a few years ago, one or two years, the policy tended in the direction of restricting the appointment of trustees as much as possible. Followng that there was some change in the policy and it tended in the other direction, in the direction of saying, as long as a trustee has the necessary qualifications the fact that there is not a great deal of business in his district is his concern. During the last few months we have tended more to the first mentioned policy of having considerable regard to the amount of business to be anticipated in a district from the experience in connection with past cases and the number of trustees already located there. In mentioning the qualifications of a trustee I omitted some obvious ones like financial responsibility and so on.

By Mr. Macdonnell:

Q. Can you be more specific? It seems to me the qualifications of a trustee are one of the most important things in this whole Bill.—A. Oh yes.

Q. And when you refer to financial responsibility, do you have in mind there that he must not be a bankrupt himself?—A. Yes, that he is not a bankrupt himself. A statement is required of his assets and liabilities to see that he is not in hard circumstances, and he is required to give a certain number of references.

Q. Did you say anything as to his professional qualifications? Did I miss that? I did not carry that in my mind.—A. I said we looked for experience, sir, in a business way; and we look for experience in or knowledge along the lines of accounting.

Q. When you say you look for it, could you be more specific? I think that may be of great importance.—A. The weight that is given to that depends considerably on the district concerned and the number of people who are looking for licences in that district. I might perhaps put it this way: If it is a district where there is no trustee and we think it is desirable that there should be a trustee, then not so much insistence would be put upon those qualifications as in a district where the number of trustees is up to about the line that we think is the saturation point.

Mr. STEWART: How do you pass upon his qualifications as an accountant? Do you take somebody's word for it; do you make enquiries; do you take the man's own word for it; how do you do it?

The WITNESS: In a great number of cases he will be a chartered or a public accountant, in other cases we inquire into his—well, he makes a statement as to what his experience and what his qualifications are in that regard, and then that is tested to a certain extent in the matter of his references

Mr. BELZILE: He also has to furnish a general bond?

The WITNESS: He has to furnish a general bond and a special one in respect of each estate.

Mr. SMITH (*Moose Mountain*): How much is the general bond?

The WITNESS: The general bond differs depending upon a number of things; for instance, depending upon the population of the district and so on, in an endeavour to bring it into line with the amount of business that he may have to handle. It has just been pointed out to me, Mr. Chairman, that in the Province of Quebec the number of trustees who would be public accountants of one type or another would be about 90 per cent.

Mr. STEWART: In a city like Winnipeg which has a population of over 600,000 how would you decide when the saturation point had been reached?

The WITNESS: I believe, sir, that in recent months there was one application from the City of Winnipeg. I am speaking from memory now and I am subject to correction, but I think I am correct. We have looked at the list of trustees for Winnipeg and looked at the number of estates that they have handled over the past year or so, and my impression is that we came to the conclusion that having regard to those factors there was not a present need for any additional trustees.

The CHAIRMAN: Do I take it, Mr. MacDonald, from your evidence, that in regard to the appointment of new trustees you consider the present condition; that is, you check up to find out how adequately the area is already served. If it is well served you would put your qualifications high enough that you would be improving the service if you granted a new licence, whereas if you felt that it was not adequately served you would be inclined to receive applications from persons having lesser qualifications.

The WITNESS: I think that is a reasonable statement of the facts.

Mr. STEWART: Have you had any trouble with trustees within the last two years?

The WITNESS: Oh, over the last two years there have been a small number of investigations. I would say that the number would not be more than five during that time and none of those investigations have resulted in the removal of any trustee.

The CHAIRMAN: Are there any further question on subsection 3?

Mr. ASHBOURNE: Mr. Chairman, may I ask if there have been any applications for licences as trustees from the tenth province, Newfoundland; and, if so, how many?

The WITNESS: There have been no applications for licences from the tenth province of Newfoundland, sir. The amount of prospective business from that province has not been such as to bring it yet particularly to my attention; and the Act is among those still to be proclaimed in force there.

Mr. ASHBOURNE: Thank you.

The CHAIRMAN: Shall subsection 3 carry?
Carried.

Subsections 4, 5, 6, 7, 8 and 9 are of a character that they can perhaps pass. They permit the superintendent to intervene. Mr. MacDonald, are there any powers or any functions which you think would be helpful for you to have that the bill does not give you in these subsections?

The WITNESS: No, not at the present time.

The CHAIRMAN: Are there any questions on these subsections?

By Mr. Belzile:

Q. I understand that the practice provided for in this section has been followed even before this, although it was not in the old law?—A. Some of them, yes.

The CHAIRMAN: Some of them are new.

By Mr. Belzile:

Q. But they were in practice by the superintendent before the passing of this— —A. (*g*) is a very good example of that:

(*g*) Examine trustees' accounts of receipts and disbursements and final statements.

This is a new paragraph creating express authority for the examination of trustees' statements, to conform with what is in effect.

By Mr. Macdonnell:

Q. But is it not an instruction to the superintendent?

The CHAIRMAN: The witness is referring back to subsection 3 (*g*).

Mr. MACDONNELL: Should not that read "the superintendent?"

The CHAIRMAN: Yes. It is mandatory.

The WITNESS: Yes. "Authority" is, perhaps, not the exact term for it. It could have read better. This is a new paragraph creating express obligation.

By Mr. Macdonnell:

Q. Does not that raise the question? Is it your practice now under (*g*) to examine all trustee accounts?—A. Yes, sir.

Q. So that just fits your practice, does it not?—A. Yes, sir.

The CHAIRMAN: Shall subsections four to ten carry?
Carried.

Clause 4, official receiver.

Mr. LAING: Did the provinces formerly constitute districts?

Mr. LESAGE: They are divided.

Mr. LAING: Some of them are divided?

Mr. LESAGE: Yes, in Quebec and Ontario.

Mr. FULFORD: Depending on the size of the province and the population.

The WITNESS: The only change in subsection 1 is the formal change in the first four words.

The CHAIRMAN: Shall clause 4 carry?

By Mr. Macdonnell:

Q. Are the official receivers in fact just intermediaries between the superintendent and the trustees? Isn't that what they are in fact?

Mr. LESAGE: They are something like the clerks of courts; they are in fact clerks of courts of bankruptcy.

The WITNESS: The official receiver is the man who receives an assignment. In the case of a petition by the creditors to put the debtor into bankruptcy, that is dealt with by the court proper, the judge or registrar; but in the case of an assignment, he goes to the official receiver and the official receiver takes the assignment and the official receiver conducts the examination of the debtor.

The CHAIRMAN: Are there any further questions on clause 4? Shall clause four carry?
Carried.

Now, clause 5.

By Mr. Stewart:

Q. On line 27, page 8, it reads:

(2) The Superintendent shall make an investigation into the character and qualifications of any applicant for licence...

How do you go about making that examination?—A. Are you referring to the word "character"?

Q. Yes.—A.—Well, in the first place, the candidate himself sends in certain reference names and we write to each of them. And in addition, one of them must include a local bank manager. And in addition to that we make certain independent inquiries; for instance, from a person who is, let us say, in a position to give us some information, such as the registrar or the official receiver or some other person in a public capacity, either connected or sometimes not connected with bankruptcy administration.

Q. There is no screening though?—A. There is no screening apart from that.

The CHAIRMAN: Shall clause 5 carry?
Carried.

Mr. LESAGE: I understand the clause myself, but I have received representation from trustees concerning the amount of the fee they have to pay.

The CHAIRMAN: You mean the amount of the bond which they are required to file.

Mr. LESAGE: No, not the bond, the fee. It varies with the population of the city or area where they practise.

The WITNESS: That is correct.

By Mr. Lesage:

Q. And in some of the larger cities they pay from $50 down to $10 according to the population—A. That $50 is the original.

Q. And it is renewed $25 to $5.00?—A. Yes.

Q. And some trustees who are in the larger cities contend that although they are more numerous, they have no more business than in smaller cities where there is only one, and that it is a discrimination against them. I am only telling you about this so that you may have an opportunity to study the matter.—A. Surely.

Mr. BENNETT: How much is the bond that the trustee has to put up?

Mr. LESAGE: It varies from $10,000 to $2,000 according to the population. Clause 5. Carried.

The CHAIRMAN: Clause 6 "Appointment of Trustee by creditors". Shall clause 6 carry?

Carried.

Clause 7 is purely formal. Does clause 7 carry?

Carried.

Clause 8 "Security to be furnished by trustee." As to this clause, the first suggestion of the Toronto Board of Trade was adopted. The second suggestion was not adopted.

Mr. BELZILE: Could we not carry this clause subject to the reservation made in clause 2 because it relates to the old Act itself?

The CHAIRMAN: What is the wish of the committee? Shall clause 8 carry? Carried.

Shall clause 9 carry: "Trustee shall insure property"?

Mr. STEWART: In subsection 3 line 15:

> The trustee shall deposit in a chartered bank, in a separate trust account in the name of the estate to which they belong, all monies.....

There is nothing to stipulate when these deposits shall be made. Does the superintendent think it would be advisable that the wording should read: "he shall deposit as soon as may be." or words to that effect?

The CHAIRMAN: Or "forthwith"?

By Mr. Stewart:

Q. I think that the deposits should be placed in the bank on the day they are received, as far as possible.—A. I would very readily accede to that suggestion.

Mr. RILEY: But if it is only a small amount of, let us say, $3 to $5?

Mr. LESAGE: There is always the petty cash.

Mr. STEWART: I am not talking about pettey cash. I believe these monies should be deposited in the bank daily. I see no reason why it should not be done. Moreover, it is only good business practice.

Mr. LESAGE: But suppose it is only $3 or $5. and the trustee does not receive anything more for three or four weeks. He will not be doing that?

Mr. DUMAS: What would be the benefit?

Mr. STEWART: I maintain that it is good business practice and I think it would be of assistance to the superintendent in that he may have to check up afterwards. I believe it would help him to know that the money has been received and has been deposited. Moreover, should the bank not be open on a

given day, the money should be deposited upon the next banking day. I have come across occasions in my own experience where the money has not been deposited as quickly as it should have been. Allowance is made for petty cash funds and also for payment by cheque in the Act.

The CHAIRMAN: I would think that a trustee who has any volume of business at all would be making almost daily deposits in the ordinary course of his business, and that it would not be any great hardship upon him to require him to deposit forthwith.

Mr. DUMAS: This suggestion would make him deposit reasonably soon.

By Mr. Stewart:

Q. It is not a point I am stressing but merely one I raised, for the consideration of the committee.

The CHAIRMAN: What do you think?

The WITNESS: Well, I see no objection whatever to a word going in there which would enjoin upon the trustee a prompt compliance with the section and at the same time leave him with the reasonable flexibility that he should have. I should perhaps add, Mr. Stewart, that we have not up to date had any difficulty on that point. But I recognize that is not an answer. It is never too late for the difficulty to arise.

By Mr. Stewart:

Q. The horses are still in the stable.—A. Yes.

The CHAIRMAN: What is the wish of the committee?

Mr. STEWART: The phrase "as soon as may be" is used in another part of the Act. Perhaps that phrase would be appropriate here.

Mr. RILEY: The word "promptly" is sufficiently broad, is it not?

Mr. LAING: Should we not say that it must be done within a certain number of days after receipt, in order to be specific?

Mr. DUMAS: We might use the wording which is used in the Interpretation Act.

The CHAIRMAN: What do you think about it, Mr. Macdonnell? You have had considerable experience in these matters?

Mr. MACDONNELL: It seems to me that to put in rigid requirements would be awkward. You might have someone in the country who would not find it convenient to deposit daily. I would not change it.

The WITNESS: Too rigid a provision would invite contravention.

The CHAIRMAN: Shall clause 9 carry?

Carried.

Shall clause 10 carry? "Powers exercisable by trustee with permission of inspectors."?

By Mr. Macdonnell:

Q. I would like to ask the witness this question: In clause 10, subsection (*a*) you say:

> (*a*) sell or otherwise dispose of for such price or other consideration as the inspectors may approve all or any part of the property of the bankrupt, including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt, by tender, public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

Now "transfer the whole thereof". What is the difference? Why do you differentiate between transferring, itself? Have you got to transfer the whole thing? Do you mean: sell in parcels?

Mr. DUMAS: Could be!

The WITNESS: I think it is one of the cases where the draftsman has possibly gone beyond what was necessary in an effort to cover all the cases. As to the words "or otherwise dispose of", they were inserted in the Senate after the bill was introduced.

Mr. MACDONNELL: Does it relate back to "otherwise dispose of"?

Mr. LESAGE: Dispose of for such price and transfer. That is what I believe. There are two main sentences: First, sell or otherwise dispose of for such price, such and such a thing; and then transfer.

Mr. MACDONNELL: I still do not quite see the point. You say he may sell or otherwise for such a price or other consideration as the inspectors may approve all or any part of the property of the bankrupt, including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt, by tender, public auction or private contract. . . ." That seems to be very clear down to there. Then you go on and say:

> . . . with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

By Mr. Lesage:

Q. That is what I do not understand. I do not see why it is there.—A. At first blush there seems to be a redundancy there. I believe that the words: "to transfer the whole thereof to any person or company" were probably intended to round-out the idea of a sale. They probably go no further than the word "sell" itself implies. As to "sell the same in parcels," I am afraid I cannot give you a good reason for these words, right at the moment.

Mr. BELZILE: Suppose a man has ten houses. Could he not proceed to sell each one separately?

The CHAIRMAN: Yes. He is given that power in the first line.

Mr. DUMAS: We are only quibbling about the use of the word "transfer" and the word "sell".

Mr. MACDONNELL: Yes, and isn't that just what lawyers will do in court?

Mr. DUMAS: I do not know enough about lawyers to answer that one.

Mr. LESAGE: I should say from the word "with" on there is no use for it.

Mr. MACDONNELL: I quite agree with you.

Mr. LESAGE: When somebody has the right to sell something it includes the right to transfer the property.

Mr. BELZILE: It needs to.

Mr. LESAGE: We do not have to say it then.

Mr. BELZILE: I mean that what it means here should be read that way: with power to transfer the whole thereof or to sell the same in parcels.

Mr. LESAGE: Why, that is what you have there. It does not mean a thing.

Mr. MACDONNELL: I would say: "power to transfer the whole or any part thereof."

Mr. RILEY: You should put in "to sell or to transfer".

Mr. DUMAS: The first part of your transaction is in the first two lines.

Mr. LESAGE: Would you mind looking at that, Mr. Macdonnell and see what you think of our considerations?

The CHAIRMAN: It is the opinion of the committee that the words "with power to transfer the whole thereof to any person or company or to sell the same in parcels" are redundant, and should come out.

By Mr. Richard (Gloucester):

Q. There may be a question of the transfer of land and the registration which might come in.—A. I would not be quite satisfied to say that the words "with power to transfer" come out. I agree that to sell same in parcels seems to be completely redundant; but as to the other, I would prefer to take Mr. Macdonnell's suggestion that it should read: "with power to transfer the whole or any part thereof to any person or company". It appears to me there may be a little difference in meaning. A trustee might go ahead and complete a sale in the sense that the contract is made and the money ready to be paid over; but when the time came for execution of the formal document, the words might have some significance there, if the question should arise, whether the trustee was the proper person to execute the document.

The CHAIRMAN: Will you take that up with the draftsman and find out about it?

Mr. BELZILE: Could it not be interpreted: with power to transfer in the name and acting for the brankrupt? Couldn't it be interpreted that way?

The WITNESS: I am inclined to think that is the answer.

Mr. BELZILE: I think it is.

By Mr. Richard (Gloucester):

Q. What about the last words of (g)? Do "creditors" mean and include preferred creditors?—A. You mean in paragraph (*g*)? A creditor there would not include secured creditor.

Mr. LESAGE: It is not in the same condition that we find in 2 (*h*).

By Mr. Stewart:

Q. 2 (*h*) means a person having a claim, preferred, secured, or unsecured, provable as a claim under this Act. It is at the top of page 2.—A. That deserves looking into. Those words were added after the bill was introduced. Those words you speak about were added in the Senate. It may be that there is an unforeseen consequence.

Mr. LESAGE: If I am a trustee and I borrow money or property for the administration of the estate, I cannot give a mortgage when there is already one existing because the man having the first mortgage is the one who is entitled.

Mr. RICHARD (*Gloucester*): Is there any chance of the preferred creditor losing his status?

Mr. BELZILE: No. He has consideration.

Mr. RICHARD (*Gloucester*): But if you include "preferred", he takes second place.

The CHAIRMAN: That money borrowed has to be discharged or repaid out of the property of the bankrupt and the holdings of a secured creditor cannot be considered as part of the property of the bankrupt. The mortgagee of a parcel of real estate, to the extent that his mortgage is valid, that part of the real estate is not the property of the bankrupt.

Mr. RICHARD (*Gloucester*): It is only an equity which may be sold.

The CHAIRMAN: That is right.

By Mr. Macdonnell:

Q. It says:

. . . carry on the business of the bankrupt, . . .

I am reading from paragraph (*c*).—A. May I just check this point?

By Mr. Dumas:

Q. While you are doing that, might I say that I think the point is covered by clause 11, which Mr. Lesage raised; part of his point, I think.

The WITNESS: This paragraph (*g*) of subsection (1) of clause 10 goes back to section 51 subsection (1) of the present Act; and in the Act there is a definition of creditor.

By Mr. Macdonnell:

Q. Secured or unsecured?—A. "Creditor" was not defined in the same way in the old Act; but the substantive provision was the same: an interim receiver or trustee or custodian may incur obligations, etc., etc., and the money so borrowed shall be discharged or repaid to the lender or to the trustee and so forth out of the assets of the debtor in priority to the claims of the creditors. And creditor in the present Act is defined in an inclusive way so it would apparently include a secured creditor.

Mr. MACDONNELL: I wonder if the chairman is right in what he said a few minutes ago, as to the priority which you get under (*g*)? Under (*c*) there is a provision which I think is very important. It reads:

(*c*) carry on the business of the bankrupt, so far as may be necessary for the beneficial administration of the estate.

How is he going to get money to do it? I was going to ask: does not (*g*) give him the right to raise money in priority to everybody, just as a receiver and a manager?

The CHAIRMAN: Not in priority to secured creditors. If a man is a secured creditor, then to the extent he is secured, that is not an asset of the bankrupt at all.

Mr. MACDONNELL: In (*g*) it says:

. . . . .such obligations and money borrowed to be discharged or repaid with interest out of the property of the bankrupt in priority to the claims of the creditors;

The CHAIRMAN: No. It is to be paid out of the property of the bankrupt.

Mr. MACDONNELL: Now, a creditor under 2 (*h*) means "a person having a claim preferred, secured or unsecured, provable as a claim under this Act;"

The WITNESS: I am inclined to think that by reason of the change made in the bill since it was introduced there may be an unforeseen consequence which might give rise to a little argument.

By Mr. Macdonnell:

Q. Does the old definition of creditor include "unsecured"?—A. Creditor means, in the case of a corporation, it shall include bondholder, debenture holder, shareholder and member. You may say that creditor was not defined.

Mr. BENNETT: In the old Act it said mortgage or pledge, which was altogether different. Mortgage or pledge any part of the property.

Mr. LESAGE: It is embarrassing. Would you look at it?

The WITNESS: I will be glad to.

Mr. MACDONNELL: How is a fellow going to carry on unless he can raise money?

Mr. LESAGE: He usually sells some of the things, part of the assets, the movable property.

The CHAIRMAN: He should not be allowed to encroach upon a secured creditor.

Mr. MACDONNELL: A receiver raises money right at the top of everybody, as you know.

The CHAIRMAN: But a receiver is appointed. He is, I think, appointed for a different purpose.

Mr. MACDONNELL: Yet it may be greatly in the interest of the creditors if the business be carried on because it may be their only chance. The receiver raises money in priority to the first mortgage, but he is put in there by the secured creditors. Nevertheless he raises money in priority to everybody.

The CHAIRMAN: He is appointed to carry on the business, not to wind up the estate.

Mr. LESAGE: He is not appointed by the secured creditors. They have not a word to say about the administration of the estate. That is different too. It seems that he is required here to inquire into the circumstances.

The CHAIRMAN: But it is only to be paid out of the property of the bankrupt, and to the extent the secured creditor encroaches upon the title of the bankrupt it is not the property of the bankrupt.

Mr. LESAGE: Suppose I have a mortgage on your property and you go bankrupt. The property on which I have the mortgage is liable to the claim under my mortgage up to the full value realizable on the property.

The CHAIRMAN: Well, if you have a mortgage, it would encroach on the title of the bankrupt.

Mr. LESAGE: Oh well, it would not apply in Quebec because according to our civil law there is no such thing as a mortgage.

Mr. BELZILE: That is right; we have no mortgages under our civil law in Quebec. We have "hypothecs".

The CHAIRMAN: I think the section would stand very careful scrutiny and study by the law officers.

Clause 11, the borrowing powers with permission of court. There again the property of the debtor comes in, but I wonder if there should not be a definition in clause 2 of "property of the debtor". Would that help us?

Mr. LESAGE: No, it is a matter for the courts.

The WITNESS: The property of the debtor that is subject to administration is referred to on page 36. You will find the answer to your question there.

Mr. LESAGE: Yes, it defines the property of a bankrupt divisible amongst his creditors by saying what it shall not comprise so and so; and then in subsections (*c*) and (*d*) it defines what it shall be made up of.

The CHAIRMAN: Yes. That should be handled pretty carefully.

The WITNESS: The property of the debtor is, generally speaking, all of his property, in section 39.

Mr. LESAGE: In other words, it refers to tangible things.

The WITNESS: No, sir. It says: "The property of a bankrupt divisible among his creditors shall not comprise"—and then follow two classes one of which is trusts; and the other is: any property that as against the bankrupt is exempt from execution or seizure under the laws of the province within which the property is situated, and within which the bankrupt resides.

The CHAIRMAN: I would think the only way you would be able to meet the issue there would be by writing in a definition of "property of the debtor".

Mr. LESAGE: I do not think you are right in saying that money could be raised in priority of mortgages. It might be possible to raise money actually on a business, but I do not think it could be done in that way.

The CHAIRMAN: You would have to have the consent, if the Act prohibited it; you would have to consult the creditors and get their consent; they could do that.

Mr. BEAUDRY: You take a lot of these businesses that are carried on from day to day, a thing of that kind could happen quite often; but you would have to get the consent of the creditor or creditors who have the right to the money.

Mr. BENNETT: I would think that section would be *ultra vires* on account of provincial jurisdiction over mortgages. I doubt very much if we could here at Ottawa pass any legislation which would affect the validity of a first mortgage on the property of a bankrupt. I know that if I loaned money on the security of a mortgage I would not want to lose it, or lose my right with respect to recovery by having some preferred creditor in a case of bankruptcy rated ahead of my claim under my mortgage.

Mr. MACDONNELL: Isn't that really a matter of policy?

Mr. BENNETT: I think it is a matter of provincial jurisdiction.

The CHAIRMAN: Clauses 10 and 11 will stand for very careful scrutiny.

Clause 12:

Mr. MACNAUGHTON: I do not know whether this is the right time but I have been asked to say a few words in this particular connection. Would this be the right place for me to take the matter up?

The CHAIRMAN: Yes.

Mr. MACNAUGHTON: This is on clause 12. I have been asked to bring this point up by the National Committee of the Canadian Commercial Travellers' Association which is comprised of the Association of Commercial Travellers of Canada, the Dominion Commercial Travellers' Association, the Ontario Commercial Travellers' Association, the Maritime Commercial Travellers' Association, the Northwest Commercial Travellers' Association and one or two others. I should tell the committee that they submitted a brief to the Senate, and that can be found on page 135 of the third volume of the report of the proceedings before he Senate committee. To come to the point, Mr. Chairman, the reason I have taken the trouble to speak at this time on this clause is that this association is representative of approximately 40,000 commercial travellers throughout Canada. Now, Mr. Chairman, the difficulty which faces people of this kind—not only commercial travellers but workers, labourers, wage earners, and people of that general classification, they are more specifically set out in clause 75—is that their claims for salaries, commissions, wages or allowances have a priority to the extent of $500, and in filing their claims if the trustee after examination finds their claims are not to succeed then they are obliged to make an application to a court. Now, Mr. Chairman, in the case for example of commercial travellers, or even of clerks, wage earners or labourers, whether they are paid by salary or by way of commission, the only recourse they have is to take an action in the courts in an effort to recover if the trustee does not allow their claim, and in many cases they cannot afford financially to do this. As a matter of fact in not a few instances they would have absolutely no money with which to pay the costs of the court should their claim not succeed. Now, they have come to the conclusion—those people on whose behalf I am speaking—that it would be advisable, depending upon the view of the committee, to have the Superintendent of Bankruptcy, for example, issue a directive to all trustees that any preferred

creditor such as a commercial traveller, and these others whom I have enumerated, whose claim is disallowed in full or in part by the trustee for a particular bankrupt, by the trustee who may be appointed by the creditors or by the banks—where that claim is disallowed, that such a person should be allowed to make an application direct to the trustee for a rehearing. As the Act stands now it is going to cost him maybe $300 in expenses because he has to make an application to a court. We submit that the superintendent should be given the right to present any claim he may have before the trustee again and that he should be entitled to a rehearing. If we could follow a direct and simple procedure of that kind it would save considerable cost to this class of person.

The CHAIRMAN: I think that is a very reasonable suggestion. I do not know how far the superintendent will go along with it in the issue of such a directive, but I do think that it is something which we might try for two or three years and then if it does not work out satisfactorily the Act could then be reamended to make it mandatory. I think the servant or workman or agent and so on who is given a preferred position on account of wages should certainly be entitled to at least a preferred hearing if his claim is disallowed in whole or in part.

Mr. BEAUDRY: I agree with that suggestion, Mr. Chairman.

The CHAIRMAN: I think it should apply right across the board to subsection (*d*) of clause 95: Wages, salaries, commissions or compensation of any clerk, servant, travelling salesman, labourer or workman for services rendered—and so on.

Mr. LESAGE: But he is a preferred creditor now.

The CHAIRMAN: Any of these people here who are dependent on their wages for a living should certainly be entitled to a hearing by the trustee.

Mr. LESAGE: I do not exactly see why you should make an exception there. After all, the debtor is in bankruptcy, and the travelling salesman, the worker, the agent and so on will have to take action in court. There will be expense, of course; but would not anyone else contend that their rights also should be respected? The usual way, the way we do it in a democratic country is by going to the courts.

Mr BEAUDRY: But this is not a court.

Mr. STEWART: That hardly meets the situation.

The CHAIRMAN: The whole thing turns on this: Are we casting any unfair burden on the trustee to ask the trustee to appoint a day on which personally to hear the submissions on the part of any wage earner whose claim he has disallowed?

Mr. RILEY: Who has the right to say what the status of the claim is? Who is going to say whether the claim for wages is preferred or not?

Mr. LESAGE: He is supposed to prove his claim in detail to the trustee, or to the inspectors. The section says that if he is a preferred creditor he must file all the reasons in detail showing why he is a preferred creditor.

The CHAIRMAN: Quite true, but the trustee then comes along and makes his decision, an exparte decision without a hearing at all, do you see?

Mr. BEAUDRY: Then he has the right to go to the courts.

Mr. MACNAUGHTON: That is the whole point in this, Mr. Chairman; if you are a workman and you have no money you cannot possibly take an action against a bankrupt in court because you have nothing on which to proceed, you cannot pay your costs.

Mr. LESAGE: If there is nothing in the estate he will not collect anyway and he will not want to go to the expense of appealing. There is no use in appealing from a decision if there is not a cent there, but if there is anything there and he wants to he has the right to appeal to the courts.

Mr. MACNAUGHTON: What I am interested in particularly is the case of the ordinary person who is not able to go to the courts. He should have the right of a rehearing before the trustee with a view to establishing his claim.

The CHAIRMAN: I am simply looking for a simplified and direct mode of procedure, of relief on claims of this nature. You see, the trustee is put in this place, the way the Act stands now; he gets these preferred claims for wages, he calls in his inspectors, and if there is any doubt about it he calls in the bankrupt. The bankrupt says, "I don't owe this". The trustee simply disallows it. And then all these wage earners must appeal to the courts if they are going to get any redress. Why would it not be much more direct to set up the machinery for the inexpensive and immediate disposal of these matters?

Mr. ISNOR: This matter is covered in clause 94. I think if you were to take clause 94 and write three words into it you would have a solution of Mr. Macnaughton's problem. I will read the section as it would then appear:

> 94 (1) The trustee shall examine every proof and the grounds of the claim, and may require further evidence and personal attendance in support of it.

Mr. LESAGE: "May".

Mr. ISNOR: I understand "may" has the effect of requiring a thing to be done, in law.

The CHAIRMAN: Not when in the same sentence the word "shall" appears.

Mr. ISNOR: Well, I am not a lawyer, but I thought you could enforce that —just say the trustee shall examine every proof, and so on; and then "may require further evidence and personal attendance in support of it."

Mr. BEAUDRY: With all due respect to these lawyers, I object.

The CHAIRMAN: Shall we carry clause 12, and make a note at clause 94 of this matter, whatever should go in; we will put it in under 94. I think that is the logical place for it. Mr. Macnaughton, have you had a look at 94?

Mr. MACNAUGHTON: I haven't studied clause 94 yet. No.

The CHAIRMAN: I would think that any statutory change should come in clause 94.

Mr. MACNAUGHTON: I am merely trying to protect persons who have found and who find themselves honestly without any funds and as a result without ability to appeal to a court.

Mr. BEAUDRY: I do not want any misunderstanding of my attitude on this matter. I am in full agreement with you.

The CHAIRMAN: If it is dealt with under clause 94 it will refer to all preferred creditors and your position is improved.

Mr. BEAUDRY: Definitely.

The CHAIRMAN: Shall clause 12 carry?
Carried.

The CHAIRMAN: Clause 13—

Mr. BEAUDRY: Mr. Chairman, I have to leave the committee at the moment. I am particularly interested in clause 52 and should it be reached before I am able to return you would oblige me by permitting me to reopen it.

The CHAIRMAN: I will make a note of that, Mr. Beaudry. Thank you.
Clause 13?
Carried.

Clause 14?
Carried.

Clause 15?

Carried.

Clause 16: Perhaps this clause should have a bit of discussion. This is practically a new section inserted on the recommendation of the Toronto Board of Trade and Judge Urquhart.

Mr. BENNETT: I wonder if Mr. MacDonald would give us a practical instance of what would happen under clause 16.

The WITNESS: Well, a situation like this could develop; in fact it did develop just a few weeks ago. In the administration of an estate there are certain book debts that the trustee thought were worthless and not worth following up, and most of the creditors, in fact the majority of the creditors and the inspectors agreed with him, that it would be good money thrown after bad to follow it up. One of the creditors alone disagreed very strongly with that. And that is a case where that creditor could secure the right of taking action in his own name (presently in the name of the trustee but with the same effect) and he would benefit in the amount received up to the extent of his claim.

Mr LESAGE: For the whole of his claim?

The WITNESS: He has the right to all that he recovers, except the monies over and above his claim.

Mr. LESAGE: To the whole of his claim.

The WITNESS: Yes.

Mr. LESAGE: If he has a claim of $300 and he goes out and, let us say, collects $500, he could keep the $300 and the trustee or other creditors would get the benefit of the $200.

The WITNESS: Yes, and when you consider it, that is a fair result, because he has made something out of what the other creditors thought was of no value.

Mr. MACDONNELL: What would be the situation where more than one of the creditors decided to try to follow up and collect these book debts? Would they share equally?

The WITNESS: I think that is the present effect. I had not considered this point because it had not arisen in my experience. I do not know whether it has arisen. But under the ordinary rule of interpretation the singular could be construed to include the plural; and if that interpretation is right it might be that both creditors would benefit. I am inclined to think, just offhand, that two creditors could take advantage of that as well as one. How they rate among themselves—

Mr. LESAGE: Well, suppose the claims were not in the same amount; suppose they totalled $1,000 and that one man had a claim for $400 and the other had a claim for $600; on what basis would distribution be made?

The CHAIRMAN: All right, pro rate it.

Mr. LESAGE: That is a good suggestion, but it does not say anything here about having it pro rated. It is not provided for.

Mr. RILEY: That would be covered by the definition with respect to creditor.

Mr. LESAGE: Under the general rules of interpretation, I suppose they would apply; the singular includes the plural.

The WITNESS: I should think the context would permit it. And by way of example, I would think that the result would be this: you have a creditor for $500 and you have a creditor for $300, and they go out jointly and recover let us say $1,000, they would both get—

Mr. LESAGE: That is easy, they both recover $500.

The WITNESS: The balance of $200 goes to the trustee.

Mr. LESAGE: Well, that is fair.

Mr. MACDONNELL: Is not that where the judge comes in: upon such other terms and conditions as the court may direct

Mr. LESAGE: Absolutely, that is right.

The CHAIRMAN: Shall clause 16 carry?

Carried.

Clause 17, remuneration of trustee.

Mr. MACDONNELL: I am not sure what subsection (2) means: may retain "a sum not to exceed 7½ per cent of the amount remaining out of the realization of the property after the claims of the secured creditors have been paid or satisfied." Might that not be nothing?

The WITNESS: Yes.

Mr. MACDONNELL: Why does he have to work for the secured creditors for nothing?

Mr. LESAGE: He is not working for the secured creditors.

Mr. MACDONNELL: Oh, I see what you mean. It is unfortunate.

Mr. LESAGE: I suppose the creditors or the bankrupt himself would have to look after the trustee.

Mr. BENNETT: He would not be allowed to collect or charge any more than 7½ per cent.

Mr. STEWART: Is that not taken care of under section 95 (*b*)?

Mr. LESAGE: That is the fixed amount of his remuneration, but it does not say that he shall be paid by the preferred creditors. This is after they have been taken care of. If there is anything left he can take up to 7½ per cent, but only if there is something there for him to take.

Mr. RILEY: And there may be cases where he is left with nothing.

Mr. FULFORD: He has to take a chance on what he makes.

Mr. MACDONNELL: What is the factual answer? The preferred creditors would have to pay him themselves, would they not?

The WITNESS: I am sorry, my attention at the moment was on another point. Could I have your question over again?

The CHAIRMAN: The question is that the trustee under subsection 2 of clause 17 may find himself without remuneration, and Mr. Macdonnell asked what the practical answer to that is.

The WITNESS: Well, the practical answer, in part, is that the trustee may sometimes, to put it colloquially, take a licking. That is sometimes what does happen.

The CHAIRMAN: Before you leave that, have you had any representations from the trustees; do they object to this? Have they made any recommendations on this clause 17? They are the interested parties, and surely if there is anything wrong with it we would have heard from them.

The WITNESS: I have had one representation on clause 17, but it relates to a different point. There has been no representation, as I remember, on this particular aspect of it. The other part of the answer would be that at the present time the trustee voluntarily takes on an estate, and before doing so he could consider that aspect of the estate.

Mr. MACDONNELL: I suppose he could make a private deal.

Mr. LESAGE: No, he could not. What usually happens is this: suppose a person goes to a trustee and makes an assignment the trustee looks at the assets

and if he feels that he could not realize enough on the assets to pay him for his costs he will send him to a lawyer. But it sometimes does happen that he doesn't get a thing.

Mr. QUELCH: What happens if no trustee will take it?

Mr. LESAGE: That is provided for in the Act.

The WITNESS: No. If no trustee will touch it the debtor goes unbankrupt.

The CHAIRMAN: Mr. Lesage, I have to leave for a few minutes, will you take the chair, please?

Mr. Lesage, the vice chairman, assumed the chair.

The VICE CHAIRMAN: Mr. Riley, you had a question.

By Mr. Riley:

Q. Well, Mr. Chairman, what I asked was this: supposing the remuneration of the trustee was not fixed at the first meeting and supposing the trustee could not get the creditors together for a second meeting—the trustee steps out of control then?—A. You mean, supposing at the first meeting no fee is fixed?

Q. Yes.—A. And the trustees cannot get the creditors to take any further action?

Q. Yes.—A. Well, the answer to that is that he would be entitled to put $7\frac{1}{2}$ per cent in his account and it would be passed by the court.

Q. And that would be after the claims had been settled according to the proposal?—A. Yes, and then we get back to the predicament that we considered a moment ago.

Q. Yes, what happens then?—A. What happens?

Q. Isn't this what happens; the trustee looks over the assets, sizes the picture up, and decides whether or not he wants to act?—A. Yes.

Q. And if he decides to act then it is his responsibility and his risk?—A. Exactly, and they may go further and say to the bankrupt or to the insolvent person: it does not appear that there will be enough assets to give me my remuneration. Can you make any private arrangement with me to take care of my fees, either by having some of your friends do that for you, or by undertaking to make payments to me out of your future earnings? And if the insolvent person can satisfy the trustee that he will get something, or if the trustee is willing to absorb it in his business, then the case is handled. But if it comes to an absolute impasse, the man does not become bankrupt in the technical sense.

By Mr. Belzile:

Q. There may be a case where there is a secured creditor, and there the creditor will prosecute according to law and get his little amount out of the realization of the assets.—A. Yes.

Q. Somebody may have a claim which is secured or preferred, and then he sues his debtor for the whole thing.

By the Vice Chairman:

Q. Does clause 17 carry?

Carried.

Does clause 18 carry? There is a new subsection here. Could you give us a practical example, Mr. MacDonald?—A. Well, it might cover something that was of some value to the debtor but which did not have any money value at the present time to the trustee.

By Mr. Belzile:

Q. Such as family pictures?—A. Not that. I think it would have a little more practical effect than family pictures. I am trying to think of something now because it is a new section. You might have the remaining part of a lease, perhaps, which turned out to have no commercial value but which was of some use to the debtor, if he was going to continue in business. Then again, you might have some old fixtures for which you could not get anything on the market but which might be worth something to the debtor.

By Mr. Isnor:

Q. Or you might have a trademark which nobody would require except the debtor and he might find it valuable in future use.—A. Yes.

By the Vice Chairman:

Q. Does clause 18 carry?

Carried.

Does clause 19 carry? There was no obligation on the trustee to obtain a discharge before, but he always did?—A. Yes.

Q. It was in his own interests?—A. And we press him, of course, to do so.

Q. I know that. Does clause 19 carry?

By Mr. MacDonnell:

Q. With regard to subsection 2:

> (2) the court may discharge a trustee with respect to any estate upon full administration thereof or, for sufficient cause, before full administration.

Would that discharge cover a discharge for some kind of misfeasance?—A. It is not so intended.

Q. I did not think so.—A. It is intended to meet a case where some matter of realization is so far in the future that the trustee does not want to be continued.

Q. And you deliberately leave the reason at large, and you just say "for sufficient cause"?

The VICE CHAIRMAN: Yes. It is up to the court.

Does clause 19 carry?

Carried.

Does clause 20 carry? "Acts of bankruptcy"?

Mr. MACDONNELL: I did not notice how long this is. Can we look at the second part of 19 just for a moment?

The VICE CHAIRMAN: Yes.

Mr. MACDONNELL: You may go ahead and I will come back to it if I want to.

The VICE CHAIRMAN: No, it is quite all right.

By Mr. MacDonnell:

Q. I take it that subsection 10 just means sort of formal acts which are still to be done after the discharge. Is that what it means?—A. It might, yes. I think that it goes further than that. This is an instance, an idea of it applying: let us suppose that a dividend, for some reason or other, does not reach the creditor who is entitled to it. Let us say a $50 cheque is issued as a dividend to a creditor, but through some mistake or other it is not cashed. Anyway, he does not get it and the money is paid to the Receiver General of Canada. Until proper proof can be made through the trustee, the Receiver General is the only custodian of the money. I think it could be paid out to a reappointed trustee, who would be the authoritative person to deal with the Receiver General rather than somebody he did not know.

Q. Could you give us an illustration of No. 11?—A. Yes, sir. After the trustee has been discharged, let us say that an undiscovered asset turns up. It might turn out that he had a few shares of stock tucked away somewhere and that they only came to light; or he had a mortgage on property, or it might be that it had been discovered but had been overlooked by a trustee, and he proceeded and got his discharge. Then a trustee could be reappointed to realize on it.

The VICE CHAIRMAN: Does clause 19 carry?
Carried.

Now, with respect to clause 20, (a), (b), (c) (d) and (e) there is no change; and in (f) (g) and (h) there is no material change. Paragraph (i) is new but I think it is quite clear.

The WITNESS: The purpose of (i) is to tie in with the new part.

By Mr. Belzile:

Q. The new provision?—A. Yes.

The VICE CHAIRMAN: Does clause 20 carry?
Carried.

Does clause 21 carry?

Mr. BELZILE: The only change in there is the $1,000.

The VICE CHAIRMAN: It is $1,000 instead of $500. That is one point which Mr. MacDonald explained this morning. Was this increase in the amount proposed by any organization?

Mr. ISNOR: Yes, by the Canadian Credit Men's Association.

By Mr. Stewart:

Q. What is the amount in the United States, Mr. MacDonald?—A. I cannot give it to you offhand, but we can get that information very quickly.

The VICE CHAIRMAN: Clause 21, apart from the change from $500 to $1,000, is only a redrafting for the purpose of simplification and clarity.

The WITNESS: That is largely the case, substantially. I am looking at page 25, when I say that.

By the Vice Chairman:

Q. Yes.—A. There is a little difference in subsection 9 because we have dropped the description of custodian.

Q. Yes.—A. May I reply to Mr. Stewart's question: the last figure that we have right here is $1,000 in the United States. But I notice—this book is 1938, and when I get back to the office I would wish to check for changes made in the meantime.

Mr. STEWART: All right.

(Mr. Cleaver resumed the chair)

The VICE CHAIRMAN: We are on clause 21 now, Mr. Chairman.

Mr. BELZILE: Clause 21 has to do with a matter of procedure, has it not?

By Mr. Macdonnell:

Q. Would you explain subsection 15 of clause 21?—A. It gives the creditor his choice of proceeding against any of the partners, any of the members of a partnership.

By the Chairman:

Q. Not including?—A. Suppose he is a creditor, let us say, to the extent of $1,000 against a partnership. Let us say there are three members of the partnership. He may proceed against any one of them or any two of them or he may proceed against the three of them just as he chooses.

Mr. MACDONNELL: I do not understand the significance of the phrase "any creditor whose claim is sufficient to entitle him to present a bankruptcy petition against all the partners...." There is some point which I have not got.

Mr. BELZILE: I believe the point arises in that in law you cannot prosecute a partnership as such. You have to prosecute the members of the partnership, as such, every partner. But you cannot prosecute against the partnership.

Mr. BENNETT: Oh yes you can, in Ontario.

Mr. BELZILE: Suppose there was a partnership of Lesage, Isnor and Belzile. If you want to prosecute that partnership, you have got to prosecute John Lesage, Gordon Isnor, and Gleason Belzile, doing business under the name of Lesage, Isnor and Belzile as partners.

The CHAIRMAN: It is hard to understand. In Ontario the liability of a partnership is joint and several. The wording here would indicate that, perhaps, in some parts of Canada it is not a joint and several liability.

Mr. LESAGE: It is not in Quebec; it is a personal liability. The liability is not limited by the amount.

Mr. BELZILE: By the amount of money that was put into the partnership.

Mr. MACDONNELL: I still do not understand the phrase that they are entitled.

Mr. ISNOR: Doesn't that mean that they claim $1,000; that the claim must amount to $1,000?

The WITNESS: According to the definition of a person on page 3, a person includes a partnership.

By Mr. Isnor:

Q. And the other principle is the same as that of an endorser. Be it one, two or three endorsers, they are liable.

Mr. MACDONNELL: Anyone who is entitled to present a bankruptcy petition can present it against one or two members of the firm. I do not think it is a very happy principle. I think it is stupid. I think the first part means: anyone who is entitled to present a bankruptcy petition can present it against one or more of the partners; they are all partners.

By Mr. Lesage:

Q. And any creditor whose claim is sufficient—I do not understand why there is a distinction, because anyone can present a bankruptcy petition if the insolvent person has over $1,000 debts, can he not?—A. This would clear the matter up. Because, in the absence of subsection 15, it might be argued that he had to proceed against all the partners.

The CHAIRMAN: If that is the intention, why should it not be worded in that way?

Mr. BELZILE: We have in Quebec what is known as the discussion of assets. When it comes to bankruptcy of one of the partners, you have got to discuss the assets with him; you have a right to have the assets separated, to have the assets of a bankrupt partner separated from the assets of the other partners who are not bankrupt. One of the partners might be entirely solvent. Why prosecute a man who is not solvent and then not even recover your costs?—A. It is the same wording in the present Act. It goes back to the 1919 Act, which I think

is the same: "any creditor whose debt is sufficient to entitle him to present a petition of bankruptcy against all the partners of a firm may present a petition against anyone or more partners of the firm."

By Mr. Lesage:

Q. Why limit it to the creditor who has a claim of $1,000? Why limit it to that creditor?—A. I see the point.

Q. That is what Mr. Macdonnell asked first.

Mr. BENNETT: I do not think that is the point of that section. It is the power to present a petition against one partner. That is all it means. It is not trying to limit it.

Mr. LESAGE: But it does limit it.

Mr. LAING: Let us suppose there were three partners. Then their liability would be only $333 each, in the case of a $1,000 claim.

Mr. MACDONNELL: I think it would read better if it said: "against a firm, may present a petition against any one of the partners."

Mr. LESAGE: Why limit it to the creditor whose claim is sufficient to entitle hime to present a bankruptcy petition?

Mr. BENNETT: It is just an ordinary claim in bankruptcy. If A and B owe me $1,000, I can proceed against A.

Mr. LESAGE: But suppose he owes you $500.00?

Mr. BENNETT: Then I could not do it.

Mr. LESAGE: Yes you could.

Mr. BENNETT: At the time the debt owing to the petitioning creditor or creditors amounts to $1,000.00, the man who petitions must have a debt of $1,000.

Mr. MACDONNELL: Clause 21-(1)-(a).

Mr. BENNETT: It is summarized. What they mean is the power to present a petition against one partner.

Mr. FULFORD: You think that one partner can pay and the others cannot, and you get after the fellow who can pay.

Mr. BENNETT: Can one partner not join his defaulting partners, Mr. MacDonald?

The CHAIRMAN: He would have the right to sue them.

By Mr. Bennett:

Q. If I petition against "A" in a partnership, can I say that I want "B" joined?—A. No, unless you are petitioning against—

Q. There is no power in the partner who is petitioned against to add another partner?—A. To add another partner, no.

Q. Well, that does not seem right.

Mr. MACDONNELL: You cannot deprive him of his rights between himself and his partners, though.

Mr. BENNETT: I might be dragged through bankruptcy proceedings just because somebody did not like me, while my partners could sit there free.

By Mr. Laing:

Q. Would it not be fair to join all the partners in a case like that?—A. I would like to think that out a bit more. The point is: if there are three partners, A, B, and C, and the petitioning creditor, let us say, likes C, he thinks he is a good fellow and he does not want to bring him into it. So he says: we will just go against A and B. And then A and B should be able to say: C was with us and should be joined in this bankruptcy.

By Mr. Bennett:

Q. That is right.—A. I suppose that A and B are subrogated to certain rights against C arising out of their partnership relationship.

The CHAIRMAN: How would this meet your question as to the wording, Mr. MacDonald?: "Any creditor whose claim against a partnership is sufficient to entitle him to present a bankruptcy petition may present a petition against any one or more partners of the firm without including the others."

By Mr. Macdonnell:

Q. I think that would be more intelligible.—A. That seems to be quite all right. I will go over it tomorrow at leisure and if I see anything wrong, I will bring it up.

The CHAIRMAN: Would you think of a subsection there to be added that in the event of bankruptcy proceedings being taken against one or two only of the partners of a firm, that an application might be made to the court to have them all added?

Mr. BENNETT: That would be my idea. The singular is used with creditor in the subsection; but in 21-I-(a) it says:

". . . . the petition creditor or creditors . . . ."

I believe subsection 15 should read "any creditor or creditors."

Mr. LAING: Any creditor means all creditors.

Mr. BENNETT: Any creditor may mean one creditor.

The CHAIRMAN: There is a difference in meaning. Suppose that two creditors team up to make the desired amount you see?

Mr. BENNETT: In 21-I-(a) you distinctly use the words: ". . . . petitioning creditor or creditors. . . ." That is what disturbs. You went past that technical objection in 16 the same way. This is a technical Act and I think you have got to be careful with it.

By Mr. Lesage:

Q. They do not become only one because of the words in clause 21-(15).—A. I think there is perhaps a special reason for using the words "creditor or creditors" in section 21 because, unless they were used in that way, I do not think it would be clear that creditors might combine to get a claim up to $1,000. I do not think that the use of creditor or creditors in that section imperils the application to any of the other sections of the ordinary rule of construction that the singular includes the plural and vice versa.

By Mr. Macdonnell:

Q. Does not that apply where the sense demands it? That is not a categorical statement, is it?—A. No. It is only a rule of interpretation.

Q. Does it necessarily demand it here unless it says so?

Mr. BENNETT: We are drawing a statute and we should try to be as clear as we can so that it cannot be argued about in the courts. Here is Mr. Lesage, who is a good lawyer and right off the bat that thought occurs to him. That is a point which would certainly be argued about in court.

By Mr. Lesage:

Q. It means only one thing.—A. I would wish to look at that a little further before I committed myself to you, Mr. Macdonnell. The burden is the other way under the Interpretation Act. It is not where the context requires it, but unless the context forbids it. My fear about making a change in subsection 15 is this: that once you have that rule of interpretation, every time

you go, in a particular section, and express it disjunctively, you are undermining your rule; and we may find that we have undermined it in other sections.

Q. Should we not go back to the definitions? We say in subsection (15):

any creditor whose claim is sufficient to entitle him . . . . . "

It points it out to the creditors specifically, to one creditor.

Mr. RILEY: A change in the interpretation clause would cover the whole thing. That would clarify it.

Mr. LESAGE: It is embarrassing but we will let Mr. MacDonald brood over it.

The WITNESS: I shall read it.

The CHAIRMAN: Does clause 21 carry? Clause 21 then is carried with the exception of subsection 15 which stands.

Mr. BENNETT: You are going to consider that other clause, about joining the partners?

The CHAIRMAN: Yes.

Mr. ASHBOURNE: One member of the committee used the word "insolvent". Is there any difference in the idea of an insolvent and that of a bankrupt?

Mr. LESAGE: I might be insolvent but not bankrupt: If there is no petition against me, I am not bankrupt, but I may still be insolvent if my liabilities exceed my assets.

Mr. MACDONNELL: Even if nobody knows about it.

Mr. LESAGE: Insolvency means the state of a person whose liabilities exceed his assets.

The CHAIRMAN: Does clause 22 carry?

Mr. STEWART: It is now twenty minutes to six o'clock.

The CHAIRMAN: Very well then, we now stand adjourned until 11.30 a.m. tomorrow morning, Friday, November 25, 1949, when we shall meet in room 277.

EVIDENCE

HOUSE OF COMMON:,
November 25, 1949.

The Standing Committee on Banking and Commerce met this day at 11.30 a.m. The Chairman, Mr. Hughes Cleaver, presided.

The CHAIRMAN: Gentlemen, we have a quorum.

Mr. T. D. MacDonald, K.C.,
Superintendent of Bankruptcy,
recalled:

The CHAIRMAN: We have reached clause 22 of this bill. Shall the clause carry?

Carried.

Clause 23?

Carried.

Clause 24?

Carried.

Clause 25?

Mr. FULFORD: A question arose here about fishing.

The CHAIRMAN: I suggest that we stand 25 over because Mr. Isnor is not here.

Mr. FULFORD: If fishing is going to be excluded there are several complementary industries which might be considered. I am thinking of the small logging industries; I am not talking about incorporated logging firms but small logging operations might be considered.

Mr. LESAGE: I understand that the reason why farmers are specified is that there is a special arrangement for them—the Farmers' Creditors' Arrangement Act—and I see no reason why we should exclude fishermen or the other trades.

The CHAIRMAN: We shall let this clause stand.

Clause 26?

Carried.

Clause 27?

Mr. ASHBOURNE: Is there anything in this act, with regard to this part 3 proposal, which would debar a man who was insolvent, and who contemplated being forced into bankruptcy, from making a composition with his creditors without going under the Bankruptcy Act?

The CHAIRMAN: I think not, so long as they were all agreed.

The WITNESS: You have answered the question correctly.

The CHAIRMAN: As long as the creditors are unanimous they can do anything they want to do.

Mr. RICHARD *(Gloucester)*: A moment ago before the meeting I was asking Mr. MacDonald about the situation where a certain man is required, in order to present a petition, to submit a list of creditors with debts amounting to a certain amount. Supposing some of those debts are not allowed and the amount is reduced below the requirement here. What is the result?

The WITNESS: The petition fails.

Mr. LESAGE: You are talking about an assignment or about a petition?

Mr. RICHARD *(Gloucester)*: Well he has got to prove a certain amount of indebtedness. Sometimes the amount will be padded so as to bring it within the law and then later a number of those liabilities may not be legitimate. What I want to know is what happens then?

Mr. LESAGE: The petition will be dismissed.

Mr. RICHARD *(Gloucester)*: And the assignment, if an assignment has been made?

The CHAIRMAN: Are there any further questions on clause 27? Shall the clause carry?

Carried.

Clause 28?
Carried.

Clause 29?
Carried.

Clause 30?
Carried.

Clause 31?

Mr. MACDONNNELL: I notice in the memorandum handed to us that a suggestion was made by the Toronto Board of Trade, but not adopted, that creditors with claims of less than $25 be excluded in computing the required majority. I must say I would not be in favour of that, but is there any comment on it?

The WITNESS: We felt that it was taken care of by the special resolution rule as referred to in Section 31 and defined in the interpretation section—under section 2(*t*) on page 4.

Mr. LESAGE: What is the meaning of the words "any class of creditors?"

The WITNESS: Secured, preferred, or ordinary.

Mr. LESAGE: There must be three-quarters of the value of the debts of all creditors, not only those present at the meeting?

The WITNESS: Present personally or by proxy, yes.

By Mr. Macdonnell:

Q. What is that again?—A. It is a resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present personally or by proxy at the meeting in question.

Q. Then under that you could have, perhaps by accident, a very small percentage of the creditors present but a three-quarters value represented and you could go ahead?

Mr. LESAGE: Three-quarters.

The WITNESS: Yes.

The CHAIRMAN: Those who are interested should attend. There is no quorum requirement at all.

Shall the clause carry?

Carried.

Clause 32?

By Mr. Macdonnell:

Q. Could we have an explanation of that requirement? Can a debtor, without regard to his reasonableness refuse a proposal? In other words has he got an absolute veto?—A. The proposal comes from the debtor. It originates with him.

Q. Then under this, the creditors may include such provisions or terms in the proposal with respect to the affairs of the debtor as they wish. In other words, this clause 32 is a proposal of the creditors but the debtor has an absolute veto?—A. Yes, because the original proposal is voluntary on the part of the debtor. The debtor did not have to make a proposal in the first place.

Q. I see that.—A. He makes a proposal and the creditors may say that they are not quite satisfied with that proposal and in effect they can say they do not want him to make that proposal but want him to make a slightly different proposal embodying such and such other terms. Then, the debtor can of course say he does not care to make that kind of a proposal, in which case he is back in his original position and the creditors have their original remedies.

Mr. LESAGE: Then it is a matter of a counter proposition from the debtor which the creditors may or may not accept?

The CHAIRMAN: The creditors may say that they will not accept the offer but that they will accept such and such an offer.

Mr. RICHARD (*Gloucester*): The proposal may be accepted but if they want to carry on the business in a certain way the debtor is the one who supervises it and he can say yes or no?

Mr. BELISLE: I think there is a mistake somewhere here. A proposal is usually made in settlement of the debts. The debtor proposes, for instance, 15 cents on the dollar, but the creditors ask for 20 cents or 25 cents. That is the usual sense of all proposals submitted to the court.

Mr. RICHARD (*Gloucester*): But what about the words "supervision of the affairs—"?

Mr. LESAGE: They may require that the debtor for instance must have an accountant follow the business and report to the creditors. The debtor is free to refuse, and if he refuses he is in his original position.

Mr. MACDONNELL: I suppose if we left that out the debtor might find himself faced with a very difficult situation.

Mr. LESAGE: It works very well in practice.

The CHAIRMAN: Shall clause 32 carry?

Carried.

Clause 33?

The WITNESS: May I correct an impression that was given a moment ago. There is a quorum of three required at a creditors' meeting under clause 72.

The CHAIRMAN: Yes.

Clause 34?

By Mr. Macdonnell:

Q. Could I have a word of explanation here? I see there are some suggestions made on this section and perhaps the superintendent might give an explanation? I notice that there was a suggestion as to priority of claims.—A. It was suggested by the Toronto Board of Trade that the words "any person other than the trustee is to collect and distribute" be used instead of "any other person is substituted for the trustees to collect and distribute". The change was a purely formal one and it was not adopted because it was felt that the present words covered the situation.

—Mr. Lesage took the chair.

By Mr. Macdonnell:

Q. The first four lines of that subsection seem a little confused. Would you mind enlarging on them?—A. (4) no proposal shall be approved by the court that does not provide for the payment in priorities to other claims of all claims directed to be so paid in the distribution of the property of a debtor—

That is the same as the provision which is in the present Act, and it means in effect that all the preferred creditors must be paid in full in order for the proposal to be accepted. All the priorities must be conformed with, must be honoured.

By Mr. Quelch:

Q. Have the preferred creditors the power to reduce that claim?—A. It is a principle in a matter of this kind that any restriction placed on the creditors or on any class for its own protection can be waived by the creditor affected. The point came up under the section in the present Act, and there is jurisprudence to be found on it.

By the Vice Chairman:

Q. Can it be waived by a majority of the class or must it be waived by the whole class "in toto", by all of the creditors?—A. I would say offhand it would have to be waived creditor by creditor according to his rights, as those rights were affected.

By Mr. Quelch:

Q. In so far as other creditors are concerned, can the majority accept the proposal?—A. No.

Q. It has to be accepted by each?

By Mr. Macdonnell:

Q. We do not want to split hairs.—A. Perhaps I misunderstood. I thought you were referring to preferred creditors as a class, that the ordinary creditors under the majority rule—

Q. In number and in value?—A. That is a special resolution rule.

By the Vice Chairman:

Q. In the class?—A. In the class.

Q. The majority plus the dollar provision? That is section 31; that is the explanation I wanted. Are there any further questions on section 34?

By Mr. Richard (Gloucester):

Q. As to subsection 6, I suppose that the title of the trustee to revest after the proposal is accepted is just what he took by the assignment; it does not disturb the secured creditors?—A. No, sir, it does not disturb the secured creditors.

Q. The transfer back and forth does not affect them?

By Mr. Macdonnell:

Q. I suggest that the superintendent might again look at the word "so". I do not know what it is doing there; but I do not want to pursue it. Subsection 4 begins by saying:

(4) No proposals shall be approved by the court—

And then subsection 5 says:

(5) In any other case the court may either approve or refuse to approve the proposal.

Has the court no discretion in subsection 4, no discretion whatever?—A. No discretion in subsection 4.

Q. The last three lines of subsection 4 read:

> —nor shall any proposal be approved in which any other person is substituted for the trustee to collect and distribute to the creditors any moneys payable under the proposal.

So they have the same discretion, only "any other person" is substituted for the trustee and so on?

The VICE CHAIRMAN: There is no discretion there.

Mr. MACDONNELL: That is right, I take that back. But why? The creditors have no authority whatever to substitute anyone for the trustee?

The VICE CHAIRMAN: Another trustee.

The WITNESS: You see, this is not a voluntary composition in respect that each creditor can speak for himself because he may be compelled by the majority rule. So, to protect creditors. This provision requires that the trustee be a trustee licensed under and subject to the provisions of the bankruptcy office.

By Mr. Macdonnell:

Q. But this says that you could not change a trustee, could not substitute one trustee for another.—A. Well, the proposal starts off by being lodged with a trustee.

Q. I beg your pardon?—A. The proposal starts off by being lodged with a trustee under the Act.

Q. Is there any provision elsewhere whereby one trustee can be substituted for another?—A. Yes, sir.

The VICE CHAIRMAN: Section 35 carried.

By Mr. Macdonnell:

Q. No, just a minute. We go back to—what is the clause which provides? Twenty-seven, oh yes:

> 27. (1) A proposal may be made by (a) an insolvent person, and (b) a bankrupt.

Is there any particular significance which does not meet the eye with regard to the beginning of section 35 which is confined to an insolvent person?—A. No. That just provides the procedure in the case of an insolvent person as distinct from a bankrupt when he comes to make his proposal.

By Mr. Richard (Gloucester):

Q. What about clause 35 where it says:

> . . . the time of the filing of the proposal shall constitute the time for the determination of the claims. . . .

Do you mean to say that any claims which would become due after the time of filing could not enter into the list of creditors?—A. Yes, that would be the fact.

Q. Well, a debtor may file his proposal, and then something may come due after the filing. Where does that fellow fit in?—A. Well, he would not be bound. That creditor would not be bound.

The VICE CHAIRMAN: Suppose it exists but has not matured?

Mr. RICHARD (*Gloucester*): Yes, suppose there be a note or draft.

The VICE CHAIRMAN: It would be included in the proposal then.

Mr. RICHARD (*Gloucester*): Q. Does he rank too?—A. I will have to look up that point.

Mr. BENNETT: He obviously would not be bound, particularly the preferred creditor.

Mr. MACDONNELL: Do you say that he would or would not?

Mr. BENNETT: He would not be bound.

The WITNESS: That is covered in the case of a bankruptcy by section 83. But as for a proposal, I shall have to look into that and give you my answer later.

By Mr. Isnor:

Q. I wish to ask Mr. MacDonald a question. I think it comes under clause 35. Suppose a case as follows: one of the creditors is advised as to the proposed settlement which is agreed upon by the trustees, but he takes exception to the proposal, feeling that in time his claim will be worth more to him, the creditor, and for that reason he does not accept. Is that permissible?—A. No, sir, he is bound by the proposal.

Q. He is absolutely bound?—A. He is absolutely bound, provided that the proposal has been passed by a special resolution and approved by the court.

Q. Is that along the same lines as the old Act?—A. Yes. In the case of a proposal made after bankruptcy, it is along the same lines.

By Mr. Richard (Gloucester):

Q. The acceptance of the proposal works out in the same way as an assignment?—A. Yes, in a sense that is quite correct.

Q. The man who does not want to accept it, nevertheless, if the proposal be accepted, becomes bound by the majority.

The VICE CHAIRMAN: Of course, he can go before the court. The proposal has to be approved by the court. If you look at section 34 subsection (1) you will see that any creditor who is dissatisfied with the proposal may go before the court and state his objection.

By Mr. Isnor:

Q. Proceeding one step further with my question: in the case of a judgment against a party bound, they would all be wiped out by the decision under the Bankruptcy Act.—A. No, it is not wiped out.

Mr. RICHARD (*Gloucester*): It is not wiped out. If he acquires assets after his discharge, that judgment would be good.

The VICE CHAIRMAN: It is not wiped out in the sense that if the debtor does not comply with the payments he has to make under the proposal, then the proposal is void and the judment is there and he can be proceeded against.

Mr. ISNOR: Why I ask you that question is: I cannot see how the first ruling can be sustained because all that I, as a creditor, would have to do would be to say that I am not prepared to accept the proposal because I believe that further operations of the debtor would warrant my withholding my claim. But in the meantime I put in a judgment against the debtor and unless it is wiped out it still stands good.

The VICE CHAIRMAN: No. The effect of the judgment is suspended, it is only suspended.

By Mr. Isnor:

Q. I am quite prepared to accept your opinion as a lawyer, but I would like to get the opinion of the superintendent as well.—A. The position I would say would be this: the judgment is not wiped out in a technical sense. But the same result follows as if it had been a judgment in a case of bankruptcy. You cannot proceed with it. When the debtor finally gets his discharge after

the composition, you can not proceed with it. So although I did not like to accept the use of the words "wiped out", nevertheless to that extent it is rendered ineffective.

Mr. ISNOR: Cancelled.

The VICE CHAIRMAN: No, it is a stayed execution of the judgment.

By Mr. Richard (Gloucester):

Q. In so far as the assets which he has at that time are concerned; but if the composition is accepted and the debtor acquires property after that, then the judgment is still good.—A. No, I would say that the judment—well, I am forced nearly to the language proposed by Mr. Isnor—the judgment is rendered ineffective.

The VICE CHAIRMAN: It is paid.

By Mr. Richard:

Q. Suppose the debtor, before getting a discharge, acquires property after making his composition or distribution through the assignment, how is that judgment affected? Do you mean that the judment cannot touch that property?

Mr. BELZILE: The property is automatically vested in the trustee.

Mr. RICHARD (*Gloucester*): If he acquires other property after the distribution made in accordance with the assignment or by the proposal, where does that property come? Does it vest in the trustee?

The WITNESS: The debtor is discharged from his obligations.

Mr. QUELCH: But not by the Court.

Mr. CLEAVER: Can a debtor acquire any property in his own name before the discharge?

The VICE CHAIRMAN: He is not bankrupt under this heading, he is only insolvent. He can acquire property in his own name.

Mr. RICHARD (*Gloucester*): For instance, he may fall into property after making his distribution. If he does, what happens to that property?

The WITNESS: If the property comes into the hands of the trustee before the discharge of a bankrupt debtor then it is subject to be distributed to the creditors in the ordinary way.

Mr. RICHARD (*Gloucester*): Yes, but before he does. He only gets his discharge after a number of years.

The WITNESS: Before he gets his discharge his property is still available to meet the claims of his creditors.

Mr. FULFORD: Supposing a man decides to pay his creditors fifty cents on the dollar and then a short while after comes into an inheritance which makes it possible for him to pay seventy-five cents on the dollar? Now that twenty-five cents on the dollar, that added capital will be distributed amongst the creditors in spite of the fact it was not in the original proposal?

The WITNESS: In the case of a bankruptcy it would be true but not in the case of a proposal.

The VICE CHAIRMAN: Suppose there is a proposal to pay fifty cents on the dollar, say fifteen cents in the first year, fifteen cents in the second year and twenty cents in the third year and supposing the business of the debtor becomes good after the second year and he buys a house. This house will be a guarantee towards the payment of the last twenty cents, that is all.

The WITNESS: That is right.

The VICE CHAIRMAN: He will pay his twenty cents when it becomes due and the property will not be touched even if there is a judgment against him.

Mr. RICHARD (*Gloucester*): Yes, but this is a case in which the creditor does not agree. The debtor pays fifty cents on the dollar and he is discharged but he falls into property in the second year. Now I want to know is a judgment creditor wiped out?

The WITNESS: The answer is in section 36, sub-section (1) which outlines the only condition under which a proposal having been entered into and approved by the court can then be set aside.

Mr. MACDONNELL: There must be finality somewhere. If at any time before there is finality, before the final agreement has been given, property comes in, then if there was any injustice, if at any time property comes in before the final agreement is made and the discharge given, they presumably would not agree?

The VICE CHAIRMAN: No, Mr. Macdonnell. The agreement may come three years before the discharge. There may be an agreement approved by the court that he will pay in three instalments.

Mr. RICHARD (*Gloucester*): He may pay and before he gets his discharge from the court he acquires property. Can this property be taken?

The VICE-CHAIRMAN: This property cannot be touched except to guarantee payments under the agreement and the creditors cannot complain about it because they have accepted the property. Either the man who has a judgment accepted the proposal or he was bound by the acceptance of the special resolution.

The WITNESS: Perhaps, it might help if I put it this way. Suppose that I being a debtor and being in hard circumstances go to my creditor—I have only one creditor; I have only one debt—and I say to him, "I owe you $500 and my financial situation is very very bad, and I can arrange to get only $100 and it will cause me an awful lot of hardship even to get that, but if you will give me a clearance for my whole debt, I will repay you today $100." My creditor says "Fair enough" and we make a contract to that effect. Now, tomorrow, unexpectedly, I come into an inheritance of $10,000. My creditor cannot come back to me and say, "Here, your circumstances are changed and I should get a better payment; I should be paid in full." My creditor cannot do that; we have made a bargain. That is the same situation that applies here.

Mr. RICHARD (*Gloucester*): Well, in that case then the debtor who makes a proposal which is accepted is in a better position than a debtor who makes an assignment so far as after-acquired property is concerned because the debtor who makes a proposal which is accepted and approved may acquire property afterwards which is untouchable whilst the one who makes an assignment may pay the percentage, and then if he acquires property afterwards, before the discharge, that falls to the trustee?

The VICE-CHAIRMAN: That is right.

The WITNESS: But the creditors will appraise the probability of that happening.

Mr. RICHARD (*Gloucester*): They may not foresee it.

Mr. RILEY: It is a voluntary thing.

The VICE-CHAIRMAN: Shall clause 35 carry?

Carried.

Mr. MACDONNELL: With regard to that last point that Mr. Richard made, has it been fully probed—the difference between a bankrupt and a man who has made an assignment?

—Mr. Cleaver resumed the chair.

The WITNESS: The legal position is quite different. In the one case a man has made a contract and in the other case a man has come into court and handed over all his assets, but generally speaking your judgment creditor is in no higher position than a plain ordinary common creditor who has not acquired judgment.

Mr. RICHARD (*Gloucester*): That is in the case of a proposal but in the case of an assignment before discharge, and even after payment was made, would after-acquired property still be seizable?

Mr. LESAGE: In a proposal the creditors agree and in a bankruptcy they do not.

Mr. Quelch: In reaching an agreement on a proposal could a condition upon property being acquired at some future time be inserted; I mean could that point be covered or included in the agreement?

The CHAIRMAN: Oh, yes, any terms such as that could be included.

Clause 36, Procedings in Case of Default.

Mr. ISNOR: Are you changing the wording in 36 (3), Mr. MacDonald.

The WITNESS: No, there is no change there.

Mr. ISNOR: I think that was suggested by the chartered accountants.

Mr. LESAGE: It was adopted and it is in the text in line 27.

Mr. MACDONNELL: What is the meaning of the phrase in lines 3 and 4, clause 36, sub-section 1 "or where it appears to the court that the proposal cannot proceed without injustice or undue delay" and so on.

The WITNESS: That would cover, I would say, a case where entirely unforseen circumstances came up making it impossible for the proposal to be proceeded with or to be proceeded with within a reasonable time.

Mr. MACDONNELL: You do not think some ingenious lawyer could suggest that property that comes in afterwards might be included?

Mr. LESAGE: Suppose there is an understanding between a debtor and a third party; for instance, suppose the third party is his father and says "I am going to give you a property for your family" and in reply the debtor says, "No, not now, I have a lot of creditors; I will make a proposal first; my creditors will agree and then you will give me the property." That would be fraud.

Mr. MACDONNELL: That seems to be a very good instance of what you call fraud, but what about injustice? That is a very broad term. It would seem an injustice to have the situation such as Mr. Richard has been setting out; would that be covered?

The WITNESS: I should hardly think it would because I should think that the justice or injustice of the proposal would have to relate to the circumstances when the proposal was agreed to. Now, that is just an expression of my opinion. As to the other words they would probably cover such a situation as this: The debtor came in and represented that in the very near future he was obtaining a lumbering contract or some other kind of a contract which was going to put him in means and put at his disposal funds to carry out the proposal and the actual getting of the contract was delayed and disappeared into the future. Now the court would say, "There is no reasonable prospect of you carrying out this proposal within a reasonable time and we will set the composition aside."

The CHAIRMAN: I would think, Mr. Richard, that your client would have a remedy if the debtor did not make full disclosure; if he knew there was money or property coming to him and he did not make full disclosure, I think that would be injustice. A concealment alone is not fraud. There must be something active.

Mr. MACDONNELL: That seems to me as if the court would take another look at the whole thing.

The CHAIRMAN: I do not see any harm in that clause. I think the court should have power. Do you see any harm in it?

Mr. MACDONNELL: I like the idea. But does it cover Mr. Richard's case which is a very important case.

Mr. RICHARD *(Gloucester)*: The proposal has been accepted and at a later stage the court may decide they cannot proceed without injustice and they cannot come back; it is all afterwards, it is not at the time of the agreement. You see the whole thing where the proposal is made and accepted, or where it creates an injustice and so on you see, injustice is something which comes after the whole thing is accepted. Supposing the proposal has been accepted and you are going to be paid 10 percent every six months. All right, after six months the court finds that there has been a default in payment or there has been or will be an injustice if the proposal is continued; the court might then modify the proposal?

The WITNESS: It might set aside the proposal. The words of that section came from the present Act, and if you would care to leave the point with me I will check before the next meeting on the jurisprudence a sit applies to the word "injustice".

The CHAIRMAN: Shall the clause stand?

Stands.

Clause 37?

Mr. MACDONNELL: I do not understand section 37 very well; could I have it explained?

The WITNESS: Yes, sir. Suppose a situation like this: The debtor says, "I can undertake to pay you in three installments up to 60 per cent of your claim. There is one condition attached to that. I have no operating capital and I need a few hundred dollars, and in order to permit me to do that you will all have to contribute $50 by way of operating capital to allow me to carry on"; and the creditors say, fair enough; and by the majority rule they adopt the proposal. One creditor can come in; then, that is an exception in one respect to the majority rule; he can come in and say, "not for me; I think it is just throwing good money after bad, I am going to stand on my present rights"; and in that case then the value of his claim will be fixed and he will be entitled to be paid in cash when the proposal is approved.

The CHAIRMAN: And the settlement to him being a cash settlement will be a write-down. He has contributed nothing to assist the debtor and if the other creditors go ahead and do that then they are going to say to this chap, "you did not do anything with us to assist him," and the court is going to rule that he would have to be content with 40 cents on the dollar.

The WITNESS: He would, that is so.

The CHAIRMAN: Shall clause 37 carry?

Carried.

Clause 38.

Mr. FOURNIER: Stands.

Section 39.

Mr. LESAGE: Before it is proceeded with, Mr. Chairman, could we go back to clause 25? Mr. Isnor is here now.

The CHAIRMAN: Yes, Mr. Isnor is in the committee now and we will revert to clause 25.

Mr. LAING: Mr. Chairman, there has been a proposal put forward by a number of groups suggesting that it would be improper to proceed with this bill

unless a similar change were made in the legislation regarding the Companies Creditors Arrangement Act. I wonder if Mr. MacDonald could tell us whether there is anything that could be done to meet this objection?

The WITNESS: Well that, sir, is rather a question of policy on which I doubt whether any expression of opinion from me would be proper or perhaps very helpful. The Companies Creditors Arrangement Act is not under the administration of my office, and I am rather reluctant to express an opinion as to whether or not at the present time my office should reach out to take in matters not presently within its scope.

Mr. MACDONNELL: You would rather somebody else answered that?

The WITNESS: Yes, sir. There was a great deal of debate in the Senate committee in 1946 upon the idea of bringing the Companies Creditors Arrangement Act under the bankruptcy office. When the bill was introduced in 1946 there was such a proposal in it, in Bill A5, and it was one of the controversial points that led to the bill dying in the Senate committee that year.

Mr. MACDONNELL: You could tell us, please, what the exact situation with regard to the Companies Creditors Arrangement Act is now, and in how many provinces it is actively in force?

The WITNESS: You mean, sir, is it actually in force in the sense that it is being used?

Mr. MACDONNELL: Yes.

The WITNESS: Well, no, I cannot give you that information offhand. We have no actual point of contact with that Act. As you know, the procedure under it is automatic. The only supervision is by the court. But I will make inquiry and see what information is available.

The CHAIRMAN: Section 25—Mr. Isnor:

Mr. ISNOR: I was going to submit an amendment for the consideration of the committee that farmers and fishermen should also be included under this section. I wonder what Mr. MacDonald has to say about that?

The WITNESS: Well, sir, with the opening of the field in the direction of primary industry, I do not know where you are going to stop. There was a suggestion—I do not know whether you were here at the time—but a few minutes ago the point was raised and one of the other members either proposed or said if that is extended to fishermen why not to any other primary producer. Now, the farmer is excluded, from a compulsory bankruptcy but not from a voluntary bankruptcy. There is of course, no corresponding provision affecting fishermen.

Mr. ISNOR: But the thought I had in mind, Mr. Chairman, was that the benefits of this Act might be extended to farmers and fishermen. There are times when it might be of advantage to the farmer if he could avail himself of the provisions, the benefits of this Act in connection with his business; and the same would apply to fishermen, as I think was pointed out in the committee yesterday.

Mr. LESAGE: It is not always an advantage to be included, it is sometimes a disadvantage.

Mr. RICHARD (*Gloucester*): Mr. Chairman, all these clauses refer to the receiver—clauses 21, 22, 23, 24 and 25. A receiver may be asked for by one or more creditors against any of these classes of people, excepting a farmer. It says, "Sections twenty-one to twenty-four do not apply to persons engaged solely in farming or the tillage of the soil or to any person who works for wages, salary, commission or hire at a rate of compensation not exceeding twenty-five hundred dollars per year and who does not on his own account carry on business." From that it will be apparent that the farmer does not fall into the class that a receiver may be asked for. That is what it amounts, is it not?

Mr. LESAGE: Why?

Mr. RICHARD (*Gloucester*): Well, he does not work for wages, salary, commission or hire—and so on. A receiver cannot be asked against him.

Mr. LESAGE: It is not a privilege anyway; it is a right that a man has to make an assignment.

Mr. RICHARD (*Gloucester*): This whole thing applies to the receiver.

Mr. BELZILE: Yes, this applies to petitions for a receiving order.

Mr. MACDONNELL: Yes, at the instance of the creditor.

Mr. RICHARD (*Gloucester*): Yes. He may not want to make an assignment or a composition; quite so. But still I do not see why it would not apply to a fisherman. I mean that a receiver could be applied for by his creditors, just as the same for any other business. He does not evade any responsibility under this clause.

Mr. LAING: I think what Mr. Isnor would like is a fishermen's creditors arrangement act. I have something on that line before me here. My point there is this, that I think a fishermen's creditors arrangement act would be desirable.

Mr. QUELCH: I do not think his point is clear. Does he want the fishermen to be excluded from this Act, along with farmers and persons not in business; or, does he want them included and does he want to include farmers and fishermen? As you know, the farmers are now in a position where they can take advantage of the Farmers Creditors Arrangement Act.

Mr. ISNOR: That is not quite my point. This clause defines only certain classes against whom the provisions of a creditors' petition shall apply. My question to Mr. MacDonald is as to whether this is a benefit or otherwise to the farmer.

The WITNESS: I would say it is a benefit to the farmer.

Mr. QUELCH: You say it is a benefit to the farmer because he is excluded from it; is that the point?

Mr. MACDONNELL: Mr. Quelch is very familiar with the Farmers Creditors Arrangement Act. I wonder if we could have a short explanation from him of the Farmers Creditors Arrangement Act, especially as to the protection it gives the debtor. I think it would be interesting for us to have some information on that point.

Mr. QUELCH: I think the important thing under that Act is that it permits the farmer to continue in operation. That, to my mind, is the important benefit.

Mr. MACDONNELL: Under the Farmers Creditors Arrangement Act it is entirely a matter of his own decision if he goes into bankruptcy.

Mr. QUELCH: Oh yes, the application is not made by the creditor, it must be made by the farmer.

The CHAIRMAN: And does that not apply only to the three western provinces?

Mr. LESAGE: No.

Mr. QUELCH: My understanding of it at the moment is that it does not apply in Ontario or Quebec.

Mr. LESAGE: That is right.

Mr. QUELCH: There was great activity under it during the war, particularly, but—

Mr. MACDONNELL: Before they all became rich.

Mr. QUELCH: —until they became solvent. Farmers have the protection that their homesteads cannot be sold. They are protected to that extent at least.

Mr. RICHARD *(Gloucester)*: Well, Mr. Chairman, I am still not clear on the point. Anyone, except those in the excepted class, farmers or those whose wages are under $2,500 may be petitioned into bankruptcy but the farmer is in a situation where he does not fall under the section no matter if he earns only $500 a year. He does not earn it by hire or by commission and therefore he may be petitioned into bankruptcy.

The WITNESS: He may not be petitioned into bankruptcy under the Bankruptcy Act.

Mr. BELZILE: Clause 21 relates to the petition for receiving orders.

Mr. LAING: Is this exception put in because of the Farmers' Creditors' Arrangement Act?

The WITNESS: No.

Mr. LAING: Was the Farmers' Creditors' Arrangement Act brought about because of this section in the Bankruptcy Act? It is like asking which came first, the chicken or the egg?

The WITNESS: I do not think that was the case either.

Mr. LAING: I was going to say, in the case of fishermen, that if there is to be a special act introduced such as a fishermens' creditors' arrangement act we could let this stand until such time as the act is introduced.

Mr. ISNOR: I do not think it has any connection. At some future time, if we are able to arrange for fishermen to enjoy the same situation as the farmers enjoy because of their Farmers' Creditors' Arrangement Act then, of course, we can deal with the matter at that time. In the meantime, if there is any benefit to be derived by fishermen if they are included then I feel that they should be included in this particular section.

The CHAIRMAN: I wonder if we could have any indication of whether we are talking of a practical problem of any size or whether it is a theoretical problem? How many fishermen have been thrown into bankruptcy in the last five years?

Mr. ISNOR: I could ask the same question—how many farmers were thrown into bankruptcy in the last five years?

The CHAIRMAN: None.

Mr. ISNOR: Then there is no harm in including fishermen.

Mr. LESAGE: I can give you a practical example of what would happen in the case of fishermen.

Mr. ISNOR: Tell me what would happen in the case of a farmer?

Mr. LESAGE: If you do not mind, I will continue. Supposing a fisherman has debts and judgments against him are granted, the creditors cannot petition against him in bankruptcy and so they execute their judgments against him. He is wiped out completely and he cannot later acquire any property because it will be seized again and again, the judgments having been only partly satisfied. The man can never be free. If he is put into bankruptcy his creditors can petition for so many cents on the dollar and then he may apply for discharge and start anew. He will not be able to do that if he is seized against time and again. I see an advantage for fishermen not to be included in the exception.

Mr. RICHARD *(Gloucester)*: Not to be included in the exception?

Mr. LESAGE: Yes.

Mr. RICHARD *(Gloucester)*: All right, you may have ten creditors of a fisherman who earns $1,500 a year.

Mr. LESAGE: Yes.

Mr. RICHARD *(Gloucester)*: One may petition him into bankruptcy.

Mr. LESAGE: Yes.

Mr. RICHARD *(Gloucester)*: But you cannot beat the farmer that way nor the fellow that earns less than $2,500. Therefore a fisherman who may only earn $1,500 has not the protection of a worker who earns $1,500 nor is he in the position of the farmer.

Mr. LESAGE: No. The farm may be seized. But if it is seized as in the example I was giving as to fishermen, then he can go under the other law, and that is a protection that the fisherman would not have, unless we pass a special law for a fisherman's arrangement act.

Mr. ISNOR: I wonder if Mr. MacDonald is prepared to answer my question?

The CHAIRMAN: Mr. MacDonald does not care to comment on parts which do not come under his jurisdiction. I do not think he should be censured in any way for taking that stand. I think it is a quite proper stand to take. He is superintendent of bankruptcy, period.

Mr. ISNOR: Recognizing Mr. MacDonald's ability, I would be the last one in the world to try to embarrass him in his position other than when dealing with this Act.

The CHAIRMAN: Well then, would you ask your question and direct it to Mr. MacDonald.

By Mr. Isnor:

Q. I want to know whether Mr. MacDonald thinks it is an advantage to the farmer that is covered in section 25?—A. Well, I would like, subject to the approval of the chairman, to reserve that question for the moment and give my answer at the next meeting. My reason is that there is a point that I am not quite satisfied about as to the application of the Farmers' Creditors' Arrangement Act. I believe Mr. Quelch said a moment ago that the farmer could not be petitioned into bankruptcy under that Act. That was my impression. Now, I have the further impression—but I may be wrong—that our records will show that, rightly or wrongly, farmers have been petitioned into bankruptcy, so I just want to check on that point. But I shall be prepared to give you an answer at the next meeting of the committee.

By Mr. Macdonnell:

Q. You may petition a farmer into bankruptcy but you may not petition him under the Farmers Creditors Arrangement Act.—A. Petition him into bankruptcy in relation to the Farmers' Creditors' Arrangement Act? That is the point I want to look up.

By Mr. Richard (Gloucester):

Q. Under the old Bankruptcy Act, was the farmer excepted as he is here and now?—A. Yes. This section was in the old Act.

Mr. QUELCH: The difficulty in dealing with the question of farmers is the fact that during the depression years in western Canada we had a great deal of provincial debt legislation which tends to confuse the issue. But I am under the impression that no creditor can petition a farmer into bankruptcy under the Farmers' Creditors' Arrangement Act. I think that I would agree with Mr. Isnor, that fishermen would be better off if they were excluded from the bankruptcy act. Moreover, in a bankruptcy proceeding, the very time that a farmer might be forced into bankruptcy would be during a depression. I believe that ninety-nine times out of a hundred that would be true. And the result would be that if the farmer had to dispose of his assets at that time, he would get practically nothing for them. The farmer is a man who is able to make a very quick comeback. Many farmers who were in distress during the depression years are now

considered wealthy men. A few good years can revive a farmer so that he is in a good position. The farmer would not want to be forced into bankruptcy during a time of depression. He would like to continue until prices improve when he would have a chance to pay off his creditors. And I can say that generally speaking the creditors have been reasonable and have voluntarily agreed to accept so many cents on the dollar. That would be done under a private agreement between the farmer and the creditor. I know it has happened many times. Just so long as the farmer cannot be forced into bankruptcy, he at least has that bargaining power.

The CHAIRMAN: But the farm could be seized under execution.

Mr. QUELCH: That is quite true. The creditors have the power to force, if not under the Farmers' Creditors' Arrangement Act, by threatening that if he does not pay, they will sue.

The CHAIRMAN: The clause stands then until Mr. MacDonald has an opportunity to consider the matter. We are now at clause 39. That is part of the Act, "Property of bankrupt."

It has just been called to my attention that it is ten minutes to one. We will adjourn now and meet Tuesday morning at 11:30 a.m. if that is satisfactory to the committee.

Mr. FULFORD: There is a notice that there will be a meeting this afternoon.

The CHAIRMAN: We will disregard that.

Mr. FOURNIER: Before we adjourned yesterday I asked Mr. MacDonald some questions but unfortunately I had to attend the sitting of other committees and I do not know whether those questions were answered.

The CHAIRMAN: I believe they were, Mr. Fournier, and by Tuesday I hope the committee proceedings will be printed and you will have your answers.

HOUSE OF COMMONS

1949

SECOND SESSION

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Bill No. 149 (Letter F of the Senate) An Act Respecting Bankruptcy

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MINUTES OF PROCEEDINGS AND EVIDENCE

No. 2

TUESDAY, NOVEMBER 29, 1949

WITNESS

T. D. MacDonald, Esq., K.C., Superintendent of Bankruptcy, Department of Justice, Ottawa.

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

CORRIGENDA

Page 5, line 5, delete "Huges" and substitute "Hughes";

Page 6, line 4, delete "Huges" and substitute "Hughes";

Page 6, lines 11, 12, 13, delete "Insurance" and substitute "Bankruptcy";

Page 6, line 29, in blank space after word "page" insert "19".

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MINUTES OF PROCEEDINGS

HOUSE OF COMMONS,
TUESDAY, 29th November, 1949.

The Standing Committee on Banking and Commerce met this day at 11.30 a.m. The Chairman, Mr. Hughes Cleaver, presided.

Members present: Messrs. Ashbourne, Belzile, Cleaver, Dumas, Fleming, Fraser, Fulford, Gour (*Russell*), Hellyer, Isnor, Lesage (*Vice-Chairman*), Macdonnell, Macnaughton, Prudham, Quelch, Richard (*Gloucester*), Stewart (*Winnipeg North*), Weaver.—18.

In attendance: Messrs. T. D. MacDonald, Superintendent of Bankruptcy and J. S. Larose, office of Superintendent of Bankruptcy.

The Chairman read a telegram from F. D. Tolchard, General Manager, Board of Trade of City of Toronto.

(For text of telegram, See Evidence, at page ———).

The Chairman announced the receipt of letters from some of those to whom he had addressed the letter of 24th November, as authorized by the Committee. It was agreed that these letters be printed as appendices to this day's minutes of proceedings and evidence.

The Committee resumed consideration of Bill No. 149, An Act respecting Bankruptcy.

The following clauses were carried, subject to reconsideration later at request of any member: 39 to 48, both inclusive; 50 and 51. The following clauses stand: 49, 52 and 53.

On summons to the House, the Committee adjourned at 12.30 p.m., to meet again this day at 3.30 p.m.

AFTERNOON SESSION

The Committee resumed at 4.00 p.m. The Chairman, Mr. Hughes Cleaver, presided.

Members present: Messrs. Ashbourne, Beaudry, Belzile, Breithaupt, Cleaver, Dumas, Fournier, (*Maisonneuve-Rosemont*), Fraser, Fulford, Fulton, Gour (*Russell*), Hellyer, Hunter, Isnor, Laing, Lesage (*Vice-Chairman*), Picard, Prudham, Quelch, Richard (*Gloucester*), Smith (*York North*), Stewart (*Winnipeg North*).—22.

In attendance: As at morning session.

Consideration resumed of Bill No. 149.

The following clauses were carried, subject to reconsideration later at request of any member: 54 to 93, both inclusive. The following clauses stand: 94 and 95.

The Committee adjourned at 5.30 p.m., to meet again tomorrow, Wednesday, 30th November at 11.30 a.m.

T. L. McEVOY,
Clerk of the Committee.

EVIDENCE

HOUSE OF COMMONS,
November 29, 1949.

The Standing Committee on Banking and Commerce met this day at 11.30 a.m. The Chairman, Mr. Hughes Cleaver, presided.

Mr. T. D. MacDonald, K.C., Superintendent of Bankruptcy, recalled:

The CHAIRMAN: Gentlemen, we have a quorum. Before proceeding with the work of the committee I would just like to report that, pursuant to instructions received from the steering committee, a letter was dispatched to all those who had taken the trouble to make representations to the Senate while this bill was under consideration by the Senate. In that letter I asked any who wished to attend personally to give evidence to advise us by wire, and any who wished either to add to or to underline the representations which they had already made, to write. I may say that I have received only one wire. It is very short and I shall read it. It is from Mr. F. D. Tolchard, General Manager of the Toronto Board of Trade, and it reads:

> Your letter twenty fourth bankruptcy bill this Board and associated interests most anxious Senate Bill F be passed at present session of House notwithstanding Senate committee did not accept all amendments desired stop Sending McEvoy our latest submission to Senate committee with memorandum showing action taken on amendments requested stop If House committee can consider these desired amendments and would like oral evidence without endangering passing of Bill at present session this Board will be glad to arrange for representatives to appear before committee at any convenient time stop Desire to emphasize however importance of passage of Bill at present session and would respectfully urge that Banking and Commerce Committee do nothing which would delay enactment of Bill.
>
> F. D. TOLCHARD,
> *General Manager, Toronto Board of Trade.*

(For text of letters, etc. see appendices to this number.)

Is it the wish of the committee that we should add this wire and correspondence to our committee report this day, so that all members of the committee will have copies?

Mr. BELZILE: I so move.

Mr. STEWART: Does that include the proposed amendments?

The CHAIRMAN: No, it does not. It includes the memorandum of their request and all that has happened to it. Their brief is already in print in the Senate record, and their brief is an exact copy of the one already tabled. We are at clause 39, part IV of the Act, "Property of the Bankrupt".

Mr. QUELCH: Was clause 25 carried?

The CHAIRMAN: Clause 25 was carried but the understanding was that any member could refer back to it.

Mr. QUELCH: I thought we were at clause 25 at the end of the last meeting, and that we were considering clause 25 when we adjourned.

The CHAIRMAN: Clause 25 was marked "stand".

Mr. QUELCH: We were considering it.

The CHAIRMAN: Yes, and the Superintendent of Bankruptcy was going to make some inquiries. And now, as to clause 39, are there any questions?

By Mr. Richard (Gloucester):

Q. I would like to ask Mr. MacDonald in respect to subclause (*c*) of clause 39, "All property wherever situate of the bankrupt at the date of his bankruptcy or that may be acquired by or devolve on him before his discharge; . . . ." In the period between a trustee's discharge and the discharge of the bankrupt, should any property devolve upon him, then in whom does it vest? I take it that it is still available for creditors, and that there is no more discharge; he has been discharged.—A. That property is amenable to the trustee; it is available if it is gone after, for distribution to the creditors.

Q. But the trustee may be discharged.

Mr. BELZILE: He has five years to go on. His appointment is good for five years after his discharge.

By Mr. Richard (Gloucester):

Q. He may apply for discharge after distribution of whatever assets are in his hands.—A. The trustee may be brought back to deal with it.

Q. He may be reappointed again? That property was available for creditors, judgment creditors, as well as ordinary creditors. Where does the statute of limitations come in there? Would the judgment creditor be in the same category as the ordinary creditor, or would he have a debt which is good for twenty years?—A. The limitation period would not run there.

Q. Why would it not? If it starts to run, there is nothing to stop it. Bankruptcy does not stop it.—A. My impression is that the limitation period does not run during the bankruptcy.

Q. You understand by point. A man makes an assignment, and whatever assets he has are distributed by a trustee; then afterwards he comes into property again; that property is available to creditors. Now, some of those creditors may be ordinary creditors and their claim may be barred by the Statute of Limitations. But with a judgment creditor, his claim is good for twenty years.

Mr. LESAGE: The assignment stops the period. I could answer in French very easily, but I do not understand the technical terms in English.

Mr. RICHARD: (*Gloucester*): The Statute of Limitations starts from the time the debt is due, and I do not think it stops, and I do not think there is a gap there.

Mr. LESAGE: There is no interruption in the case of a judgement, because that judgement is good for twenty or thirty years. But if it is an ordinary debt, let us say a commercial debt, it is good for five years in the province of Quebec, and those five years will start to run from the date of the discharge of the trustee.

Mr. RICHARD: (*Gloucester*): But if it has started to run already, it continues to run.

Mr. LESAGE: No. It stops it and you must start it to run all over again. It is an acknowledgment.

The CHAIRMAN: Clause 40 "Stay of Proceedings". That is a stay of proceedings from the filing of a proposal, and so on.

Mr. RICHARD (*Gloucester*): Well, that might be so, if he has no remedy.

The CHAIRMAN: Yes.

By the Chairman:

Q. Mr. MacDonald, I have a question to ask under this clause. Would this be an appropriate clause under which to define property of the debtors? You remember that that point arose when we were considering the right of a trustee to pledge the assets of a debtor, the property of a debtor, for the purpose of carrying on the business of the debtor.

Mr. MACDONNELL: What clause is that, Mr. Chairman?

The CHAIRMAN: What was the clause of the Act where we ran into the right of a trustee to pledge the property of a debtor for the purpose of carrying on the business? Oh, it was clause 10.

The WITNESS: Clause 10, subclause (1) para. (g).

By the Chairman:

Q. You have also referred me to clause 2 subclause (o). Now, do you not think for the purpose of clarity it might not be wise to add a few words indicating "assets include any property rights of the secured creditors"?—A. Oh, I see. I am afraid that I did not quite catch the point before. I think this question was raised also by Mr. Macdonnell at the first or second meeting.

Q. That is right.—A. I have looked at it again. I have a note here which I shall read into the record. Paragraph (g) appears to be all right, because a secured creditor does not make a claim unless he relinquishes his security or unless it is for the excess of his account over the value of the security; and in either such event he is then as an ordinary creditor. You see, (g) speaks about this commitment being paid with interest out of the property of the bankrupt in priority to the "claims" of the creditors. In so far as he relies upon his security, the secured creditor will not have a claim in there, so he will not be affected. He will never have a claim in unless he is either relinquishing his security, or is claiming for the excess of his account over the value of his security. And in either of those cases he should of course be affected. So my feeling would be that the paragraph is appropriate as it is now worded.

Mr. MACDONNELL: I must say that I would not question what the witness has said. It is a very interesting point. But I should have thought it might have been made clearer because it does seem to me that if (g) is right, it would not need a very ingenious lawyer to take a different view. In other words, the word "claims"—I am not ignoring the definition of "claims" in clause 2, which I think supports what I think you have said; yet I suggest it is not very clear in subclause (g).

Mr. RICHARD: (*Gloucester*): If it is an unsecured creditor, would it be made clearer to say "inquire into the claims of"?

Mr. MACDONNELL: No, because Mr. MacDonald says that part of the claims will be claims of secured creditors to the extent that they are over and above their security.

The WITNESS: I certainly do not want to be insistent on that point and if it were merely a question of clarification I should be inclined to say immediately "Yes, accede," but the misgiving I have is this: that wording is in the present Act, in section 51, sub-section (1) and it never gave rise to any such suggestion. Now if we go reinforcing it in individual clauses it may be that we will find a clause later which we have unknowingly affected by implication.

Mr. MACDONNELL: That is a very strong argument.

The CHAIRMAN: Shall clause 39 carry?

Carried.

Clause 40?

Mr. MACDONNELL: Do you think it would be a waste of time in case there might be anyone else who might not have read these clauses as carefully as he

would like, to have them read as we come to them? I do not press for it, I just suggest it.

The CHAIRMAN: I perhaps would be prejudiced against the suggestion on account of self interest,—I might be elected to do the reading.

Mr. FLEMING: Mr. Chairman, there were some suggestions on this clause. I see by the compendium the Bar of Quebec requested clarification but their suggestion was not adopted it being felt that the addition of the words "Until the trustee has been discharged" in sub-clause (1) of clause 40 is sufficient. Then the Toronto Board of Trade, David Grobstein and Richard Beaudry made a suggestion and it was adopted. Mr. Justice Urquhart suggested that the words "Until the trustee has been discharged" should be deleted. Mr. Justice Urquhart of the Supreme Court of Ontario in the letter we received from him this morning indicated that he was interested in one particular clause above all others. Is this the one?

The CHAIRMAN: No, the point Mr. Justice Urquhart is interested in, as I understand his letter, is that he feels the present Bill should contain a declaration, should provide machinery for an order declaring the man bankrupt and his reason was that certain other acts of parliament would not come into play unless the man is officially declared a bankrupt, and he illustrated that point by referring to two or three sections of the Criminal Code where a man commits an offence if, while a bankrupt, he secures credit without advising his creditors that he is an undischarged bankrupt and so on. And when we come to that point I think Mr. Justice Urquhart's recommendation should be rather carefully considered by this committee.

Mr. FLEMING: That was on clause 21, subclause (6) and clause 41 subclause (6)?

The CHAIRMAN: Yes.

Mr. FLEMING: I just looked quickly over that letter this morning. I do not recall whether or not that was the main point he was stressing.

The CHAIRMAN: That was the main point he was stressing and I think he has something there. On clause 40, subclause (1) the Senate accepted and adopted the recommendation of the Toronto Board of Trade.

Mr. FLEMING: That was to insert the word "approval" instead of the word "filing" (of a proposal).

The CHAIRMAN: Shall clause 40 carry?

Carried.

Clause 41?

Carried.

Clause 42?

Carried.

Clause 43?

Carried.

Clause 44?

Carried.

Clause 45?

Carried.

Clause 46?

Carried.

Mr. FLEMING: On clause 46,—what is the significance of what the Toronto Board of Trade wanted with regard to clauses 71, 72, and 73? Their suggestion was not adopted, I understand.

The WITNESS: There are certain sections in the present act which are similar I believe, to sections also contained in the Winding-up Act providing for directions to be given by the court affecting the mutual rights of contributors of this class, and it was felt in drafting the Bill that those sections were not necessary, and that, I believe, is the point against which the Toronto Board of Trade made its representations.

The CHAIRMAN: What were the clauses of the old Act that were left out?

The WITNESS: Section 70, subsection (3) and subsection (4).

Mr. FLEMING: And clauses 71, 72 and 73 have been dropped too, I believe.

The WITNESS: I am sorry, the ones that are affected by what I have just said are not subsection (3) and (4), the sense of which has been carried with very little change into the new clause 46. They are rather sections 71, 72 and 73. Section 71 commences:

> (1) The trustee may from time to time make demand on any contributory requiring him to pay to the trustee within thirty days from and after the date of the service of such demand, the amount for which such person is so liable to contribute or such portion thereof as the trustee deems neecssary or expedient

and then skipping subsection (2), subsection (3) provides that:

> "If the contributory disputes liability, either in whole or in part,"

and it goes on to explain what he must do in a case like that and section 72 provides that:

> (1) The court shall, on the application of any conrtibutory, adjust the rights of the contributories among themselves, and, for the purpose of facilitating such adjustment may direct the trustee to intervene, carry the proceedings,

and so forth. I think that the gist of it is probably contained in the last part I have read, the part about the application to adjust the rights of the contributories among themselves.

The CHAIRMAN: I think perhaps, the Toronto Board of Trade on reading the new Bill must be satisfied because in their last presentation they do not raise any question at all in regard to this clause 46.

Clause 46?

Carried.

Clause 47?

Carried.

Clause 48?

Carried.

Clause 49? With reference to clause 49 the Toronto Board of Trade makes the suggestion that the trustee should be affirmatively placed under some responsibility to inspect the fixtures and what-not and if there are any name plates on the fixtures even though no registered lien has been filed, that proper notices should be sent out to the addresses on these name plates. Have you had any complaint, Mr. MacDonald, of hardships rising through trustees disposing of assets of that nature? In Ontario we have our Conditional Sales Act—

The WITNESS: I am not aware of any such complaints, Mr. Chairman.

The CHAIRMAN: It would appear to me that that would be putting a trustee to a tremendous amount of extra work. Surely these people would contact the trustees on the notice of bankruptcy being published.

The WITNESS: And they have the privilege of registering their liens.

The CHAIRMAN: Do you want to press that recommendation, Mr. Fleming?

Mr. FLEMING: I would like to consider it further, Mr. Chairman, to tell you frankly.

The CHAIRMAN: Under all these conditional sales agreements there are usually monthly payments involved and on default the suppliers or manufacturers immediately give a notice.

Mr. FLEMING: I notice this recommendation we are referring to now is from the Canadian Manufacturers' Association, not the Toronto Board of Trade. It is the same one that is referred to in the compendium prepared by Mr. MacDonald. The association wanted the word "unregistered" deleted and replaced by the words "not registered or not protected against creditors under the law of the province." Now I take it the intended purport of the two drafts is about the same but the suggestion in Mr. MacDonald's compendium is that the proposed amendment is not considered necessary.

The CHAIRMAN: Well, Mr. Fleming, I think too there is another point which can be quickly grasped. You see, if a trustee in good faith goes ahead and sells some of this property on which there is a claim under the Conditional Sales Act there may be an amendment asked for, or the estate may be liable to damage, and that sort of thing.

Mr. FLEMING: I am not sure at the moment.

The CHAIRMAN: Well, who is better able to decide negligence than the court. You see, if we attempt to set out what negligence is we will run into all kinds of difficulty.

Mr. HUNTER: I am not suggesting that. I am suggesting that we must define the principle.

Mr. FLEMING: Mr. Chairman, with all respect, I think there is actually a way out of this suggested by the Canadian Manufacturers Association in their letter which has just been handed to me, and it is this:

> It is suggested that in the sixth line of Section 49 the word "unregistered" be deleted, and after the word "charge" in the same line, the following words be inserted:—"not registered or not protected against creditors under the law of the province." The reason for this is that some provinces such as Ontario, permit liens on manufactured goods to continue valid without registration provided that the name and address of the vendor are marked thereon. With respect to property which is subject to a valid but unregistered lien, under the present wording of the section, the trustee is not personally liable for any loss or damage. This cuts down the rights of lienholders holding such liens. A competent trustee would be familiar with the Conditional Sales Act of his province, and should take notice of all liens which are properly protected. It may be that in such provinces, the trustee will be put to considerable trouble in making the necessary inquiry but this is preferable to valid lienholders being deprived of their rights as secured creditors and reduced to the status of ordinary creditors.

It strikes me there is a great deal of merit in that proposal.

The CHAIRMAN: The secured creditor still has the right to go to the court and ask the court to rule that a trustee has been negligent, and in a province where there is a Conditional Sales Act and where the manufacturer has complied with the requirements of the Act by putting his name plate on, I would think the court would be the best tribunal to decide whether there was negligence or not on the part of the trustee.

Mr. MACDONNELL: The subclause says.

> unless the court is of opinion that the trustee has been guilty of negligence with respect to the property—.

Isn't that it?

The CHAIRMAN: I get your point, Mr. Macdonnell. I think that is covered by what you just referred to,

unless the court is of opinion that the trustee has been guilty of negligence with respect to the property;

That means with respect to his disposal of the property.

Mr. FLEMING: I would suggest that the clause should stand for further consideration.

Clause 49 stands.

Mr. FLEMING: There is a matter of negligence, which I think is deserving of consideration.

The CHAIRMAN: Clause 50:

Mr. RICHARD (*Gloucester*): Subclause 3, "The onus of establishing a claim to or in property under this section is on the claimant"; does not mean the property?

The CHAIRMAN: That refers to the position of the bankrupt at the time of the bankruptcy. If the property is in the possession of the bankrupt he has a right to prove his ownership; he must under this clause prove his ownership.

Mr. LESAGE: I think that subclause can only be taken to mean that the burden of proof with respect to the claim is on the creditor, the claimant.

The WITNESS: I think Mr. Lesage has made the answer. The general principle is that the burden is on the person claiming property in the possession of another.

Mr. MACDONNELL: Well, what is the meaning of the last subclause; "Nothing in this section shall be construed as extending the rights of any person other than the trustee".

The CHAIRMAN: I suppose, Mr. Macdonnell, it extends the rights of the trustee in that it puts the onus on these other folk to prove their title in respect of property in the possession of the bankrupt.

Mr. FLEMING: In subclause 4, the original period for proving a claim was thirty days. I note that Mr. Justice Urquhart suggests that power be given to the court to shorten the thirty-day period; and what was done in the Senate, I gather, was to shorten the thirty-day period to fifteen days. I wonder if fifteen days is going to be too short in some cases. You might easily have a creditor in these circumstances not available. He may be away some considerable distance. He may be, in the fall of the year, up in the north country shooting. Fifteen days is a pretty short period in a big country like this. It would seem to me it would be very much preferable to leave the period of thirty days and give the court the power to shorten it to some lesser number of days if a proper case is made out for shortening it.

The WITNESS: My impression is that that would be personal notice, or such substituted notice as to the court would seem fair.

Mr. MACDONNELL: Anyway, your fifteen days is not a very long period.

Mr. FLEMING: It might turn out that the creditor would not know anything about it until too late to make an application.

Mr. STEWART: Take Mr. Fleming's argument. Suppose a creditor were to leave, let us say, on a two-weeks' holiday and the notice was sent to him the day after he left, then it may happen that he actually would not return to the city until the term of notice within which to file his claim would have expired.

Mr. BELZILE: Any creditor is always entitled to file his claim whether it is fifteen days or one month. All this clause 50 is intended to do is to protect the trustee against the negligence put against him in clause 49; so that if the

trustee does not receive the claim at the end of thirty days or fifteen days as stipulated here he is protected; but the creditor is always entitled to file his claim and prove it.

Mr. FLEMING: We all know that procedure is inclined to be slow. That is one of the reasons for introducing the summary provision section of this bill. I think we are all in sympathy with this idea of more expedition in the handling of bankruptcy matters. I think that is one of the reasons for the suggestion to which I referred in this compendium, that the period be shortened from thirty days to fifteen days. Now, I do not know whether that is the way to handle this. If there is any reason for giving a claimant more than fifteen days well, then, a court should make an order covering that.

The CHAIRMAN: The Toronto Board of Trade proposed that and Mr. Justice Urquhart; and if you will refer to the Senate hearing of March 14 with respect to clause 50, subclause 2—page 18, you will find that it points out there that the period of thirty days is too long in both this subclause and in subclause 4.

Mr. FLEMING: But the suggestion there was that the court could shorten the period of thirty days. However, the time has been shortened to fifteen days; and the note on subclause 4 is:

> Suggested by Mr. Justice Urquhart that thirty days is too long.

As far as I am concerned, Mr. Chairman, I would like to take this point up again later on.

The CHAIRMAN: All right, we will refer back to it later.

Mr. STEWART: Would it not be possible to change the procedure outlined in subclause 4, and instead of having the notice sent by mail have it made personally?

Mr. LESAGE: When you leave service of notice to receipt you open the door wide to possibilities for discussions of all kinds. All he has to say is that he didn't receve such a notice.

The CHAIRMAN: I have just checked that with Mr. MacDonald and in his opinion the notice required to be given by the trustee to the preferred claimant under subclause 4 would be a personal notice. Now, the man gets personal notice, surely fifteen days is ample time for him; and, of course, if he is away on a hunting trip or, out of town, he cannot be served.

Mr. RICHARD (*Gloucester*): What happens if you cannot effect personal service?

The CHAIRMAN: You would have to go to the court for an order for substitutional service.

Mr. RICHARD (*Gloucester*): If it means personal service, then the claimant is protected.

The CHAIRMAN: Subclause 4 requires personal service, or a court order for substitutional service, and surely the court would give proper protection when making an order for substitutional service and, if the man is personally served, fifteen days is ample time.

The WITNESS: Specific directions could also be contained in the rules as to the mode of service.

The CHAIRMAN: We will mark clause 50 carried, subject to reference back if anyone wishes.

Clause 51?

By Mr. Macdonnell:

Q. I would like to ask a question here. Is it meant that ample notice has to be given to the manufacturer before the powers under clause 51(1) are

exercised?—A. The burden seems to be placed upon the manufacturer or vendor, Mr. Macdonnell, to find out and make objection himself. I do not read into the clause that it is placing an obligation on the trustee to notify the manufacturer beforehand.

Q. I would not think that there is any obligation at all, but is it reasonable to assume that the manufacturer will know of this?—A. The only reply I can make at the moment is that the point has never been raised as creating any hardship. When I say that from time to time, I want to make it clear that I am not putting it forward as a general answer to all of these matters, because sometimes it is no answer. It is never too late to criticize a clause, but it is a fact, as I have said, that the point has never been raised as creating any hardship.

Q. That is not such a bad answer; we do not want to change things that work.

The CHAIRMAN: Shall the clause carry?

Carried.

It has been agreed that clauses 52 and 53 should stand, and I will now call clause 54, dealing with partnership property.

By Mr. Macdonnell:

Q. I do not understand the significance of subclause 1?—A. Are you referring to the case of the limited partnership?

Q. Is this an answer to some legal cause of danger that is apprenhended?—A. It is an answer to some danger that might be apprehended when considering the difference between the limited and ordinary partnership. In the case of the limited partnership the rights and obligations of one or more of the partners may be subject to special conditions. If all of the general partners of the partnership become bankrupt the property of the limited partnership is available to the creditors, whereas, if it were another kind of partnership, my impression is that to realize the partnership assets you would have to proceed against all the partners. Perhaps I have put that in a rather roundabout way. If you are dealing with a limited partnership you get the partnership assets into the hands of the trustee by proceeding against all general partners—not all partners, as in the case of the ordinary partnership.

By Mr. Lesage:

Q. What is a limited partnership?—A. A limited partnership is a partnership in which the relations of one or more of the partners to the others are governed by special arrangement—for example that he is only a contributory for a certain amount, or that he is only a beneficiary to a certain amount. Suppose that A and B want to form a partnership in a trading venture; they go to C telling him that they have not quite enough money and ask whether he will go in with them. C may say that he has his own business to take care of and that he cannot go into the partnership as a full time venture but that he is interested and will contribute so much money. He may further specify that his liability is limited in the same way. He says that he will take a lower proportion of the partnership earnings than the other two partners, as a result.

Q. Are not the partners of a limited partnership responsible severally and completely towards all third parties?—A. Not necessarily. For instance, if I do business with a partnership consisting of A, B and C, and if I know that the basis on which they hold themselves out as doing business is that A and B are in the business completely but their agreement with C is that he is only liable to the extent of his contribution, and, if that is the basis upon which I do business with them, and if that understanding is part of my contract, then I have no recourse beyond that understanding. I am not prepared to tell you at the moment how constructive notice of that situation may be brought home to a creditor.

By Mr. Richard (Gloucester):

Q. Partnerships must be registered and the registration would show that C has a limited liability?—A. That is one of the circumstances, Mr. Richard, but there are others.

Q. In our province if such a limitation were not shown in the register the partners would be deemed to be general partners.—A. Certainly no private reservations between partners can affect people with whom the partnership does business.

Q. In my province the details of the partnership must be gazetted so that everyone would be given notice that C had only limited liability.

Mr. LESAGE: That is true, but towards third parties the responsibility is always joint.

Mr. BELZILE: In the province of Quebec we have some kinds of partnership which we call commandit. In the commandit the commandateur puts up the money—for instance $10,000—and the other partner gives his full time to the partnership. After a while it sometimes happens that the administrator is the only man who works the business.

Mr. FLEMING: That is precisely the same as the limited partnership arrangement not only in Ontario but I think in all other common law provinces. If a partner wishes to limit his liability he must register.

The CHAIRMAN: Gentlemen, I hear the division bells ringing. We shall adjourn until 3.30 p.m.

AFTERNOON SESSION

—The Committee resumed at 4 p.m.

The CHAIRMAN: We have a quorum. We were on clause 54. Have you any comments to make on the clause "Application to limited partnership"? Shall the clause carry?—A. No, Mr. Chairman.

Carried.

Shall clause 55 "Sales in Quebec" carry?

Mr. BELZILE: No change.

The CHAIRMAN: Carried. Shall clause 56 carry?

Mr. BELZILE: No change.

The CHAIRMAN: Carried. Shall clause 57 carry?

Carried.

Shall clause 58 carry?

Mr. LESAGE: No change.

The CHAIRMAN: Carried. Shall clause 59 carry?

Mr. LESAGE: No change and no representations.

The CHAIRMAN: Carried. Shall clause 60 carry?

By Mr. Belzile:

Q. What is this settlement? Is it a marriage contract?—A. A settlement may be a marriage contract. Clause 61 refers specifically to marriage contracts. Marriage settlement is referred to in clause 60, subclause (3).

By Mr. Lesage:

Q. Yes, "before and in consideration of marriage;" that would be a marriage contract.

A. In paragraph (a).

Q. Yes.

The CHAIRMAN: Does clause 60 carry?

Carried.

Does clause 61 carry?

Carried.

Does clause 62 carry?

Carried.

Does clause 63 carry?—What does that mean, Mr. MacDonald?

The WITNESS: Clause 63:

> 63 (1) Where a person engaged in any trade or business makes an assignment of his existing or future book debts or any class or part thereof and subsequently becomes bankrupt, the assignment of book debts is void against the trustee as regards any book debts that have not been paid at the date of the bankruptcy.

Where it is a general assignment of book debts, the assignee has the advantage of any debts that he collects before the man becomes bankrupt. But thereupon his assignment ceases to be effective as to the others.

The CHAIRMAN: Have you had representations from any of the banks in regard to that clause?

By Mr. Lesage:

Q. Yes, the Canadian Bankers Association.—A. We had representations from the Canadian Bankers Association upon that clause, relating chiefly to Newfoundland. They later withdrew their representations. Perhaps I should not say "withdrew," but they did not press them. They ended up by pressing two representations in particular, and not pressing the others.

Mr. BREITHAUPT: What clause is that now?

The CHAIRMAN: Clause 63. I was always under the impression that bankers made quite substantial loans against bills receivable and drafts and what not. Yes, subclause (3) answers the point I have raised. Shall clause 63 carry?

Mr. MACDONNELL: Just one minute, please. Did the Bankers Association question about this only with respect to Newfoundland? Did they not think it would have an effect on clause 98?

The CHAIRMAN: No. I raised that point. Subclause (3) protects the banks.

By Mr. Ashbourne:

Q. What about anyone who had an assignment of book debts in Newfoundland? Under the statute there is no provision made for the registration of that assignment.—A. I understand that the Bankers Association has very recently made representations to the government of Newfoundland to the effect that such a statute should be passed there; and this bill as presently framed is subject to proclamation, that is, it is not to come into force upon assent, but to give a reasonable time for the necessary adjustments to take place. So therefore there is a possibility that the situation will be met before the new Act comes into force.

The CHAIRMAN: Does clause 63 carry?

Carried.

Does clause 64 carry?

By Mr. Macdonnell:

Q. Could we have a short statement from Mr. MacDonald as to the points involved in clauses 64 and 65? I gathered from the suggestion that the old clause should be restored.—A. The old section has been restored in the bill before you.

Q. Oh!—A. Do you wish me to outline it?

By Mr. Lesage:

Q. What is the conflict of jurisprudence?—A. The conflict of jurisprudence turns on the question of intent. It is perhaps an over-simplification to say simply that there is a conflict of jurisprudence, upon whether the intent required is concurrent or unilateral. I do not think it can be disposed of so simply. It is rather a question of the court in each individual case, looking at all the circumstances and saying whether or not they come within the intention of the section. It is true that some of the cases have been difficult to reconcile one with the other. But after representations were made by the Bankers Association and considered, it was felt that there was something in the apprehension which they raised, that the new draft clauses went too far. So the old sections were reverted to. The situation they were afraid that the new clauses created was briefly this: A person whose financial situation was becoming difficult might go to his bank and disclose his situation and ask for a loan in an endeavour to pull himself through, and give security for it. That would be a transaction that you would want to leave unaffected and would want to encourage because it might stave off bankruptcy, yet it might unintentionally be caught by the new draft clause as contained in the bill before the original provisions of the Act were reverted to. For that reason the old clauses were reverted to in the present bill.

By Mr. Lesage:

Q. The draft clauses were creating a presumption, I suppose?—A. No. The new clause—I will read you clause 64 (1):

> Every transaction, whether or not entered into voluntarily or under pressure, by an insolvent person who becomes bankrupt within six months thereafter and resulting in any person or any creditor or any person in trust for such creditor or any surety or guarantor for the debt due to such creditor obtaining a preference, advantage or benefit over the creditors or any of them, is void as against the trustee.

The representations made on behalf of the Canadian Bankers Association were to the effect that the provisions I have read went farther than they should and farther than it had been intended to go and touched upon the kind of transaction which I have mentioned a moment ago. So that the effect would be that the credit would be adversely affected—credit from the banks particularly—at a time when it was most important to the businessman, to the debtor, to be able to get it.

By Mr. Belzile:

Q. As to those particular clauses 64 and 65, who has the onus of proof in any action filed before the court?—A. I am not entirely sure that I grasp your question, Mr. Belzile.

Q. Well, as to clause 65 suppose I enter into some kind of transaction. I buy a piece of property and I pay $1,000 for it. Then somebody comes along and says: "This property is worth $5,000," so, Mr. Belzile, you put back this piece of property into the bankrupt's assets, and here is your $1,000. Then I say: Well, I entered into this contract in good faith and I paid good money for it. The property is not worth a cent more than what I paid for it, and I want my contract upheld.

The CHAIRMAN: There is a provision in clause 64 which might change the onus of proof: and in clause 65 I cannot find any statutory provision changing the normal onus of proof.

Mr. BELZILE: When you come to the matter of good faith or bad faith, it is very difficult to prove negative facts, to prove that I was unaware of the insolvency of the bankrupt at this moment, or to prove that I ignored any actual act of bankruptcy, or to prove that I had no reason to believe him to be a bankrupt or an insolvent. It is far easier to prove positive facts.

By Mr. Lesage:

Q. If you look at the presumption in the second paragraph of clause 64 you will see that in order for presumption to be created, you have to prove first that you have given a preference to a creditor. There would not be any presumption, *prima facie*, that the land you are speaking of was worth more than $1,000. It is only after evidence is given and accepted that the land which you bought was worth more than $1,000 that the *prima facie* presumption would be created; only afterwards.

Mr. BELZILE: In the province of Quebec we have a presumption in any kind of transaction made gratuitously, but not in a transaction which is made against valuable consideration. In that case the person who wants to set aside a transaction has first got to prove it.

By Mr. Lesage:

Q. It is the same here, the onus of proof.—A. Except in the case where it is changed under subclause (2).

Q. Then it is only a presumption of the intent, not of the facts. The facts have to be proven.

Mr. MACDONNELL: What is *prima facie* presumption, half and half of what you have done?

Mr. LESAGE: Oh, yes, it can be set aside by counter evidence.

Mr. ISNOR: In clause 64 (1) the Canadian Bar Association recommended a change from three to six months, and that recommendation was adopted.

The CHAIRMAN: Yes, but the Senate put it back again.

By Mr. Isnor:

Q. What would be the advantage or disadvantage of that, Mr. MacDonald? —A. Well it would be an advantage to the person who is attacking the conveyance in that it would give him six months instead of three months. Let me put it this way: a transaction might be concealed for three months preceding bankruptcy but it would be more difficult to conceal it for six months, and that would mean that transactions going back six months before bankruptcy could be attacked.

Q. That is what I thought, but the Senate replaced the six with three, shortening the time.—A. Yes, that is what happened, the six months period was contained in the new clause 64 and when the Senate took the view that it should revert to the present form of 64 my recollection is that the point was then raised as to the three months—six months period and it was nevertheless changed back to the old clause just as it stood with three months and not six months in it.

The CHAIRMAN: Shall clause 64 carry?

Carried.

Mr. MACDONNELL: As I understand, what happened was there was a suggestion that clause 64 and clause 65 be restored without any change and first of all that was not adopted because while it was felt there was jurisprudence it was of a very conflicting nature. Do I understand that the attempt had been made to draft clauses which would overcome this conflicting jurisprudence but that it was given up, and while that was at first not adopted, finally was adopted, it was not thought worthwhile to try to sort out these conflicting lines of thought?

The WITNESS: With the time then at the disposal of the draftsman, yes, that is so.

Mr. MACDONNELL: That strikes me as being it. I thought we were making a bill to end all bills.

Mr. LESAGE: You will always have, not contradicting judgments, but varying judgments, because that is a question which varies in each case, the question of intent. As Mr. MacDonald put it very well a few minutes ago, you will always have varying judgments on the question of intent.

Mr. MACDONNELL: Yes, but I understand this has really been given up because of the time of the draftsman. That would be rather a pity, if it is the reason, because surely if the thing is worth doing—

The WITNESS: Mr. Macdonnell, that was not entirely the reason or was not the only reason. I probably spoke a little too hastily there. It was also felt that this branch of the law was, as far as the jurisprudence is concerned, still in a state of evolution and that it would be proper to leave it for further decisions of the courts which would probably point the way more surely to the ultimate decision to be arrived at. Many of these conflicting decisions were decisions at a not high level. Not many of them have gone to courts of appeal for authoritative decisions.

The CHAIRMAN: Shall clause 65 carry?

Carried.

Clause 66?

Carried.

Clause 67?

Carried.

Clause 68?

Carried.

Clause 69?

Mr. MACDONNELL: Might I ask a question under clause 67?

The CHAIRMAN: Yes.

By Mr. Macdonnell:

(1) All transactions by a bankrupt with any person dealing with him bona fide and for value in respect of property acquired by the bankrupt after the bankruptcy, if completed before any intervention by the trustee, are valid against the trustee, and any estate or interest in such property that by virtue of this Act is vested in the trustee shall determine and pass in such manner and to such extent as may be required for giving effect to any such transaction.

Now you might have transactions of that kind where the bankrupt himself had been dealing in anything but good faith. I take it that it is only the person who is dealing with the bankrupt who has to be in good faith. Is that right?—A. That is right.

Q. I suppose if the bankrupt deals in bad faith it is too bad, nothing can be done about it.—A. I think the purpose of the distinction is to put the prejudice upon the estate if the trustee has not been astute to get in that particular piece of property. In a case like this somebody has to suffer and it is a question between the trustee and this innocent person who gave value for the property.

Q. And there is no kind of constructive notice to anyone, there is no registration he can be affected by?—A. Only what is contained in the words "bona fide."

The CHAIRMAN: So that if the debtor concealed a valuable piece of property and sold it for half of what it was worth the purchaser takes title?

Mr. MACDONNELL: That might go to the bona fides.

The WITNESS: And it might also go to the question of value.

The CHAIRMAN: Bona fide and for value.

Clause 68?

Carried.

Clause 69?

Carried.

Mr. ISNOR: Mr. Chairman, clause 68, subclause (2) dealing with the claims amounting to $25 or more: that was a recommendation, was it not, by the Toronto Board of Trade, if I remember correctly?

The CHAIRMAN: You are referring to clause 69?

Mr. ISNOR: Clause 68, subclause (2). I was just wondering whether that was a fair clause or not. I think a small creditor, even smaller than $25, is entitled to the same consideration.

The WITNESS: He gets the same consideration.

> The trustee shall include with such notice a list of the creditors with claims amounting to twenty-five dollars or more—

but even the creditors who are not on the list get the notice.

Mr. BELZILE: The reason is that the creditor who has a claim not amounting to $25 has not the right to vote at the meeting of creditors.

The WITNESS: And because the enumeration of the small claims is not considered necessary to inform creditors who receive the notice as to the essential facts of the case.

The Chairman:

Clause 68?

Carried.

Clause 69?

Carried.

Clause 70?

Carried.

Mr. MACDONNELL: It is a very small point but I notice,

> After the first meeting notice of any meeting or of any proceeding need not be given to any creditors other than those who have proved their claims.

It seems to me that a creditor might not rush in to prove his claims.

The WITNESS: Mr. Chairman, may I just add in reply to Mr. Isnor's last question. I want to refer him to clause 81 on page 55. It has reference to the question which he just asked. A creditor with a claim of $25 does not have a vote.

The CHAIRMAN: Mr. Macdonnell, were you satisfied with the answer given to you with regard to the failure to give notice to those who did not prove their claims?

Mr. MACDONNELL: Yes.

The CHAIRMAN: Shall clause 71 carry?

Carried.

Clause 72?

Carried.

Clause 73?

Carried.

Clause 74?

Carried.

Clause 75?

Carried.

Clause 76?

Carried.

Clause 77?

Carried.

Clause 78?

Carried.

Clause 79?

Carried.

Mr. MACDONNELL: Could we have a word on clause 77 from Mr. MacDonald?

The CHAIRMAN: Yes.

The WITNESS: The purpose of that, Mr. Macdonnell, is to say that for purposes of voting the creditor must take into consideration the people who are liable on the security prior to the bankrupt, and the reason I would suggest is that since there will be subrogation in favour of the bankrupt or his estate against those persons priorily responsible, the amount to be considered for voting purposes is only the difference. If I have not put that very well perhaps I can illustrate it a little better. Mr. Smith is a creditor and he has a note against the estate but there is a person responsible on that note before the estate and suppose the note is for $200 and the responsibility of the first party is for $150. Now eventually if the estate pays that note it is going to have a claim back on the other party to the extent of the $150, so $50, as far as voting rights are concerned, should be the measure of that creditor's claim.

Mr. LESAGE: Suppose the said note is endorsed and the first responsibility is that of the bankrupt and that it is endorsed by two responsible people then what happens?

The WITNESS: The clause has no application; the man claims, proves and votes for the full amount.

Mr. LESAGE: For the full amount?

The WITNESS: For the full amount. It is only when there is somebody with liability prior to that of the bankrupt, that the clause comes into play. I wonder if I have satisfactorily explained that?

Mr. MACDONNELL: Then the clause has no application to his claim at all?

The WITNESS: No. I think it is to take care of a situation like this, in addition to what I said: Suppose a creditor comes in and he has this note on which the bankrupt was the second party in order of responsibility, and it is for $200, but the first party is liable to the extent of $100 which the bankrupt estate would eventually recover if it has to pay off the full note. Now, obviously, the net claim of the creditor against that estate is the difference of $100; and it is on that $100 that his voting right should be based. That is what the clause brings about.

Mr. MACDONNELL: I take it then that the bankrupt does not necessarily have to deduct the full amount as to liability but he estimates the value of that document; is that right?

The WITNESS: Yes. He may say that although the person who is responsible on this $200 note in priority to the bankrupt is responsible for $100 he is only good for $50 and he will value the obligation accordingly.

Mr. MACDONNELL: But that really does not hurt him though. He actually doesn't meet the value of his claim. It only hurts himself. There is no hurt coming to him here. Do I make my point?

The WITNESS: Yes, you do, Mr. Macdonnell. Well, if he put a value on it, if it was disputed or if it was disagreed with, it could be opposed by the trustee; and this also, is only for voting purposes. It is not for claiming dividends.

The CHAIRMAN: Any further questions on clause 77?

Carried.

We are now on clause 80:

Carried.

Clause 81:

Carried.

Clause 82, Inspectors.

Mr. MACDONNELL: Has any question ever arisen as to a creditor vote being in exact proportion to the amount of his claim; I mean, here we are dealing with claims over $25 and not exceeding $200; say his claim is for $26 in the one case or $199 in the other, would they both have the same voting strength?

Mr. BELZILE: Yes, one vote.

Mr. MACDONNELL: No question has been raised on that.

The CHAIRMAN: Imagine the community of interest.

Shall clause 82 carry?

Carried.

Clause 83—"Claims provable." Has any question arisen in regard to contingent claims?

The WITNESS: You will find that dealt with, Mr. Chairman, in the explanatory note on the opposite page.

Mr. RICHARD (*Gloucester*): What about subclause 4?

The WITNESS: Subclause 4, Mr. Richard, is for the purpose of covering the case of a proposal. That is, in the case of a proposal the claims provable are determined as of the date of the filing of the proposal, but you apply the same rules about contingent or future claims as clause 83 sets out in the case of a bankruptcy.

The CHAIRMAN: Any further questions on clause 83?

Carried.

Clause 84?

Carried.

Clause 85?

Carried.

Clause 86.

Mr. FULTON: Mr. Chairman, may I ask a question in regard to clause 85?

The CHAIRMAN: Yes.

Mr. FULTON: Is there any change in the forms called for by this section, proof of claims, in the Act? Clause 85 (2) refers to proof of claim in the prescribed form. Now, I am wondering about this; as a result of amending the Act do you consider it necessary to change the various forms which have been used previously?

The WITNESS: It may be necessary to make some changes. I do not think there will be any difference in principle; it would be just to make them more convenient for use under the new Act.

The CHAIRMAN: Mr. MacDonald, is any protection given to the trustee under the Act to a secured creditor realizing upon his security and realizing substantially less than its actual value?

The WITNESS: No, except that he then can claim for the balance.

The CHAIRMAN: Self interest is, I suppose, to be considered sufficient control on that, is it?

The WITNESS: I misunderstood you, Mr. Chairman. The trustee can ask him to assess the value of his security and if the trustee is dissatisfied about the value that the secured creditor places on his security then the trustee can require him to sell that security.

The CHAIRMAN: Would you mind referring me to that clause?

The WITNESS: Clause 88.

The CHAIRMAN: Yes, I know that. Would you mind referring me to the clause which gives the trustee the power to insist upon a secured creditor valuing his security before he realizes it?

The WITNESS: No, there is no such section, Mr. Chairman; that is, if a secured creditor goes right off the bat to the realization of his security, that is something he can do.

The CHAIRMAN: Would there be some power given to the trustee to intervene to prevent a secured creditor from sacrificing his security at prices which were just what he could get for it?

The WITNESS: Under clause 88, subclause 1, the trustee may require him to offer it for sale upon such terms and conditions as are agreed to between them or in default such as are directed by the court. Now that, perhaps, answers your objection in part at least.

The CHAIRMAN: As I read clause 88 it gives you three different sets of circumstances: one, where the creditor has valued his security and the trustee is dissatisfied as to the value; another is where the creditor has not realized on his security; and another one is where he has surrendered his security. Well now I am putting up to you a case where a creditor rushes ahead and squanders his security, sells it away below value; surely there must be some check upon that.

Mr. BELZILE: Clause 40, subclause 2, provides for a secured creditor to realize his security, and, after he has realized his security, if there is any amount owing to him he can prove it and file his claim for the difference.

The WITNESS: Mr. Chairman, I suppose the situation you have put your finger on is no different, in the case of a bankrupt, than it is in the case of a security that is realized without bankruptcy. You have the same danger and you have the same remedy against a secured creditor who did not take ordinary, reasonable steps to make the best out of his security. If Smith has given Jones a chattel as security for a debt, and Smith defaults, and Jones sells the security without any question of bankruptcy coming into it, you have the same possible difficulty.

Mr. MACDONNELL: Yes, only worse.

The CHAIRMAN: Shall the clause carry?

Carried.

Clause 87?

Carried.

Clause 88?

Mr. MACDONNELL: I suppose there is no other remedy—"Where the trustee is dissatisfied with the value at which a security is assessed, or where a secured creditor who has neither realized nor surrendered his security fails to assess—" then you have got to sell it. It might be a very bad time indeed to sell. I must

say that offhand I cannot think of any other way of dealing with the problem?

The WITNESS: The only other way would be to pay the debt and get the security back.

Mr. MACDONNELL: Or you could have someone else value it?

The WITNESS: Oh, when I said that I meant the only way under the present provision would be to pay the debt—

Mr. MACDONNELL: Oh yes.

The CHAIRMAN: The only way is for the trustee to be a gambler and to pay the value and have the estate take the security over; but where does the trustee get power to do that?

The WITNESS: He has the same right, as far as the equity of redemption is concerned, as the debtor has. This problem should probably be looked at also from the other standpoint—from the standpoint of the person who is prevailed upon to make an advance upon security of goods or chattels. To the extent that he is hedged around or restricted in the steps that he can take to make good his security to that extent, I suppose, that it is making it more difficult to obtain that kind of a loan.

Mr. MACDONNELL: Is it just an academic point? Is it a thing upon which you have seen difficulties arise, or does it work smoothly? It does seem to me that there is a loophole but if no one has tried to take advantage of it perhaps we should not spend time on it?

The WITNESS: I do not recall any specific case where a complaint has been made upon that point, but, on the other hand, I would be surprised if there was not frequently considerable grumbling on the part of other persons about the way secured creditors had realized their security. It is a very contentious point. The person who pledges or claims an interest in a chattel very often thinks the man who sold it did not sell it to good advantage.

Mr. MACDONNELL: Then it is a practical difficulty.

The CHAIRMAN: Shall the clause carry?

Carried.

Clause 89?

Carried.

Clause 90?

Carried.

Clause 91?

Carried.

Clause 92?

Mr. FULTON: How can a secured creditor fail to comply with clause 88, for instance? The trustee has power to order a sale and if there is no agreement then there is a direction from the court?

The WITNESS: Clause 92 is just an additional sanction.

The CHAIRMAN: Shall the clause carry?

Carried.

Clause 93?

Carried.

As Mr. Fleming is not here we had better let clause 94 stand.

Clause 95?

Mr. STEWART: There is a matter here on which I would like to have the opinion of the superintendent. There is a growing trend in industry for workers to ask for pension funds to be set up. The best way of doing that of course

is to have the pensions in the form of a federal annuity, or some other sort of annuity, or a trust fund. Where there is neither a trust fund nor annuity scheme it is possible that the company may re-invest the pension fund in the business itself and, if the company goes bankrupt, I do not see any protection here for the workers who have been contributors to the fund. Is there anything which can be done to prevent such a contingency?

The WITNESS: Mr. Stewart was good enough to mention the matter to me this morning and I told him I would consider it. We have reached this clause a little more quickly than I expected and I have not been able to give it much thought. It is a question of whether such a provision should go into clause 94. It is a question for real thought.

The CHAIRMAN: It may be that the funds should be considered as trust funds?

Mr. BREITHAUPT: I think it is a good point.

The CHAIRMAN: As the superintendent has not had time to think this over could we leave the clause stand?

Mr. BELZILE: Could we not revert to section 39 and include a provision to cover this?

The WITNESS: The difficulty in Mr. Stewart's example is that it may not come within these provisions. It may not be held in trust. That is the way I understand the problem Mr. Stewart puts forward.

Mr. BELZILE: The trust here does not necessarily mean a trust deed to property held by the bankrupt in trust for any other person. It does not mean there should be a special trust deed.

Mr. MACDONNELL: Could you in any way establish the trust if the moneys were hopelessly mingled with company funds? I wonder what Mr. Stewart would say to that?

Mr. STEWART: That is why I raised the point.

The CHAIRMAN: The relation between the employer and the employees is so close that if the employees are persuaded to consent to the loan of their funds, or part of their funds, to their employer, then surely it would be our duty to protect them against their own action.

Mr. MACDONNELL: If by any possibility that can be done?

The CHAIRMAN: I would certainly think it would be within the jurisdiction of this parliament to say that any such amount loaned by their officials from their pension fund or funds of that nature to the employer shall be considered trust funds for the purpose of bankruptcy.

Mr. MACDONNELL: I suppose that in a good many instances they would become, to all intents and purposes, partners in the business. Morally there should be some protection.

The CHAIRMAN: I would think that in the absence of evidence it should not apply, but I would say that there would be ample evidence to indicate the nature, the date and the amount of the loans made from the funds.

Mr. BREITHAUPT: They would be preferred creditors.

The CHAIRMAN: I would think they should be trust creditors.

Mr. BREITHAUPT: Under the present setup they would be preferred creditors but that is not good enough.

Mr. LESAGE: Do you refer to any kind of a loan?

The CHAIRMAN: I helped set up one of these plans not over a year ago. If the employees contribute into a fund jointly with their employer for the purpose of setting up a pension fund, then it is perfectly good business for those employees to loan those funds to their employer to help him carry on his business affairs.

Mr. LESAGE: A loan made from the special funds?

The CHAIRMAN: From the special funds to the employer. I think the relationship between the folk making the loan and the men borrowing the money is so close that it is our duty to protect them from themselves.

Mr. STEWART: There are cases in small corporations where there is a very good spirit between the employees and the employer and where a fund such as this has been set up the employees know that they may have to help out in case of financial emergency ,and money may be advanced from the pension fund in the hope that it will carry the business through but then the business may go bankrupt.

Mr. BELZILE: There are no such pension fund loans being made in practice now are there?

Mr. STEWART: It is something new in industry.

Mr. BELZILE: It has been done in the United States in the last two or three months I understand?

Mr. STEWART: Yes, and the pattern there is going to be followed here.

Mr. BELZILE: But it has not been followed here?

Mr. STEWART: Not yet.

The CHAIRMAN: Not to any great extent but it is being followed.

Mr. BELZILE: But we have contributory pension plans now?

The CHAIRMAN: Yes, and the employees and the employers both contribute to the fund. The employer may then turn around and borrow fund moneys to carry on his business.

Mr. GOUR: What happens then? Is the fund considered finished?

Mr. LESAGE: If the employees consent to the loan they are taking their own risk.

Mr. BREITHAUPT: Yes, but they are acting on the assumption that the employer is sound and that their money is safe.

Mr. LESAGE: When you lose money it is always because you have acted on that assumption.

Mr. BREITHAUPT: We should protect the workmen against that contingency?

Mr. FULTON: Are there not two types of cases, one where money is loaned from the fund to the company—in which case I take it the fund would be in the position of a secured or unsecured creditor depending upon the nature of the loan; and the other case is where no separate fund is ever set up and the pension funds were mixed with the ordinary company funds—in which case it would surely be proper to say that money was in the nature of trust funds. In the latter case Mr. Stewart's point would apply. It seems to me to be very difficult to make it part of the law that ,if a loan is made from the pension fund of the company, the pension fund should be in any different position from any other creditor.

The CHAIRMAN: You would be inclined then to put one type ahead of the other, that is where the pension fund was not carried on in a businesslike manner, and no official loan was made, no pension fund actually set up, you would say in that instance it is trust funds.

Mr. FULTON: That seems to me to be the position, just like anybody else who is handling trust funds and who perhaps is unbusinesslike.

The CHAIRMAN: And you would say that employees by officially authorizing a loan, that they lose their position. That may be sound.

Mr. FRASER: Under the Income Tax Act, does it not have to be entirely separate? I do not think they can set it up and leave it in company funds. I think they must be entirely separate. All these companies which set up funds

of that kind have committees of their workers which handle the whole thing. They bank the money and look after the whole thing and I do not think you would find one company in Canada which is handling the fund in with their other funds.

Mr. ISNOR: Dealing with clause 95—(d), the Commercial Travellers' Association are concerned about the wording "wages, salaries, commissions or compensation." They would like to have the superintendent outline the definition in so far as that particular word "compensation" is concerned. They ask whether this would include out-of-pocket expenses such as installing of equipment which was sold within a period of two or three months, in cases where it took a commercial traveller considerable time to set up such equipment. They are anxious to have an interpretation of that word in order to know whether these out-of-pocket expenses I have mentioned—A. Mr. Isnor, giving you a very off-hand answer—it must be that if I speak at the moment, an expression of opinion—with regard to wages, salaries, commissions or compensation, I should be inclined to think that there was there what might be called a genus, and that compensation would take the colour of wages, salaries or commissions, and would not include out-of-pocket expenses. But I would be glad to go into that for you further.

Q. May I enlarge on that thought while you are considering it. A commercial traveller may sell shelving and he will deliver the shelving and his contract may call for it to be set up. Therefore, he will incur out-of-pocket expenses for board and room and so on. I should think that should be part of his regular wages or salaries and commission. Would you mind giving it consideration?—A. Yes, I shall be glad to.

Q. I think they have a point there, Mr. Chairman.—A. Now, the other side of that situation, Mr. Isnor, if I might just suggest it, would be: this is a special provision for the persons mentioned in paragraph (d), and while you are considering any particular group, I know it is very easy to find reason to make exceptions in their favour; but if you look at the whole picture, I have little doubt that you would also find many other classes of persons for whom an equally meritorious case could be put. I wish to go over carefully what you have said and the suggestion you have made; but there is that other side to the question, of how far special treatment should be extended and to what classes it should go, and what it should take in.

Q. I recognize that, but it refers particularly to certain classes in the classification of clerks, servants, travelling salesmen, labourers, and so on. I just took the one, commercial traveller, because I know of cases of that type. The same thing might apply to one or two other classes, and if so I believe your interpretation should be broad enough to include all the classes and not to make a special case of commercial travellers, although I think it applies to that class to a greater extent than to the others.

The CHAIRMAN: Will you take the chair please, Mr. Lesage.

The Vice Chairman took the chair.

The VICE CHAIRMAN: Even a clerk may have travelling expenses for which he is indebted to his employer.

By Mr. Stewart:

Q. Why should paragraph (c) come before paragraph (d)? Surely the requirements of a worker are greater than the requirements of the superintendent. In other words, the worker will be more badly hurt by bankruptcy in not getting his wages than the superintendent would be in not getting his quota.—A. The administration of the superintendent's office applies to the advantage of the people referred to in paragraph (d) as to all others. The levy is one-half of one per cent. I doubt whether it takes an appreciable sum from any of the people who come under (d). We collect through the levy about $5,000 all over Canada.

Q. It is not a very substantial amount, apparently.

The VICE CHAIRMAN: As to the question which was raised by Mr. Isnor, apropos travelling expenses, would you give it a thought, because I believe there is something there.

Mr. GOUR: Something should be done about it.

The VICE CHAIRMAN: And we will take it up tomorrow. I believe if there was a way of doing something about it, it would only be fair.

The WITNESS: I shall give it careful consideration. I do not want to stress the other view, but let us suppose that somebody comes in on the eve of bankruptcy, or suppose a debtor goes to somebody—and I am just taking one instance of what might happen—and says: "Look, I am almost on the rocks; I do not know if I shall be able to pull through or not. If you will lend me money, you will be taking a chance, and I want you to know that. But will you give me a chance to pull through?" Suppose the man who was applied to digs up a couple of thousand dollars and puts them into the business. He has got no security for it. Then later on the business man becomes bankrupt. Let us suppose that the man who loaned the money is retired and that $2,000 loan came out of what he had invested and upon which he was living. Now, you have got a very hard case there. Are you willing to say that that man is less entitled in the matter of priority than the people mentioned under (d)? My point is that once you start to appraise comparatively, you are in a difficult field.

The VICE CHAIRMAN: Suppose you limit it to $500.

Mr. FULTON: Subclause (*e*); I do not quite understand the effect of that change.

The VICE CHAIRMAN: I understand that subclause (e) will stand, and that Mr. MacDonald will give it some thought.

The WITNESS: Yes.

Mr. FULTON: I do not quite understand the effect of the change in the clause, where it says:

> (*e*) municipal taxes assessed or levied against the bankrupt within two years next preceding his bankruptcy and which do not constitute a preferential lien or charge against the real property of the bankrupt—

Mr. BELZILE: Licences to carry on business for example as a lawyer, in my town.

Mr. FULTON: Such things as trade licences.

Mr. BELZILE: Yes, trade licences.

The VICE CHAIRMAN: Or rental taxes. In some cities there are rental taxes.

Mr. FULTON: But it does not affect anybody in the nature of a real property tax.

The VICE CHAIRMAN: No, no.

Mr. BELZILE: They are unsecured on any property.

Mr. RICHARD (Gloucester): They are more of a personal tax, they are not attached to any property.

Mr. BELZILE: Yes.

By Mr. Fulton:

Q. You mean the taxes contemplated in paragraph (e) are not secured by property?—A. Yes, that is right, and it may be, having regard to modern legislative practice, that (*e*) has very little practical application, but we were not sufficiently sure that it was unnecessary, so we put it in.

By the Vice Chairman:

Q. There are some taxes which are unsecured. Business taxes are unsecured. In paragraph (h), Mr. MacDonald, there are three classes of Crown claims which are of the nature of a trust. What about the sales tax, the provincial sales tax? That is in the nature of a trust. I have in mind a sales tax which has been collected and which is kept in the business and paid only after a month or so.—A. In the case of the Unemployment Insurance Act I think I would go along with you in the thought that most of those funds are funds which are supposed to be, at least, collected and kept as separate funds.

Q. And so with the income tax?—A. But I am not sure that it applies so strongly to the case of workmen's compensation.

Q. You are right there.—A. But I rather think in the case of (h) the reason was not so much the technical consideration of trust funds or otherwise as the purpose for which those funds were used, that is, in one case for the assistance of a disabled workman; in the other case, of unemployment insurance, to people who are out of work.

Mr. GOUR: Suppose a tax is not paid. The man would be without work and would not receive the money. If it is not paid, it should be capitalized.

The VICE CHAIRMAN: Are there any other questions on clause 95?

By Mr. Macdonnell:

Q. Paragraph (e) at the top of page 64, I read:

> (e) municipal taxes assessed or levied against the bankrupt within two years next preceding his bankruptcy and which do not constitute a preferential lien or charge against the real property of the bankrupt but not exceeding the value of the interest of the bankrupt in the property in respect of which the taxes were imposed as declared by the trustee;

Those, I take it, are municipal taxes, other than taxes on real estate.—A. Other than taxes which are secured on some property.

Q. Let us say they are business taxes.—A. That may be.

Q. Then, what is the meaning of the words:

> . . . in respect of?

On what property is a business tax charged? Is it charged on the building in which you carry on the business?—A. I would like to say again what I said to Mr. Fulton. I am not sure that paragraph (e) has a very wide practical application today. We were not sufficiently sure that its purpose had gone to leave it out. And that purpose is this: that there may be municipal taxes which are imposed in respect to property, but not so as to constitute a lien on that property. Now, if they come within the two year period, this clause says that they get a preference. But they do not get a preference beyond the amount which they would have got had the Bill made them a lien on the property. That is, you cannot come in and put yourself in a better position than that of a secured creditor. As a secured creditor, the most you would have had would be the value of the property itself. You are given priority but not to a greater value than the property on which might have been made a lien.

By the Vice Chairman:

Q. Would this cover business taxes based on the rental value of a property? —A. Does that business tax constitute a preferential lien or charge?

Q. No, it does not.—A. Yes.

By Mr. Fulton:

Q. It seems to me that you would have, by those last two lines, made it impossible to recognize any ordinary municipal business tax. Let us put it this

way. Most municipalities now charge a licence fee for any person or industry or business concerned to carry on business within the municipality. Those licence fees are not secured on any property—you may be renting your premises —you still have to pay your licence fee and your fee is not secured on the property you occupy. Now the last two lines on your clause it seems to me make the only taxes which are given this priority contemplated in subclause (e) taxes which are imposed in respect of the property.

The VICE CHAIRMAN: What is the meaning of property there? It all depends on the meaning of property in the context.

The WITNESS: I see Mr. Fulton's point and there would be no objection certainly to a change which would, I think, meet it and which would be this, to read the last three lines in this sense:

> but not exceeding the value of the interest of the bankrupt in any property in respect to which the taxes may have been imposed.

Does that meet your point, Mr. Fulton?

Mr. FULTON: Well, that seems to me—I may still be wrong—to confine the type of taxes which is contemplated by subclause (e) to a tax imposed in respect of property.

The WITNESS: I think that changed wording would take away the implication contained in the words as they now are. I understand you to say that you take the last three lines as necessarily implying that the the taxes in order to get the benefit of subclause (e) must be imposed in respect of property. Now, if instead of referring to the interest of the bankrupt in the property in respect of which the taxes "were" imposed—

The VICE CHAIRMAN: Mr. Fulton, if you would look on page 3 of the bill at the definition of "property" I think it will answer your point.

By Mr. Richard (Gloucester):

Q. What is the meaning of the words: "as declared by the trustee"?—A. It means that the trustee has the sole discretion, subject of course to appeals which may be to the registrar or to the judge and from there up, to say what is the value of that property for the purpose of limiting the amount of a preferential claim.

Q. Supposing any tax law or anything declares that this shall be a first lien?—A. Then we are not under subclause (e) at all—we are secured creditors.

Mr. MACDONNELL: It seems to me that the tax, the claim indicated here, is indicated in the first two lines as I read it to be:

> municipal taxes assessed or levied against the bankrupt within two years next preceding his bankruptcy and which do not constitute a preferential lien or charge—,

surely that means all taxes other than taxes secured on real estate and surely again the last three lines are merely putting a limit on the tax claims which are set out in the first three lines.

Mr. FULTON: It seems to me to contradict itself. The first three lines say that priority is given to taxes not secured on real estate and in the last three lines it says that the taxes will only be given this priority if they are taxes imposed in respect of property.

The VICE CHAIRMAN: But not necessarily real property.

Mr. FULTON: I see the point made by the chairman. He has referred to the definition of property on page 3 which is quite wide.

The VICE CHAIRMAN: Anything, even the right in a lease, would be property.

Mr. FULTON: But, any trade licence for which your municipality charges as a condition of doing business within its limits: to what possible property, even within the scope of that definition, could that tax apply?

The VICE CHAIRMAN: If you go back to page 3—

Mr. FULTON: There is no property, there is no interest in property attached by that licence; it is just a fee which you have to pay before you can do business in that municipality.

The VICE CHAIRMAN: The right to do business is surely a property, it is something.

The WITNESS: In that case, Mr. Fulton, the limitation does not apply. There is no limitation by intention. It may be that those three lines do raise an implication of the nature you referred to but by the intention of the subclause, the limitation does not apply.

By Mr. Fulton:

Q. You mean the limitation shall not exceed— —A. The limitation to the value of the property in respect of which the taxes were assessed.

Q. Well if it were held then that those words do not operate to qualify the type of tax to which the priority is given I would be satisfied, but it seems to me that as they are expressed here they qualify the type of tax to which the priority is given rather than the amount.

Mr. MACDONNELL: They do not seem to set out to do it but they do it farther through.

Mr. FULTON: Perhaps that subclause could stand and if there is any validity in my point—

The VICE CHAIRMAN: We will let the whole clause 95 stand.

Mr. STEWART: Perhaps, Mr. MacDonald might be able to give a legal opinion on this suggestion of mine with respect to reserves, pension reserves.

The VICE CHAIRMAN: Is it your intention that we should adjourn now or continue till six o'clock?—We will adjourn now and meet again tomorrow morning at 11:30 a.m. in this room.

LIST OF APPENDICES

APPENDIX A

THE SUPREME COURT OF ONTARIO IN BANKRUPTCY

(HONOURABLE MR. JUSTICE URQUHART)

OSGOODE HALL, TORONTO 1
NOVEMBER 25, 1949.

HUGHES CLEAVER, Esq., M.P.,
Chairman, Banking and Commerce Committee,
House of Commons,
Ottawa, Canada.

DEAR Mr. CLEAVER: With reference to your kind letter about the Bankruptcy Bill, it is my firm opinion that section 21 (6) of the Bill should contain a provision for adjudging the debtor bankrupt, and that its wording should closely adhere to that of section 4 (6) of the present Bankruptcy Act, R.S.C., 1927, Chap. 11, namely:

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

I enclose a memorandum which I sent to the Senate Committee on that point.

This is the most important, in my opinion, of the recommendations which I made in my evidence before and my Brief to the Senate Committee, not that some of the others are not important.

If you would like me to appear before the Committee next week, I could arrange to do so, provided that the trip is not Pickwickian, but at the moment I do not think I could add much to what is already on record.

With best regards, I am,

Yours sincerely,
(G. A. URQUHART)

There is no provision in Bill F. for adjudging the debtor bankrupt. In the Memorandum submitted by the Superintendent of Bankruptcy with regard to section 21 (6), (1949 Minutes, page 97), he quotes from Duncan and Reilley:

> Under the Bankruptcy Act—it is the receiving order which vests the property of the debtor in the trustee, and the adjudication does little more than attach the label of bankrupt to the debtor.

No authority is given in Duncan and Reilley for this statement, and it is apparently only the personal opinion of the author.

In Bill F, the bankruptcy of the debtor only arises by inference from the definition of "bankrupt" and "bankruptcy". There is no definition of "receiving order".

Section 4 (6) of the present Act provides that the Court—

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

Adjudging the debtor bankrupt is the basis of bankruptcy proceedings.

Under the present Act, it is not only the vesting of the property of the debtor in the trustee that is effected, *but the adjudication of bankruptcy affects the status of the debtor and his rights and privileges.* (Such disabilities may be removed when he obtains his discharge from bankruptcy).

For example, under section 192 of the present Act:

> Where an undischarged bankrupt obtains credit to the extent of five hundred dollars or upwards from any person without informing that person that he is an undischarged bankrupt; or
> if he engages in any trade or business under a name other than under which he was adjudicated bankrupt without disclosing to all persons with whom he enters into any business transaction the name under which he was adjudicated bankrupt,

he shall be guilty of an indictable offence, etc.

See also DUNCAN and REILLEY, page 780: Section 145. Statutory disqualification removed

Section 31 of The British North America Act reads:—

> 31. The place of a Senator shall become vacant in any of the following cases:—
> (3) If he is *adjudged bankrupt* or insolvent, or applies for the benefit of any law relating to insolvent debtors, or becomes a public defaulter.

APPENDIX B

Translation

COMMITTEE ON BANKRUPTCY

Proceedings of a meeting of the Committee on Bankruptcy, held at Montreal, the 22nd of November, 1949.

At a meeting of the Committee on the Bankruptcy Act, held at Montreal, the 22nd of November, 1949, at 9.30 o'clock a.m., to study Bill F. "An Act respecting Bankruptcy", which the House of Commons will be asked soon to consider on second reading.

There were present: Messrs. Jacques Panneton K.C., Richard R. Alleyn, K.C., Auguste Quesnel and Charles Coderre, K.C., Secretary-Treasurer. Messrs. Redmond Quain, K.C., and Louis Joseph de la Durantaye, K.C., were absent.

The Committee is aware of the fact that certain suggestions which it had made in April, 1949, when the proposed Bill re Bankruptcy was before the Senate, had been accepted and incorporated in the new Bill for submission to the House of Commons. Certain other suggestions which the Committee considered warranted were, unfortunately, set aside and the Committee does not consider it advisable to repeat them.

However, after further discussion and study of the new Bill (Letter F of the Senate), the Committee is of opinion that there should be proffered representation in the following terms:

> The trustee should act through a solicitor in all proceedings of a contentious nature, and more particularly in those brought under clauses 10(d), 66, 85(6), 123 and 137, and in those where he makes an application on behalf of the debtor, such as in the case of a composition under clause 33 and the discharge of the debtor under clause 127(2), in order that the debtor be properly represented.

To give effect to the above suggestions, it is only necessary to amend the general rule 5a, in force since the 1st October, 1948, by adding thereto the following words:

> except in the case where the process is of a contentious nature or where the trustee makes an application on behalf of the debtor.

(*Signed*) CHARLES CODERRE,
Secretary-Treasurer.

MONTREAL,
this 23rd day of November, 1949.

Seal of the
Bar of the
Province of Quebec.

APPENDIX C

760 Victoria Sq.,
November 25, 1949.

Hughes Cleaver Esq., M.P.
Chairman, Banking and Commerce Committee,
House of Commons,
Ottawa, Ont.

Dear Mr. Cleaver:

Please accept my thanks for your letter of November 24th, a copy of the new Bankruptcy Bill, and your kind invitation to make representations on behalf of the Montreal Board of Trade.

Unfortunately I shall be in Toronto on Monday and Tuesday next and since the session is expected to end soon, it appears unlikely that there will be time to express an oral or written opinion on the Bill, much as I would like to do so.

I note that all the evidence taken by the Senate Committee is before you and I would very much like to direct attention to the brief I presented to that committee and the memorandum regarding the operation of the Companies' Creditors Arrangement Act, 1933.

Since the new Bankruptcy Bill now provides for proposals, compromises, statements etc. *before* as well as after Bankruptcy, the Montreal Board of Trade is of the opinion that the *Companies' Creditors Arrangement Act should be amended to restrict its application to companies having securities in the hands of the public subject to the provisions of a trust deed.*

It is felt that the abuses which took place before the war and which are continuing should be stopped by complementary legislation now that all arrangements are to be provided for under the new Bankruptcy Act.

If it is at all possible to send a written statement to the clerk of the committee, next week, I shall endeavour to do so but in the meantime would like to emphasize the urgency for corrective legislation amending the Companies' Creditors Arrangement Act.

Yours very truly,

H. S. T. PIPER,
Chairman,
Bankruptcy Committee,
Montreal Board of Trade.

APPENDIX D

THE BOARD OF TRADE OF THE CITY OF TORONTO

Mezzanine Floor

KING EDWARD HOTEL

TORONTO, November 25, 1949.

T. L. McEVOY, Esq.,
Clerk,
Banking and Commerce Committee,
House of Commons,
Ottawa, Ont.

Dear Sir:

In recognition of this Board's long interest in the question of bankruptcy legislation, and its representations made from time to time with respect to Senate consideration of this matter, Mr. Hughes Cleaver, M.P., Chairman of the Banking and Commerce Committee of the House of Commons, wrote us under date of November 24th requesting our wired advice as to whether or not we were interested in making any further submissions on the subject. A copy of the telegram which was despatched to Mr. Cleaver from this office today is attached for your information.

You will observe that our primary interest is in ensuring that passage of the Bankruptcy Bill at the present session of the House should be not impeded. However, we are keenly interested in the Committee procedures now in progress, and should welcome the opportunity of submitting further explanations respecting our prior submissions by having our representative appear before the Committee at any convenient time, provided such action will be not likely to delay unduly or prejudice passage of the Bill.

A copy of our submission presented to the Senate Committee on Banking and Commerce on November 1st last is enclosed for your information, together with a memorandum indicating the action taken on the amendments requested.

We shall be grateful to be kept informed of progress, and to be advised, in advance if possible, if it appears that any useful purpose can be achieved by the personal attendance of our representative before the Committee.

Yours very truly,

F. D. TOLCHARD,
General Manager.

APPENDIX E

THE CANADIAN BANKERS' ASSOCIATION

MONTREAL, November 26, 1949.

HUGHES CLEAVER, Esq.,
Chairman,
Banking and Commerce Committee,
House of Commons,
Ottawa, Ont.

Dear Mr. Cleaver:

In the absence of Mr. Rogers from the city today I am acknowledging receipt of your letter of November 24th enclosing a copy of the new Bankruptcy Bill. We wish to thank you for your courtesy.

The various sections in the Bill as first introduced, to which representations on our behalf were addressed to the Senate Banking and Commerce Committee, were generally speaking adjusted in conformity with our views. It would not appear necessary for any further representations to be made on our behalf unless, of course, in the opinion of your Committee sections of the Bill in which the banks have an interest are opened up for other amendment. In the event of that occurring we should have to consider what further representations we should like to offer.

Yours very truly,

H. L. ROBSON,
Assistant Secretary.

APPENDIX F

1404 Montreal Trust Bldg.,
Toronto 1, Nov. 24th, 1949.

Hughes Cleaver, Esq.,
Chairman of the Banking and Commerce
Committee of the House of Commons,
Ottawa, Ont.

Sir: The Association has studied House of Commons Bill 149, an Act respecting Bankruptcy, which is a revision of bills introduced in the Senate in 1948 and 1949, to all of which the Association gave careful study, and with respect to which it submitted its considered views. As the Bill is now for the first time being considered by your Committee, the Association respectfully submits the following representations which were made on the corresponding provisions of the preceding bills but which have not been given effect to in the present Bill.

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

The Association approves of the elimination of the custodian in bankrupt estates, recognizing that almost invariably the custodian is confirmed as a trustee. This step therefore eliminates unnecessary procedure. However, the fact of having a custodian gave the prospective trustee an opportunity to consider whether he should take on the bankrupt's estate. The elimination of the office of custodian, and the new provision of Section 6(4) making it obligatory for a trustee to continue his duties until relieved thereof, make it desirable that Section 6 should be amended to provide that the trustee may withdraw up to the time of the first meeting of the creditors.

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

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

It is suggested that at the end of Subsection 8 of Section 8, the following words be added:—

> and provided that he shall at the first meeting of creditors obtain the approval of the creditors and if such approval is not obtained, he shall be entitled to costs and expenses of the action if the court is satisfied that he acted reasonably and in good faith.

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

3. *Proceedings by Trustee in Emergency, Section 8(9).*

It is proposed that Subsection 9 of Section 8 be amended by adding at the end the following words:

> and provided that he shall as soon as possible obtain the approval of the inspectors and that if such approval is not obtained, he shall be entitled to costs and expenses if the court is satisfied that he acted reasonably and in good faith.

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

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

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

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

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

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

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

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

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

7. *Non-compliance with Bulk Sales Act an Act of Bankruptcy, Section 20(1)*

It is recommended that Paragraph (h) of the present Act reading: "If he makes any bulk sale of his goods without complying with the provisions of any Bulk Sales Act applicable to such goods in force in the province within which he carries on business or within which such goods are at the time of such bulk sale", be included as an additional paragraph to Section 20(1). It is realized that a debtor who does this, will probably have committed some other act of bankruptcy designated in the present Bill, but such other act may be much more difficult to prove than the failure to comply with the provisions of the governing provincial Bulk Sales Act. Therefore, failure to comply with such legislation should be designated as an act of bankruptcy in the present Bill.

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

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

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

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

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

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

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

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

10. *Proposals, Section 27.*

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

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

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

The reason for this is that some provinces such as Ontario, permit liens on manufactured goods to continue valid without registration provided that the name and address of the vendor are marked thereon. With respect to property which is subject to a valid but unregistered lien, under the present wording of the Section, the trustee is not personally liable for any loss or damage. This cuts down the rights of lienholders holding such liens. A competent trustee would be familiar with the Conditional Sales Act of his province, and should take notice of all liens which are properly protected. It may be that in such provinces, the trustees will be put to considerable trouble in making the necessary inquiry but this is preferable to valid lienholders being deprived of their rights as secured creditors and reduced to the status of ordinary creditors.

12. *Priorities, Section 95.*

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

13. *Summary Administration, Section 114.*

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

14. *Discharge of Bankrupt, Section 127.*

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

15. *Powers of Registrar, Section 149.*

The Association approves of the additional statutory powers given to the Registrar, some of which have been exercised by him without specific legislative

sanction, as it would appear that the new powers given should expedite proceedings and cut down the expense which Court hearings would entail. However, these additional powers will only be an improvement if the Registrars who are appointed to exercise them possess the necessary high qualifications.

We trust that your Committee will give the above Submission full consideration.

Yours very truly,

H. W. MACDONNELL,
Manager, Legal Department.

APPENDIX G

DANIEL P. HATCH, CHAIRMAN
1009 Laird Boulevard
Town of Mount Royal, Que.
Telephone: Atlantic 3221

J. SID. WINTERS, TREASURER
139 Lakeshore Road, Humber Bay
Toronto 14
Telephone: Lyndhurst 4920

NOVEMBER 25, 1949

Mr. HUGHES CLEAVER, K.C., M.P.
Centre Block,
4th Floor,
House of Commons, Ottawa.

Dear Mr. CLEAVER,—First of all, Mr. Cleaver, permit me to thank you most sincerely indeed for the many courtesies and kindnesses which you rendered to me yesterday at Ottawa. You were extremely helpful and you most certainly stoutly supported the able presentation made on the behalf of the Commercial Traveller by Mr. Macnaughton, when Section 12 of the Act was dealt with.

I do hope that the suggestion for change made in Section 12 may still be incorporated in Section 94 when you get to deal with that Section, and that in Section 95 the word "Compensation" may be interpreted to include expenses paid out in Travelling by Commission Salesmen.

I have ordered a Transcript of each day's proceedings of your Committee and in that way I will be able to keep in touch with the progress made.

Thanking you again, sir, for the very real kindnesses and services which you extended to me, I am

Very sincerely yours,

D. P. HATCH,
Chairman.

HOUSE OF COMMONS

1949

SECOND SESSION

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Bill No. 149 (Letter F of the Senate) An Act Respecting Bankruptcy

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MINUTES OF PROCEEDINGS AND EVIDENCE

No. 3

WEDNESDAY, NOVEMBER 30, 1949

WITNESS

T. D. MacDonald, Esq., K.C., Superintendent of Bankruptcy, Department of Justice, Ottawa.

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

MINUTES OF PROCEEDINGS

House of Commons,

WEDNESDAY, 30th November, 1949.

The Standing Committee on Banking and Commerce met this day at 11.30 a.m. The Vice-Chairman, Mr. Jean Lesage, presided.

Members present: Messrs. Ashbourne, Bennett, Breithaupt, Cannon, Dumas, Fleming, Fournier (*Maisonneuve-Rosemont*), Fraser, Fulford, Fulton, Hellyer, Hunter, Isnor, Lesage, Prudham, Quelch, Stewart (*Winnipeg North*).—17.

In attendance: Messrs T. D. MacDonald, K.C., Superintendent of Bankruptcy, and J. S. Larose, office of Superintendent of Bankruptcy.

Consideration resumed of Bill No. 149, An Act respecting Bankruptcy.

The following clauses were passed, subject to reconsideration at the request of any member: 96 to 106, both inclusive; 108 to 119, both inclusive. The following clauses stand: 107 (3); 117 (*b*), (*l*) and (*o*) will be redrafted by the Superintendent of Bankruptcy to cover suggestions made by Committee.

The Committee adjourned at 12.30 p.m., to meet again this day at 3.30 p.m.

AFTERNOON SESSION

The Committee resumed at 3.45 p.m. The Vice-Chairman, Mr. Jean Lesage, presided.

Members present: Messrs. Ashbourne, Belzile, Breithaupt, Cannon, Cote (*St. John-Iberville-Napierville*), Fraser, Fulford, Fulton, Gour (*Russell*), Hellyer, Hunter, Lesage, Macdonnell, Prudham, Richard (*Gloucester*).—15.

In attendance: As at morning session.

Consideration resumed of Bill No. 149, An Act respecting Bankruptcy.

The following clauses were passed, subject to reconsideration at the request of any member: 120; 121 (as amended); 122-126; 128 (as amended); 129-135, both inclusive; the following clause stands: 127.

Clause 121, on motion of Mr. Hunter,

Resolved,—That clause 121 be amended, in line 15 by deleting the words "the trustee or any creditor" and by inserting, in line 15, after the word "bankrupt", the words "his dealings or property".

Clause, as amended, carried.

51083—1½

Clause 128(1), on motion of Mr. Cannon,

Resolved,—That Clause 128(1) be amended, in line 6, by deleting the word "and" and substituting therefor the words "as to"; and in line 7, by deleting the words "together with" and substituting therefor the words "and as to".

Clause, as amended, carried.

It was agreed that the French text of 128(1) need not be amended.

The Committee adjourned at 5.40 p.m., to meet again tomorrow, Thursday, December 1st, at 11.30 a.m.

T. L. McEVOY,
Clerk of the Committee.

EVIDENCE

HOUSE OF COMMONS,
NOVEMBER 30, 1949.

The Standing Committee on Banking and Commerce met this day at 11:30 a.m. The Vice-Chairman, Mr. Jean Lesage, presided.

Mr. T. D. MacDonald, K.C., Superintendent of Bankruptcy, recalled:

The VICE-CHAIRMAN: We have a quorum. When we adjourned last night we decided to let clause 95 stand so we will proceed and leave the clauses on which there seem to be difficulty and we will take them up later.

Mr. ISNOR: Is that the only clause which is standing?

The VICE-CHAIRMAN: We have ten clauses, altogether.

Mr. FLEMING: Was clause 94 stood over?

The VICE-CHAIRMAN: Yes.

Shall clause 96 carry?

Mr. ASHBOURNE: With reference to clause 96 does that mean that all claims of the other creditors have to be paid one hundred per cent?

The WITNESS: Yes, that is what it means, Mr. Ashbourne.

Mr. FLEMING: There is no change in the substance of the law. There is only a change in the draftsmanship.

Mr. ASHBOURNE: I presume that the reason is that the wife or husband, as the case may be, may be a partner of the bankrupt.

Mr. FLEMING: It is more than that: it would be so easy to defeat the whole distribution and equitable treatment of creditors if the husband or wife could come in and rank as creditors.

The VICE-CHAIRMAN: Clause 96?

Carried.

Clause 97?

Carried.

Mr. FLEMING: There have been no representations about the extent of relationship of people, as distant as aunts and uncles? I sometimes wonder if uncles and aunts are not a little distant to include in the scope of relatives for this purpose. Is Mr. MacDonald aware of any case under that clause?

The WITNESS: No I am not, Mr. Fleming, and as you said there have been no representations on those two points. I mean I am not aware of any cases of representation as to injustice.

The VICE-CHAIRMAN: Clause 97?

Carried.

Clause 98?

Carried.

Clause 99? There was a representation made by the Canadian Bar Association which was adopted and the words "in any capacity" have been added.

Mr. FLEMING: They made one other suggestion that was not adopted. They wanted it to apply only to wages of a person in his capacity as a

director or officer, not to claims arising in other ways. I suppose the theory is that anybody who accepts election as a director does so with his eyes open and knows that he is running risks. Have there been any representations especially as to the inclusion of officers in the scope of this provision? There might be a case to distinguish between officers and directors for this purpose.

The WITNESS: The only representations are those mentioned on page 28 that you have there on the so-called compendium.

Mr. FLEMING: You see, in small companies a man who holds an office may be in effect just a salaried worker.

The VICE-CHAIRMAN: You will note that the Canadian Bar Association, after having represented that it should apply only to wages and then after some explanation by members of the Senate, I suppose, turned around and asked that the words "in any capacity" be added.

The WITNESS: They said "If you are not going to accept our first recommendation, please accept our second recommendation and clarify it definitely" and their second recommendation was adopted by adding the words "in any capacity."

Mr. BREITHAUPT: Since clause 99 is more or less contingent on clause 95 and as you allowed clause 95 to stand would it not be well to allow clause 99 to stand until you determine what clause 95 is to be?

The WITNESS: No. Clause 99 is scarcely related to the same matter as clause 95. Clause 95 settles the priorities.

Mr. BREITHAUPT: It says in here "as provided by section 95."

Mr. CANNON: Clause 99 does deal with priority.

The WITNESS: But clause 99 deals only with the special case of the officer or director of the corporation.

Mr. FLEMING: There is no new principle in clause 99.

The WITNESS: It is the same as the present section 118 with, for clarification, the addition of the words "in any capacity".

Mr. BREITHAUPT: So whatever change is made in clause 95 will not affect clause 99?

The VICE-CHAIRMAN: No.

Shall clause 99 carry?

Carried.

Clause 100?

Carried.

Clause 101?

Mr. FLEMING: There was one question here about subclause 4. I see it was suggested by the Toronto Board of Trade that the subclause be clarified by the addition of the words "of the other or others" after "property". What was the actual change made that was designed to bring about the clarification by "of the other or others" as proposed by the Toronto Board of Trade?

The WITNESS: If you will follow the text before you now I will read section 59 as it is in the Act:

> Where a bankrupt owes or owed debts both individually and as a member of one or more different co-partnerships, the claims shall rank first upon the property by which the debts they represent were contracted and shall only rank upon the other or others after all the creditors of such other estate or estates have been paid in full.

Mr. FLEMING: There is no other change in substance here.

The WITNESS: No change in substance.

The VICE-CHAIRMAN: Clause 101?

Carried.

Clause 102?

Carried.

Clause 103?

Carried.

Mr. FLEMING: It is not very often we have occasion to apply that, Mr. Chairman.

The WITNESS: There was a case once.

The VICE-CHAIRMAN: Clause 104?

Carried.

Clause 105?

Carried.

Clause 106?

Carried.

Clause 107?

Mr. FLEMING: Mr. Justice Urquhart's suggestion on clause 107 was not adopted, I see, Mr. Chairman.

The WITNESS: No, it was felt that we have sufficient control over the trustees through the office of the superintendent and through his amenability to the court if he does not carry out the provisions of the Act.

The VICE-CHAIRMAN: Supervision powers are given in clause 160.

Mr. FLEMING: Well, I gather the feeling in the Senate was that it should not attempt to blend with the subject matter of clause 107 the subject of the suggestion of Mr. Justice Urquhart.

The WITNESS: And as to restoring section 74, clause 107 contains the substance of section 74 but is somewhat more flexible. Instead of tying the trustees down to times and amounts it provides that he shall make a distribution or declare a dividend from time to time as required by the inspectors, who are the representatives of the creditors, and it seems to me a more practical arrangement than tying him down to arbitrary times and amounts.

Mr. CANNON: The sections might act as a guide to the trustee as to when the dividends should be declared, but as the article is now there is no guide left to their judgment.

Mr. FRASER: But then there is the other angle, Mr. Chairman, that you might have nine or nine and a half per cent of it in, to divide, and that might extend over many months.

Mr. CANNON: But under section 74 of the old Act, it said:

> A further dividend shall be paid whenever the trustee has sufficient moneys on hand to pay to the creditors ten per cent, and more frequently if required by the inspectors, until the estate is wound up and disposed of.

So the inspectors, even though the trustee may not have ten per cent, have the right to ask for a distribution?

The WITNESS: These inspectors, as you know, are appointed by the creditors; they are dealing with their own property; they are subject to a direction by the creditors and subject to removal or replacement by the creditors, so they should reflect pretty closely the wishes of the body of creditors.

Mr. HUNTER: Subclause (3) has fairly wide powers.

Mr. FLEMING: I was wondering if you should confine the creditor's rights to apply to the one case where the trustee has refused, after being requested to do so by the inspectors. In many cases you will have only a very small group of inspectors and they are usually representatives of the largest creditors,

—they do not always reflect the point of view of the smaller creditors,—and for some reason or other they think it inadvisable for the trustee to expedite the payment of dividends. Your small creditor, apparently, can apply only if he, the trustee, refuses or fails, after having been directed to do so by the inspector. That is a lot of power to put into the hands of the inspectors.

Mr. ISNOR: I suppose that is pretty well covered; it applies not only to creditors but to any creditor.

Mr. FLEMING: No, it only applies when the trustee refuses to follow the direction of the inspector.

Mr. HUNTER: That is where the trustee has failed to comply with a direction.

Mr. CANNON: You cannot place any blame for that on the inspector if he fails to act.

Mr. HUNTER: I don't know, it may be there is a little doubt about this. There may be some difficulty about it; if the creditors get hot about it they just direct distribution.

The WITNESS: And the aggrieved creditor would still have his access direct to the court by way of complaint.

Mr. HUNTER: And he would have the other remedies under the Act.

The WITNESS: Yes.

Mr. HUNTER: I think there is something in the point you raised, Mr. Fleming, but I am not sure whether it is terribly practical.

Mr. FLEMING: I cannot point to any specific case. I can conceive of situations where the inspectors, representing the larger creditors, could be arbitrary and in that way the policy is determined in distribution. Mr. Chairman, I would think there would be a very grave doubt as to whether clause 15 applied to override the provisions of this clause 107. You see, you have very plain terms in subclause 3 of clause 107, without any action with respect to the trustees, except in that case where the trustee refuses after having been directed to distribute by the inspectors.

The WITNESS: No action against him lies, but I think the creditor would still have his right of appeal under clause 15. The real purpose of subclause 3 of clause 107 seems to me to provide that in case of that presumably unreasonable request the creditor is then personally responsible for interest.

Mr. FLEMING: The trustee.

The WITNESS: Yes, the trustee.

Mr. FLEMING: If clause 15 applies then I think we need not worry about subclause 3 of clause 107.

The VICE-CHAIRMAN: It is of interest.

Mr. FLEMING: Could we not clarify it usefully, though, by inserting at the beginning of subclause 3 of clause 107 the words "subject to the provisions of clause 15"?

The VICE-CHAIRMAN: Do you think it is not subject to that now?

Mr. CANNON: I do not think clause 15 applies.

The VICE-CHAIRMAN: I think it would.

Mr. CANNON: The effect of that will be this, that he will be stuck, there will be no remedy.

Mr. HUNTER: He has no relief at the present time, except by address to the inspector.

Mr. CANNON: You cannot say that you are aggrieved by the act of a trustee; as I see it, this applies only where there is a direction by the inspector.

Mr. HUNTER: The inspectors are chosen by the creditors, and while we try to protect the minorities I think on the point of law this is hardly workable.

Mr. FLEMING: I must say, Mr. Chairman, that on the point of law, as a matter of legal argument, I agree with Mr. Cannon. I am just wondering if we could avoid a situation arising at some time by a simple amendment to subclause 3. Maybe we had better leave this one over for further consideration, Mr. Chairman.

The VICE-CHAIRMAN: We will let the section stand and the superintendent will prepare a report for us on the matter.

Mr. ISNOR: I would just like to get an expression of opinion on this; we have been referring to clause 15 and to clause 107. Does not clause 15 come under that section dealing with the powers of the trustee? If so, then I think that clause 15 does apply, with all due respect to my legal friends.

The VICE-CHAIRMAN: That is a question which I want the Superintendent of Bankruptcy to examine thoroughly and report upon, later.

Mr. FLEMING: I think we had better leave that.

The VICE-CHAIRMAN: Yes.

Mr. HUNTER: He can make a decision on it and still be wrong.

The VICE-CHAIRMAN: Clause 108:

Mr. CANNON: Subclauses 1 and 2 are not changed.

The VICE-CHAIRMAN: There is a change in subclause 1 which was suggested by the Toronto Board of Trade.

Mr. FLEMING: And there was a change made in subclause 2, also.

The VICE-CHAIRMAN: Yes there was a change made in both subclause 1 and subclause 2.

Mr. FLEMING: And I understand that the change suggested in subclause 2 was at the instance of the Department of National Revenue.

The VICE-CHAIRMAN: Mr. MacDonald, could you give us the reasons brought forward by the Toronto Board of Trade for the change they suggested and which was adopted in subclause 1 of clause 108?

The WITNESS: Suggested by the Toronto Board of Trade that the subclause be made permissive rather than mandatory.

The VICE-CHAIRMAN: Was the former section 75 mandatory?

The WITNESS: Former section 75 read; the trustee may at any time after the first meeting give notice by registered mail.

The VICE-CHAIRMAN: Oh, it is the same.

The WITNESS: And the present goes back apparently to the original text; "may" seems to be more appropriate than "shall".

The VICE-CHAIRMAN: Yes.

The WITNESS: It seems to be a matter which should be in the discretion of the trustee. Would you like me to read the comments of the Toronto Board of Trade?

The VICE-CHAIRMAN: Yes.

The WITNESS: Section 110, subsection 1 (this refers to a prior bill but it is on the same section) requires the trustee to give notice by registered mail to every person with a claim of which the trustee has notice or knowledge and whose claim has not been proved. This can be a very costly matter in the case of certain estates where there are a large number of creditors, sometimes running into thousands with very small claims; subscribers to magazines are instances of the type of estate referred to; and consequently the subclause should be permissive rather than mandatory in form, and this "shall" in line 1 should be changed to "may".

The VICE-CHAIRMAN: What about subclause 2? There was a suggestion by the bar of the Province of Quebec; but I think the explanation given on the opposite page there is not quite clear.

Mr. HUNTER: Clause 108 might have some bearing on clause 107 because it is mandatory there; the trustee will proceed to declare dividends, etc.

The VICE-CHAIRMAN: No.

The WITNESS: No, I do not think so.

Mr. CANNON: I do not quite understand what it says here.

The VICE-CHAIRMAN: I do not think it is a proper translation of what they intended.

The WITNESS: I must say that I never heard the expression before.

The VICE-CHAIRMAN: As they say here, it must have been a bad translation.

Mr. FLEMING: That is in the compendium.

Mr. CANNON: In the last line of clause 108, subclause 4 it says, "until the expiration of ninety days after the trustee has filed all returns which he is required to file"; what returns are these?

The VICE-CHAIRMAN: That refers to income tax returns.

Mr. CANNON: I was just wondering if we should not have the word "tax" in there.

The VICE-CHAIRMAN: No, the subclause is all on income war tax or income tax, so it refers only to the subject of taxation.

Shall clause 108 carry?

Carried.

Clause 109?

Carried.

Clause 110—there is no material change and no representations have been made. Carried.

Clause 111—this is a new section.

Mr. HUNTER: That is more of an accounting section is it not?

The VICE-CHAIRMAN: Yes.

The WITNESS: That is the current practice, but there is no obligation in the Act at the present time and it is considered that there should be.

Mr. FLEMING: In the Senate committee they eliminated practically all reference to the time element in subclause 3. What was the reason for the complete elimination of the time element in subclause 3 and subclause 5?

The WITNESS: I believe that these tie in together, Mr. Fleming—I will have to just read that for a moment. It appears that the idea was to take out the thirty days because that made an unnecessary delay, sometimes, in sending out the statement, and then to safeguard the matter in subclause 5 by making the comments of the superintendent a condition precedent to the taxation of the accounts. So that, in effect, instead of saying you must wait thirty days before you send out the statement, it says the comments or advice of the superintendent must be received before the account is taxed. It achieves the same purpose without necessarily imposing that thirty day delay. If the superintendent gets his comments back in time, as we hope he will be able to do, the trustee then is not held up for the thirty day period.

Mr. HUNTER: Why does it not read that way?

The WITNESS: I will read you subclause 3 which was changed:

> The trustee shall then forward a copy of the statement and of the dividend sheet to the superintendent after they have been approved by the inspectors and at least thirty days before mailing those documents to the creditors.

Clause 5 read:

> After the trustee's accounts have been taxed and after the expiration of the time provided in subclause 3, the trustee shall forward by registered mail to every creditor whose claim has been proved—to the registrar and to the superintendent and to the bankrupt—

and then it continues as it is shown in this bill.

Mr. STEWART: Have you any backlog of such statements or can you handle them as they come along?

The WITNESS: We are able to handle them with reasonable expediency.

By Mr. Fleming:

Q. What is the average length of time?—A. Frequently the same day—the same day or the next day in ordinary times. I am not speaking of the present two or three weeks when we are working on a thing like this. We have a very unusual situation now but in ordinary times they are put out very promptly.

Q. Has there been at any time an expression of opinion that the trustee's comments ought to accompany the material the trustee sends to the creditors?—A. No, I cannot say that there has been.

By Mr. Ashbourne:

Q. Who is the taxing officer?—A. That is generally the registrar of the bankruptcy court.

Q. Do accounts have to be passed to any other department of the bankruptcy court except to the superintendent?—A. No.

The VICE-CHAIRMAN: Shall the clause carry?

Carried.

Clause 112?

Carried.

Clause 113?

Mr. FLEMING: There were some representations on this clause.

The VICE-CHAIRMAN: Yes, relating to the period. The Toronto Board of Trade represented that the period should be reduced from six months to sixty days.

Mr. FLEMING: What has become of the time limits?

The VICE-CHAIRMAN: They have been dropped.

The WITNESS: This is a suggestion that the old section be restored but that the period be reduced. The suggestion is that the period in the old section be reduced from six months to sixty days.

The VICE-CHAIRMAN: Now there is no time limit.

The WITNESS: That is correct.

The VICE-CHAIRMAN: Yes.

The WITNESS: Section 82 read that the trustee shall, not later than six months after he is at liberty, pursuant to the provisions of this Act to distribute the proceeds, pay to the Receiver General all declared but unpaid dividends in his hands and, at the same time, provide a list of names and addresses of the creditors so entitled.

Mr. CANNON: The change is that he will be able to do that beforehand. It is a good change.

The VICE-CHAIRMAN: Shall the clause carry?

Carried.

Clause 114. This is new, dealing with summary administration.

Mr. FLEMING: Were there any representations received in regard to 114(e)?

The VICE-CHAIRMAN: I do not see any.

The WITNESS: No, there do not appear to have been any representations.

Mr. FLEMING: Will you tell us a little more about the representations of the Toronto Board of Trade, the Canadian Bar Association and the official receiver at London that summary administration of estates be not placed in the hands of the official receiver?

The WITNESS: Perhaps I could most effectively answer this if I were permitted to speak off the record.

(Short discussion off the record.)

Mr. ISNOR: The estates which the superintendent has in mind are all very small in this particular instance?

The VICE-CHAIRMAN: The provision governing them is contained in clause 26.

Mr. ISNOR: Under $500?

The VICE-CHAIRMAN: Yes, in the sense that the $500 is the amount that can be realized.

Mr. CANNON: It is less than $500 for ordinary creditors, but there may be several thousand dollars involved.

Mr. FLEMING: Was that one of the clauses that was left over?

The VICE-CHAIRMAN: No.

Mr. FLEMING: I question, in my own mind, whether that limit was not too low to make the sections on summary administration helpful.

The VICE-CHAIRMAN: Quite often you find that the assets do not exceed $500.

Mr. FLEMING: I shall not press the point now but before we are finished I shall raise the question of whether $500 is or is not too low an amount to bring the summary administration provisions into effect.

Mr. HUNTER: I think it is a point that is well taken and it should be seriously considered.

The VICE-CHAIRMAN: Yes. In your experience, Mr. MacDonald, is it not true that there are a lot of bankruptcies in which the assets are under $500?

The WITNESS: There will be; there are quite a lot of cases which will fall under the summary administration provisions of the act at the present time, and it was felt that to begin with the amount should not be placed higher than $500 until experience at least with the working out of what is a new part of the act leads us to believe that it should be increased. We are breaking new ground and it was felt desirable to set our sights at a fairly conservative height.

Mr. FLEMING: Well I think there is general support for the summary administration. I think we have all felt that there has been a real need for that provision in the act but $500 is a very small sum. It is true that it is the amount that is to be available for distribution among the ordinary creditors but it strikes me that it is too small, even as an experiment and on the basis which Mr. MacDonald has mentioned. Five hundred dollars is not a large enough figure even under present conditions when the dollar is worth so little.

Mr. CANNON: I am inclined to agree with Mr. Fleming. I would think $1,000 would be more practical.

Mr. FLEMING: Yes. An estate of $1,000 is still a very small estate.

Mr. HUNTER: If an estate is only worth $500 it has been my experience that people do not follow this procedure through.

The VICE-CHAIRMAN: Mr. Larose tells me there is quite a large proportion of bankruptcies in which the assets are below $500, quite a good proportion.

And Mr. MacDonald says he can get the exact figures for the last two years, or for 1948; so I believe that before reaching any decision, we should look at the figures. Would that not be reasonable?

Mr. FRASER: And let this clause stand.

The VICE-CHAIRMAN: We will refer to clause 26 sub-clause (6), and let it stand.

The WITNESS: I would just like to add that I am not putting clause 114 on the basis of an experiment. It is something which has been carefully considered and thought out. The idea which I meant to convey was that at the present time and until it is seen just how it works, I would not like to see the amount set higher than it is now. It is a new provision. It has not been in the Act before. And if, at the end of the first year, it turns out that it is too low, it can then, and with justification for the change, be put up more easily than it can be changed downward.

By Mr. Fraser:

Q. Might I ask, Mr. Chairman, what proportion of the increase in bankruptcies this last year would be under $500?—A. I could not speak to that offhand.

Q. Is it quite a large number?—A. I would think offhand it would be a fairly large number, but I shall endeavour to get the figure for you, Mr. Fraser.

The VICE-CHAIRMAN: We will let clause 26, subclause (6) stand. That does not prevent us from looking over clauses 114, 115 and 116. Shall clause 114 carry?

Carried.

Shall clause 115 carry?

Carried.

Shall clause 116 carry?

Carried.

Now, clause 117 "Duties of Bankrupts".

By Mr. Fournier:

Q. What are the sanctions applicable to those who neglect to observe the regulations concerning the duties of a bankrupt?—A. I refer you to the penalty clauses which start on page 94.

The VICE-CHAIRMAN: Under "Bankruptcy Offences".

By Mr. Fournier:

Q. Oh yes.—A. Clause 156, paragraph (*a*) refers generally to clause 117.

By Mr. Fleming:

Q. I think the point is well taken there in relation to the suggestion of the Toronto Board of Trade, that the question of intent does not concern paragraphs (*f*) and (*g*) of clause 117. Clause 117 is only concerned with disclosure. It is right that there should be disclosure regardless of the intent attached to the particular transfer or disposition of property. It remains for other clauses then to declare the law as to what may be done in the light of that disclosure. —A. You are referring now to what?

Q. To paragraphs (*f*) and (*g*) of clause 117.—A. Paragraph (*f*) reads:

(*f*) make disclosure to the trustee of all property disposed of within one year preceding his bankruptcy, or for such further antecedent period

as the court may direct, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;

Paragraph (*f*) does not mention intent.

Q. And the same with respect to paragraph (*g*), there is nothing said there about intent. My point is: I do not see any reason why intent should enter into clause 117 anyway because here you are laying upon the bankrupt a duty of disclosure regardless of the intent which accompanied the disposition or transfer of property. Now, as to what may follow from intent as applied to this disposition, that is for some other section of the Act to determine. It does not seem to me that intent is mentioned at all in clause 117. I understand that representations were made to the effect that intent ought to be introduced in paragraphs (*f*) and (*g*).

By Mr. Fraser:

Q. May I ask if clause 117 paragraph (*g*) was suggested by the Income Tax Department?—A. May I have your question again?

Q. May I ask if this paragraph (*g*) of clause 117 was suggested by the Income Tax Department?—A. Not to my recollection, Mr. Fraser. It ties in with the previous clause 60. And paragraphs (*f*) and (*g*) are related to subclauses (1) and (2) respectively of clause 60.

Mr. ISNOR: Suppose a man felt justified in making certain contributions or gifts. He would have to give the reason because of changing conditions.

Mr. FULTON: Clause 60 subclause (2) said it would not be void, that the property could only be taken if at the time of making the settlement five years previously his debts at that time could not have been paid except if the property was taken into consideration.

The VICE-CHAIRMAN: I think it is intended to cover the case of a bankrupt who in the previous year has entered into contracts or has made gifts when he was insolvent. It has to be there.

Mr. FLEMING: It is only disclosure anyway.

The VICE-CHAIRMAN: It is only disclosure anyway, and it has to be there. It is a good thing that it is there.

Mr. FLEMING: Yes.

Mr. ISNOR: The point I was raising was about the period of five years.

By Mr. Cannon:

Q. In clause 60, subclause (2)?—A. It is the disclosure of information necessary to allow the trustee to take advantage of clause 60.

The VICE-CHAIRMAN: What about this suggestion of the Toronto Board of Trade concerning clause 117 (i)?

Mr. HUNTER: Why do you want that?

The VICE-CHAIRMAN: "That the bankrupt be required to provide the trustee with income tax returns". Why would they suggest that?

Mr. ISNOR: So that they would have a statement of his financial affairs. Would they not be interested in it from an accounting standpoint, Mr. Stewart?

Mr. STEWART: I would think so. We pretty well accept the assessment of the Income Tax Department as being a statement of affairs.

Mr. FULTON: Does a trustee have access?

The VICE-CHAIRMAN: To all books, and everything?

By Mr. Fulton:

Q. Does a trustee have access to the official assessment in the custody of the Department of National Revenue in the case of a bankrupt?—A. Oh no, no.

Mr. HUNTER: But if the bankrupt consents in writing, the department will make that information available.

Mr. STEWART: Would not that be covered under clause 117(*b*), according to which the bankrupt has to:

> (*b*) deliver to the trustee all books, records, documents, title deeds, writings, papers or insurance policies relating to his property or affairs;

Mr. FLEMING: I do not think there would be any harm in putting it in if there is any doubt about it.

Mr. STEWART: It is normally regarded as part of the records of the business.

Mr. FLEMING: Suppose a natural person has become bankrupt.

Mr. STEWART: That would be a different proposition, unless he became bankrupt as an individual.

The VICE-CHAIRMAN: Mr. MacDonald is of the opinion that paragraph (*b*) covers income tax returns.

Mr. FLEMING: Paragraph (*b*)?

The VICE-CHAIRMAN: Yes; clause 117 paragraph (*b*) covers copies of income tax returns which he may have in his possession.

Mr. HUNTER: If he has a copy of his T-1 return, I suppose.

Mr. FLEMING: With all due respect, I would think it is sufficiently doubtful that it ought to be put in. Let us forget at the moment the case of a corporation. It may be clearer in the case of a corporate bankrupt; but let us take the case of an individual going into bankruptcy. He might say: "my income tax returns are not books, they are not records, they are not documents, and they are not title deeds or writings, papers or insurance policies relating to my property affairs."

Mr. FULTON: It must relate to his affairs.

Mr. FLEMING: We might have debatable differences of opinion on the point here in this committee, but if it were agreed that the bankrupt had copies of his income tax returns and assessments available, it is the easiest thing in the world to put it in and make it perfectly clear.

The VICE-CHAIRMAN: There is no objection.

Mr. FLEMING: Income tax assessments and copies of returns.

The VICE-CHAIRMAN: There is no objection.

Mr. CANNON: But would you not have to put a limit on it of five years?

The VICE-CHAIRMAN: That he has in his possession copies; all right.

By Mr. Fleming:

Q. Does Mr. MacDonald want to draft an amendment?—A. I shall draft an amendment and submit it later.

The VICE-CHAIRMAN: That is quite all right. So we will let clause 117 stand, I mean clause 117 paragraph (*j*).

Mr. FULTON: You do not mean the whole clause, do you?

The VICE-CHAIRMAN: Whatever the committee wishes.

Mr. FULTON: I suggest that we carry it all but (*b*) then.

The VICE-CHAIRMAN: All right, we will do that. So paragraph (*b*) of clause 117 stands. I do not know if the suggestion of the Toronto Board of Trade would limit the meaning of paragraph (*j*) He would be required by the court, as a matter of fact.

Mr. FLEMING: You are speaking of paragraph (*j*) now?

The VICE-CHAIRMAN: Of paragraph (j), yes.

Mr. HUNTER: I do not wish to seem technical.

Mr. CANNON: Referring to subclause (2) of clause 121:

(2) Upon the application of any creditor or other interested person to the court. . . .

I do not think we should ask that it be done by the trustee. The answer is in the Act.

Mr. HUNTER: I do not wish to appear technical, but paragraph (*b*) of clause 117, I presume, is only supposed to relate to those books, records, documents, title deeds, and so on which are in his possession.

The VICE-CHAIRMAN: It cannot have any other meaning.

Mr. HUNTER: I submit it might have. He might be expected to go out and find all sorts of documents which relate to his property and affairs.

The VICE-CHAIRMAN: It is a question of delivery. The word "delivery" includes the meaning that one has to have it in his possession to deliver.

Mr. HUNTER: Yes, but one can go out and get possession and deliver. I admit it is a technical point anyway.

Mr. FLEMING: I suppose the words that could be introduced there would be the familiar words from discovery "in his possession or power".

The WITNESS: It would be such a simple matter for him to put documents out of his possession and power.

Mr. CANNON: I was thinking of that. If you put that in you will open the door to him.

The WITNESS: And in a prosecution I do not think he would be expected to do the impossible, that is if he were entirely free from blame and could explain why he had no control over them, I should not think he would be liable to a conviction.

Mr. HUNTER: Well, it is probably a technical point. I do not want to delay the proceedings on that ground.

The VICE-CHAIRMAN: We will pass clause 117 with the exceptions of subclause (*b*) which stands.

Mr. FULTON: What about subclause (*l*). I see there are no comments on it but perhaps Mr. MacDonald would care to offer a comment. It seems to me here to be fairly drastic. Is it altogether new or is it contained in some previous Act.

The WITNESS: It was formerly section 131, subsection (2) and it read like this:

—execute such powers of attorney, conveyances, deeds, and instruments, and, generally, do all such acts and things in relation to his property and the distribution of the proceeds—

Mr. FLEMING: There is a problem now: "as may be required;" in clause 131 (2) of the present Act the word "required" is followed by:

—by the trustee, or may be prescribed by general rules, or may be directed by the court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the trustee, or any creditor or person interested.

Are you not leaving that in the air by just chopping it off after the word "required"? Required by whom?

The WITNESS: I would say required by anybody who under the Act is entitled to apply to him for such a power of attorney or conveyance.

The VICE-CHAIRMAN: Personally, Mr. Fleming, I never have much faith in long enumerations that we find in statutes.

Mr. FULTON: As required, by whom?

The VICE-CHAIRMAN: It means the person who requires them. You do not have it specifically set out in the Act but it implies that.

The WITNESS: It fits in with the obligation of a trustee to do everything reasonably within his power to facilitate the administration of the estate by the trustee to enable him to dispose of the assets and so forth.

Mr. STEWART: But does this take in any more territory? I doubt it.

The VICE-CHAIRMAN: But we do not need to cover everything; that is what I mean.

Mr. STEWART: I do not see any need for it either.

Mr. FLEMING: That is fine, Mr. Chairman; but do we find it set out in the Act elsewhere? The stipulation that the bankrupt shall execute such powers of attorney, conveyances, deeds and instruments as may be required of him by the trustee.

The WITNESS: Mr. Fleming's point, as I understand it, is that there is nothing in the present law to correspond with the words, "as may be reasonably required by the trustee" in the present section.

Mr. FLEMING: Who determines that he may be required to do that? The old section 131, subsection 2, said, "as may reasonably be required by the trustee, or may be prescribed by general rules, or may be directed by the court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the trustee, or any creditor or person interested".

Mr. STEWART: Which makes the thing wide open.

Mr. FLEMING: We will have to consider that point further. I suggest we had better let it stand and come back to it again later on.

The WITNESS: I think that "required" in this context would be considered as required according to the provisions of the Act. I should not think that it would be interpreted in a way to take in anything not intended by the Act.

The VICE-CHAIRMAN: That is a very very important point.

Mr. FLEMING: Agreed. Where do you find in the Act that specific provision which says that a bankrupt shall execute such powers of attorney, conveyances, deeds and instruments as may be required of him by the trustee. It seems to me that the language here means that the bankrupt must execute these documents—may be required; is there any section anywhere in the Act which gives the trustee the power to require that of him?

The VICE-CHAIRMAN: We will have to go back to the powers of the trustee.

The WITNESS: Would you read paragraph (*o*): generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the trustee, or may be prescribed by general rules, or may be directed by the court by any special order made with reference to any particular case or made on the occasion of any special application by the trustee, or any creditor or person interested.

Mr. FULTON: But that is in (*l*).

Mr. FLEMING: Isn't that the way out; because if you have a specific definition in (*o*) as in (*l*) you would have to apply that maxim "Expressio unius est exclusio alterius"; so as to have the same provisions in (*o*) as you have in (*l*).

Mr. CANNON: The court may decide there was a reason for not inserting in (*l*) what you have there in (*o*).

The VICE-CHAIRMAN: Anyway, would it not be covered by the powers of the trustee? Would it not be covered by clause 8, subclauses 7, 8 and 9—page 12? I am not saying it does, but I am asking that question.

Mr. FLEMING: The only thing there is it requires the bankrupt—

The VICE-CHAIRMAN: —to carry on the business of the bankrupt.

Mr. FLEMING: Those are the powers of the trustee. Where does the trustee there get the power to require the bankrupt to execute powers of attorney, conveyances, deeds and instruments? I think Mr. Fulton's suggestion is the solution; to combine (*l*) and (*o*). That would bring it closer to the language of the present Act.

The VICE-CHAIRMAN: Yes.

The WITNESS: (*l*) and (*o*)?

The VICE-CHAIRMAN: Could you make a draft accordingly?

Mr. FULTON: Would it not be just; execute such powers of attorney, conveyances, deeds and instruments as may be required; and then to do—as is provided in (*o*).

Mr. FLEMING: Just as in the present clause 131, subclause 2.

The WITNESS: Will you leave that to be worked out later, Mr. Chairman?

The VICE-CHAIRMAN: Yes.

Clause 118.

Carried.

Mr. CANNON: May I make a suggestion in connection with the consolidation of paragraphs (*l*) and (*o*)?

The VICE-CHAIRMAN: Are you speaking of clause 117?

Mr. CANNON: Yes. If you consolidate those two paragraphs it seems to me that you do not need the words "as may be required" at the end of (*l*).

Mr. FULTON: Yes, I noticed that.

The VICE-CHAIRMAN: Clause 119?

Carried.

We shall adjourn until 3.30 p.m. this afternoon.

AFTERNOON SESSION

The Committee resumed at 4.00 p.m.

Mr. T. D. MacDonald, K.C., Superintendent of Bankruptcy, recalled:

The VICE-CHAIRMAN: Gentlemen, we have a quorum. When we adjourned this morning we were at clause 120. Does clause 120 carry?

Carried.

Mr. HUNTER: May I just understand the purpose of that? I do not quite follow it.

The WITNESS: Pardon me.

Mr. HUNTER: I do not quite get the purpose of clause 120. It is mandatory, I notice.

The VICE-CHAIRMAN: You have an explanation at page 30 of the compendium where it says:

> ...the Official Receiver should probe deeply into the causes of the debtor's insolvency, the disposition of his assets, etc. Unfortunately at present this is done in very cursory fashion by all too many and considered more as a mere formality. The report would indicate to the trustee a probable course of action and at least suggest questionable aspects of the bankruptcy which might call for further investigation. The filing of the report in court would make it a matter of record and available in connection with future proceedings such as the debtor's application for discharge. Forwarding a copy to the Superintendent would keep him advised and this step would also fit in with the somewhat similar obligation contained in Section 163 of the Bill. As a matter of fact Section 120 of the Bill only confirms the present practice and makes it obligatory.

Mr. BELZILE: When a man makes an assignment he files of course, his statement of affairs, assets and so on and he comes before the official receiver and then the official receiver has a whole set of questions referring to what has happened to his property five or ten years ago and so on, how it was disposed of, so as to find out if there were any fraudulent acts or fraudulent disposition of his property.

Mr. HUNTER: That is practical, is it?

Mr. BELZILE: It is.

Mr. HUNTER: I would judge from this they had gone into it a very great deal more thoroughly than before. I presume you have checked with the registrars and they are prepared to do this. They have the time and all that kind of thing,—I mean the official receivers?

The VICE-CHAIRMAN: They must have the time.

Mr. BELZILE: It is done before the first meeting.

Mr. HUNTER: It is not my impression that it is done very thoroughly. It is sort of a routine thing at present, very routine, they have a form they use and so on.

Mr. BELZILE: But on the set of questions there is always some lead given to the official receiver which allows the official receiver to probe into the very personal affairs of the bankrupt.

Mr. HUNTER: I have been in quite a few of these and they strike me as about as routine a task as you would ever see.

The WITNESS: One of the purposes of this is to endeavour to correct that situation.

Mr. HUNTER: And I presume that the registrar has the time to do this.

The VICE-CHAIRMAN: As the witness said this morning, the registrar is usually an officer of one of the high courts in the district and they deal fairly well with the bankruptcy Act.

The WITNESS: Yes, we hope to make those reports fuller though.

The VICE-CHAIRMAN: Clause 120?

Carried.

Clause 121? What about the suggestion of the Canadian Bar Association and the American Can Company,—the third paragraph of the compendium on page 31?

The WITNESS: The comments are here. That was not adopted.

Mr. HUNTER: To which one are you referring?

The VICE-CHAIRMAN: The proposition was made, I suppose, in order to get the bankrupt before a judge to impress upon him the importance of telling the truth.

The WITNESS: That is correct, but it was considered an entirely unworkable provision.

The VICE-CHAIRMAN: Now, referring to what we discussed a few moments before the meeting started.—Mr. MacDonald proposed, in line 15 of subclause 1 of clause 121, to replace the last words of the paragraph: "the trustee or any creditor" by the words "his dealings or property". Will you explain that, Mr. MacDonald?

The WITNESS: The reason for that is that the underlined words were added in the Senate to the clause; they went over to clause 121, subclause (2), and the words borrowed are "relating in all or in part to the bankrupt, the trustee or any creditor." But the words "trustee or any creditor" obviously are not consistent with the context, and the words which should be used are the same words that occur earlier in the same subclause, that is: "bankrupt, his dealings or property" in line 12.

The VICE-CHAIRMAN: The first part of the paragraph is for the examination under oath and then in line 12 it starts again: "and may order any person liable to be so examined to produce any books,". It should be to the same thing or persons as in the case of the examination.

The WITNESS: Yes.

Mr. HUNTER: I do not quite get your point there. The wording seems the same.

The WITNESS: If you look at line 12, what the subclause does is to provide that the trustee may examine under oath any persons—I am omitting the immaterial words— thought to have knowledge of the affairs of the bankrupt et cetera. Now, he can examine him respecting the bankrupt's dealings or property. That is line 12, that is the matter in respect of what he examines the person: the bankrupt, his dealings or property; and then the subclause goes on to say: "He may order him to produce books, documents, correspondence relating in all or in part"; and there they should relate to the same thing in respect of which the man may be examined, that is relating in all or part to the bankrupt, his dealings or property.

Mr. HUNTER: I get it.

The VICE-CHAIRMAN: Will you move the amendment, Mr. Hunter.

Mr. HUNTER: Yes.

The VICE-CHAIRMAN: Does the amendment carry?

Mr. FULTON: Move the amendment?

The VICE-CHAIRMAN: Yes, we are replacing the words in line 12, "the trustee or any creditor"—we are replacing those words by the words "his dealings or property".

Mr. FULTON: I will second it. With regard to subclause (3), do you want to put a question on that? Is it taken as carried?

The VICE-CHAIRMAN: Clause 121 carried as amended.

Mr. FULTON: Has the amendment carried?

The VICE-CHAIRMAN: Yes.

Mr. FULTON: With regard to subclause (3), then, what was the provision of clause 138, which is no longer here? What protection is there afforded by subclause (3) here?

The WITNESS: What was the question, Mr. Fulton?

Mr. FULTON: Looking at the comments in these notes, I see the Toronto Board of Trade suggested that there should be restored the provisions of clause

138 of the Act requiring any person to answer questions even though the answers might incriminate him or expose him to civil liability. What is the provision of clause 138 which exposed a person to that liability and how is he protected by the present clause from it?

The WITNESS: The old section 138 provided as follows:

> Any person liable to be examined under the provisions of the ten last preceding sections shall be bound to answer all questions relating to the business or property of the debtor, and as to the causes of his insolvency and the disposition of his assets, and shall not be excused from answering any question on the ground that the answer may tend to criminate the person so examined or to establish his liability in any civil action, and all or any of the questions and answers upon any examination under the four next preceding sections may be given in evidence against the person so examined on any charge of an offence against this Act and in any civil action or proceeding brought by, or on behalf of, the trustee or of any creditor or creditors entitled to take such action or proceedings.

So he was not protected, Mr. Fulton, before.

Mr. FULTON: Before. But now would he not be in contempt if he refused to answer?

The VICE-CHAIRMAN: Yes.

Mr. FULTON: Even under this clause?

The VICE-CHAIRMAN: He would be in contempt, yes.

The WITNESS: Are you looking at clause 125?

Mr. FULTON: No I was looking at clause 121, subclause (3) reading it in the light of the comments with which we have been furnished. In other words it seems to me that according to the comments it is felt this clause gives a protection to a person against answering a question. I ask, would he not in effect be in contempt, if he refused to answer?

The VICE-CHAIRMAN: Would you read clause 125, Mr. Fulton?

The WITNESS: Clause 125 is the clause which corresponds with the old section 138.

The VICE-CHAIRMAN: I do not understand the representations of the Toronto Board of Trade as they are there.

Mr. HUNTER: Before we leave clause 121, what is the meaning of that word "dealings" in "his dealing or property"? It seems a peculiar word to use, what does the word "dealings" mean? I notice in clause 125 that they use the words "business or property".

The WITNESS: "Dealings" is, I suppose, roughly the same meaning as business.

Mr. HUNTER: "Dealings" seems nebulous and vague, to me. I do not want to be critical but I am dashed if I know what "dealings" means. It is a word I have never seen used in other statutes.

Mr. FULFORD: It is a colloquial word rather than a legal word.

The WITNESS: It is the expression now used in the present act. I do not think it is an uncommon word to apply in that context. I could not point out to you a place where it is used in any statute but my impression is that that word is not uncommonly used in that context.

The VICE-CHAIRMAN: I wonder what it is in the French text.

Mr. HUNTER: I do not know whether it has ever been judicially defined.

The VICE-CHAIRMAN: In the French text the corresponding word is "operations."

The WITNESS: How would you render that literally in English?

The VICE-CHAIRMAN: "Dealings". The exact translation of "operations" is "dealings".

Mr. BELZILE: All financial operations, business dealings.

The VICE-CHAIRMAN: It reads very well. It covers everything.

Mr. HUNTER: I am not trying to quarrel with it, I am just a little doubtful.

Mr. PRUDHAM: In subclause (2), what is meant by "interested persons", does that mean a curious person interested out of curiosity, or what does that mean?

The VICE-CHAIRMAN: It might be the creditor of a creditor.

Mr. PRUDHAM: Or other interested persons.

The WITNESS: The court would have to be satisfied as to his interest; it would have to be a substantial interest in the estate. The word there indicates an abundance of caution.

Mr. CANNON: Now, about that word "dealings", I wonder if the word "business" would not be a better word. The word "business" has been in use in the Bankruptcy Act for a good many years and we know exactly what it means but the word "dealings" might give rise to a different interpretation.

The WITNESS: It is not a new word. It is a word that has been used in that context in the present Act.

Mr. CANNON: You mean the old Act?

The WITNESS: Yes.

Mr. CANNON: It has been?

The WITNESS: Yes.

Mr. CANNON: Oh, when you said in the present Act I thought you were referring to this Bill.

The WITNESS: Not the present bill, the Act as it now stands.

Mr. HUNTER: I do not recall ever having had that point come up.

The VICE-CHAIRMAN: "Business" is a more passive word than "dealings".

Mr. FULFORD: It indicates operations.

The VICE-CHAIRMAN: Yes, and operation in business is "dealings".

Mr. FULFORD: Yes, it is operations. Let us leave it at that.

The VICE-CHAIRMAN: Shall clause 121 as amended carry?

Carried.

Clause 122—what was deleted?

The WITNESS: The words deleted are indicated on the right-hand page.

The VICE-CHAIRMAN: Oh yes, I see.

Mr. FLEMING: And subclause 4 there is deleted. Can you tell me what it was in the old bill?

The WITNESS: We haven't got a copy of the original bill, the 1946 Bill, here. I can look that up.

The VICE-CHAIRMAN: Is it your desire that we should hold this over?

Mr. FLEMING: No.

Carried.

Clause 123.

Carried.

Clause 124.

Carried.

Mr. FLEMING: I would just like to understand what the suggestion of the Toronto Board of Trade was and the reason why it was not adopted.

The WITNESS: Well, it was felt that the present clause 124 substantially covers the provisions they wished to have restored, and as far as 135 (1) and (2) are concerned the penalties are now provided for in clause 156.

The VICE-CHAIRMAN: And that is in subclause (*c*) of 156 as far as the bankrupt is concerned?

The WITNESS: Yes.

Mr. FLEMING: That would not be for his refusal to answer.

The VICE-CHAIRMAN: Where he refuses to answer or neglects to answer fully and truthfully and so on.

Mr. FLEMING: That is refusal to answer on examination; what about refusal to attend?

Mr. BELZILE: That is covered in clause 124.

The VICE-CHAIRMAN: It might apply, Mr. Fleming, but possibly it does not cover his non-appearance.

Mr. FLEMING: I would think that 156 (*c*) covers non-appearance. That has nothing to do with non-attendance. Obviously the warrant provision was in 135(4) to bring a debtor up for examination; and there is also provision that he could be committed to the common jail for a period not exceeding twelve months. Might I ask Mr. MacDonald if he knows of any case where that provision was resorted to and there was a commital?

The WITNESS: Offhand, I cannot think of any such case.

Mr. FLEMING: I was just wondering if there was any good reason for eliminating that. I would think the warrant provision itself would be much more effective if you had a sting like this in the Act. I think you justify that twelve months incarceration.

The WITNESS: The note on the right-hand side of the page, which of course you have read, indicates that clause 135 at present is illogical; as, for instance, for a bankrupt being examined refusing to answer, the penalty clause states that he may be apprehended and brought up for examination.

The VICE-CHAIRMAN: What is it that causes you concern?

Mr. FLEMING: I am concerned about the elimination of this provision as to the penalty—it is true we have provision in there for bringing him up on warrant where otherwise he has refused to attend, but it seems to me it is a good thing to have that provision in regard to possible committal for a period not exceeding twelve months in the Act, because a man is much more unlikely to refuse to attend if he knows there is a penalty like that staring him in the face.

Mr. HUNTER: Isn't there one already in clause 136 (*a*)?

Mr. BELZILE: Don't you think, Mr. Fleming, that a man who is a bankrupt being brought up before a judge on a warrant and refusing to answer any questions would be in contempt of court and then would fall under the ordinary provisions of the criminal law?

Mr. FLEMING: I am not at all sure that he would be in contempt of court unless this statute requires him. If you get him up there and he still refuses to answer questions then surely you can apply clause 156(4).

Mr. BELZILE: Yes.

Mr. FLEMING: On this man refusing to attend you can issue a warrant and cause him to be apprehended and brought up for examination, but it occurs to me that you are going to have much better results if you have a section like this in the Act. That is one of the reasons for keeping this provision of committal to the common jail for a period of twelve months in.

Mr. CANNON: I think you have that provision by a combination of clauses 156(*a*) and 117(*b*)—if he does not attend he is subject to the penalty by clause 156.

The WITNESS: And if you will look at (*j*) of the same clause, it carries it further.

The VICE-CHAIRMAN: Of clause 117; yes.

Mr. FULTON: But that only covers the bankrupt himself, not other persons; clause 124 covers the bankrupt or any other persons failing to attend.

The VICE-CHAIRMAN: Yes, it covers other than the bankrupt. As far as the bankrupt is concerned now, if the authority is satisfied, then there is provision for a punishment on summary conviction if he fails to appear, not only if he fails to answer.

Mr. FULTON: It seems to me that the bankrupt is adequately covered by clauses 117 and 153, the one dealing with the penalties for other persons. He can be compelled to attend by warrant; and committal to jail for a year is a fairly hard penalty for a man who fails by four days to answer his summons.

The VICE-CHAIRMAN: That is how it is. You would leave it as it is?

Mr. FULTON: Yes.

The VICE-CHAIRMAN: What do you say, Mr. Fleming? You have your opposition on your right.

Mr. FLEMING: I have said my say.

Carried.

Clause 125:

Mr. FULTON: This is a clause where I am wondering about the change between this and section 138. Does this now mean that a man can take the protection of section 5 of the Evidence Act?

The WITNESS: No, I don't believe it does, Mr. Fulton.

Mr. FULTON: Is there in fact any protection under clause 125? Is he less liable now to be compelled to answer the questions than he was before?

The WITNESS: Clause 125 is less specific and more general in its terms, but, if it is read literally, it seems to me that the position is about the same. The section of the Canada Evidence Act to which you refer provides, as I remember it, that where anybody but for this act,—the Canada Evidence Act—, or a provincial act, would be permitted to refuse to answer a question on the ground that it may tend to incriminate him, that person is, nevertheless, compelled to answer the question but his answer cannot be used in certain prosecutions against him. Now this is not the sort of question that the Canada Evidence Act says he must answer; this is a question he is compelled to answer by what is neither the Canada Evidence Act nor a provincial statute.

Mr. CANNON: I suppose the sanction for that is that if he refuses to answer he would be in contempt of court.

The VICE-CHAIRMAN: It is in 156.

Mr. CANNON: There must be contempt of court—where questions are put to him in court. I am speaking now of 125?

The WITNESS: Yes.

Mr. CANNON: If the questions were put out of court it would not be contempt of court. If the individual is not in contempt of court there is no sanction.

The WITNESS: 156 (c).

Mr. FULTON: That relates only to the bankrupt.

Mr. CANNON: If we amended 156 (a), when we get to it, and add to clauses 117 and 125 the provision that if he fails to do the things required by him—

Mr. BELZILE: 125 refers to any person?

The VICE-CHAIRMAN: You would have to change it.

The WITNESS: Clause 156 will catch the bankrupt in so far as he comes under clause 125.

By Mr. Fulton:

Q. Clause 125 covers all others generally, does it not?—A. That is true.

Q. The only sanction is the general provision with regard to contempt of court?—A. Yes, except in the case of the bankrupt himself; he comes under 156 (c).

Q. There is, in fact, no substantial difference in the position of this person not a bankrupt from that contained in the old act.—A. That, I would say, is the case.

Q. I ask that in the light of the comment on page 31 of these notes where the Toronto Board of Trade had asked for an enlargement of clause 121 and to insert there a requirement that persons answer questions even though the answers might incriminate them or expose them to civil liability. It was not adopted, and your comment is that it was felt that it was an infringement of rights; but you have, in fact, put the provision in 125?—A. Yes, in that respect, I would say the comments in the compendium were not apt.

Q. So it was not the intention to protect this person not a bankrupt from having to answer questions?—A. Section 125 does not have the effect of protecting him.

The VICE-CHAIRMAN: Shall the clause carry?

Carried.

Clause 126?

By Mr. Quelch:

Q. May I ask a question here? Can a man who has absconded to the United States be extradited and can the trustee attain control over the assets he took with him to that country? The case I have in mind is where an American comes to this country, makes a small down payment on a plant, works it a short while and allows payments for wages and raw materials to fall in arrears. He then clears out of this country. What recourse would the trustee have, that is before a petition for bankruptcy has been filed?—A. As far as extradition is concerned, Mr. Fleming has a piece of paper on which I had written some words from the Extradition Act.

Mr. FLEMING: The first schedule simply refers to "offences against bankruptcy and insolvency law."

By Mr. Quelch:

Q. If he absconds before the petition is filed but the petition is filed shortly after he leaves— —A. You are discussing the bankrupt?

Q. Yes, but at the time he leaves the petition has not been filed. As soon as he leaves the petition is filed.—A. It would not necessarily follow that it was not an offence against bankruptcy or insolvency law. I would want to have a look at the act in the face of the exact position which you have outlined.

Q. Would it make any difference as to whether the petition had been filed prior to the time he absconded?—A. I should think that would definitely settle the question because then his obligations under the Bankruptcy Act would have set in.

Q. I understand there have been some cases of that kind?—A. The chairman points to clause 156(8) which makes it an offence.

"Any bankrupt who—after or within six months next preceding his bankruptcy fraudulently conceals or removes any property of a value of fifty dollars or more or any debt due to or from him—"

Now it seems to me that is your case. The man has fraudulently removed property and assuming that it is within six months next preceding bankruptcy then it is a bankruptcy offence. I am not sure but what even without such assistance we could fix him with some bankruptcy offence that would cover the situation and make him extraditable. As far as recovering that property is concerned it is a practical question and the difficulties are perhaps as much practical as legal. Once the trustee had established his title to the property then he could pursue it in the United States in the same way that any person in Canada who is entitled to property in the United States can pursue that property. Just how effective the measures that he took would be in getting the property back is something I would not express an opinion upon. We have not got enough facts here to pass upon that.

The VICE-CHAIRMAN: A judgment taken in one of the provinces of Canada cannot be executed in the United States. You must start all over again.

Mr. HUNTER: Can you not sue on the judgment in the United States?

The VICE-CHAIRMAN: Yes, but you have to prove the claim just the same as in any Canadian court.

Mr. QUELCH: Have there been any cases where the trustees have been able to get control of property in the United States?

The WITNESS: I cannot tell you.

Mr. FLEMING: There are states where reciprocal laws exist with regard to outside judgment.

The WITNESS: My impression is, that although the situation varies from place to place, generally speaking if a defence is not put in you can get the judgment on the foreign judgment. If the defendant is so minded however he can come in and raise any defence that he could have raised in the original action.

Mr. QUELCH: After an individual has been brought back to this country, if the trustee can prove certain property has been removed—

The WITNESS: Then you can pursue that property, but the practical difficulties of actually getting it may be very considerable.

The VICE-CHAIRMAN: Is clause 126 carried?

Carried.

Clause 127. As this is a new point perhaps Mr. MacDonald could, in a few words, explain the procedure.

The WITNESS: The first subclause contains one of the important new elements. "The making of a receiving order against, or an assignment by, any person except a corporation operates as an application for discharge, unless the bankrupt, by notice in writing, files in the court and serves upon the trustee a waiver of application before being served by the trustee with a notice of his intentions to apply to the court—"

It automatically starts discharge procedings at the time of bankruptcy. The reason for that is explained in the note on the opposite page. One of the purposes of the change in the clause is to bring about a situation where more bankrupt persons will obtain their discharges than have done so in the past.

Mr. RICHARD *(Gloucester)*: Is there not a mistake in subclause 5—the word "to" being left out before the words "the bankrupt"?

The WITNESS: I think that the repetition of the preposition is understood.

Mr. RICHARD *(Gloucester):* Oh, I see. The hearing may be opposed, is that the idea?

The WITNESS: Yes.

The VICE-CHAIRMAN: Do you know the reason for the Bar of the province of Quebec suggesting that the trustees' fees on application should be determined in advance? Has there been any undue charging by trustees on application for discharge?

The WITNESS: I will just see if I can lay my hands on their comments. Perhaps I may answer off the record.

(Answer given off record.)

By Mr. Richard (Gloucester):

Q. "Any person"; does that mean the bankrupt as well?

The VICE-CHAIRMAN: Where is this?

By Mr. Richard (Gloucester):

Q. (6) If the trustee does not appoint any other person, would that mean the bankrupt?—A. That is to meet the contingency...

By Mr. Cannon:

Q. The duties of the trustee are to help the bankrupt to get his discharge. You say: should it be the bankrupt himself? No, it could not be the bankrupt himself who would be left to fill the duties of the trustee. It would be incompatible.—A. Reverting to that question about representations made by the Quebec Bar, the only reference I have here is to the previous proceedings held before the Senate committee. And the only comment there is that the court should determine in advance the trustees' fees in connection with the request for discharge. And that is not amplified.

The VICE-CHAIRMAN: No, it is not. I read the report of what happened before the Senate committee, and it is not amplified. But surely there have been some abuses. Would it be possible, when the court renders a judgment upon the application for discharge, that the fee be fixed by the court in the same judgment. It does not have to be in advance, as mentioned here in the compendium.

By Mr. Hunter:

Q. Under subclause (4) it says that the rustee may require funds to be deposited. I cannot imagine a trustee if he has not any funds on hand not asking for them.

By the Vice-Chairman:

Q. Of course he will.—A. It is the intention that the fees will be fixed by tariff under the Act.

Q. You have special rules. Oh, that is different. I am satisfied. It is not presently in force.—A. No.

By Mr. Fulton:

Q. I am surprised at these two sentences in the explanatory note to clause 127:

> From the beginning of bankruptcy legislation there has been a gradual evolution in the attitude of the public towards bankrupts until at the present time creditors are held more or less equally responsible

with bankrupts for their debts. If the Bankruptcy Act is to serve its intended purpose to give bankrupts an opportunity to rehabilitate themselves as useful citizens, more responsibility must be accepted to create that opportunity for the bankrupt by providing an automatic procedure for his discharge.

As to the first sentence I read, I would almost be prepared to say that I take exception to it, or that I differ quite strongly from it.—A. The trend which it indicates, I think, is quite true. It may be that the concluding words carry the thought further than it should have been carried. If they had simply read: "from the beginning of bankruptcy legislation there has been a gradual evolution in the attitude of the public towards bankrupts", it might have been better.

Mr. CANNON: It is an extraordinary statement.

By Mr. Fulton:

Q. The explanatory notes do not affect the operation of the Act. But I wonder, in view of the explanatory notes and the purpose which the Act is intended to accomplish, whether it is not being made a little too easy for a bankrupt to obtain his discharge. I know in the past there has been some feeling that the Bankruptcy Act in general makes it rather easy for him. —A. The provisions to which this note refers do actually reflect the suggestion in the note. I would like to state that this explanatory note goes back to Bill A5 which was introduced in 1946. The idea contained in the last words is the idea of which you are afraid—if I may put it that way. I do not think it is reflected in the actual provisions of the Act.

By Mr. Macdonnell:

Q. There is no suggestion of a subscription.—A. No, and it does not reflect itself in the administration of the office. I can assure you of that. The purpose of clause 127 and those provisions is rather to ensure that the bankrupt who is entitled to take his discharge will take his discharge, rather than to soften the conditions under which he can get his discharge.

By Mr. Fulton:

Q. And what about this one provision which is suggested by the Toronto Board of Trade, the Creditmen's Trust Association Limited, the Canadian Bar Association, the Quebec division of the Canadian Creditmen's Trust Association Limited, and the Law Society of Upper Canada, that the estate should not bear the costs of the application? It does seem to me that if the man can make an assignment and go through bankruptcy and then have the costs of his discharge paid at the expense of the creditors, perhaps it is making it a little too easy for him to get his discharge.

Mr. HUNTER: Again, subclause (4) would indicate that they expect to get, in many cases, funds or a guarantee of them from the debtor.

By Mr. Macdonnell:

Q. After all, if a man is not going to show some interest in himself, or take some interest in himself, is there any purpose in insisting that he be no longer a bankrupt? The rather odd words to which Mr. Fulton referred suggest to me that there is a great deal to be said for putting a man back on the street, provided he has got enough sense to know that he wants to be back on the street. If he does not know, then why ask other people to pay for it?

By Mr. Fleming:

Q. I am not very convinced that we should have this automatic feature put in for the benefit of the bankrupt in relation to his application for discharge.

We have been told in the compendium of the formidable list of bodies which made representations against it. May I ask what other bodies recommended in favour of this automatic procedure? We are told that there is an American precedent for it, but what Canadian groups have asked for it?—A. I cannot point to any representations made by any bodies for that change. It is a provision that was developed in the department over a period of some time and it is patterned on the United States' provision.

Q. There is no counterpart to it in England, is there?—A. Not that I am aware of.

Q. I do not know whether you want to let this stand for further consideration at the present time, Mr. Chairman, but I would not be prepared as at present advised to support it.

By Mr. Fulton:

Q. Before this is allowed to stand, if that is the suggestion, I suppose it is correct to assume that because this onus is now placed upon the trustee, the only source of funds to pay for the application would be the estate of the bankrupt. It is not specifically provided, is it?—A. That is correct.

By Mr. Cannon:

Q. At the present time, under the present Act, Mr. MacDonald, is it the bankrupt who has to pay for his application for discharge?—A. Yes.

Q. Then why not let him pay for it? Why should the creditors pay for it? I approve of the principle of the thing; I approve of the making of the application; but at the same time I think a lot of people never apply for discharge because they do not know about it, they do not know about the procedure starting automatically. I think it is a good thing. The actual obtaining of the discharge is not made any easier. The rules would be about the same as they are now. But I wonder if it is wise to put the cost of it on the creditors.

By the Vice-Chairman:

Q. The suggestion of the Canadian Bar Association is that the bankrupt be required to pay in advance the cost of the application.—A. May I add a word by way of explanation, not by way of advocacy, but nevertheless on the other side of the ledger. There may be a certain amount of feeling that the trustee has lost all his assets in the course of ordinary commercial risk.

By Mr. Fleming:

Q. Don't you mean the bankrupt?—A. The debtor, I am sorry; the debtor has lost all of his assets in the course of ordinary commercial risks which would have served to benefit not only himself but other members of the community, and that there may be certain grounds for saying that he should be entitled to the cost of his discharge out of what was, up until this time, his own estate. I put that to you because I think it is the case for the debtor.

Q. We must remember that the debtor has not been idle in the meantime, presumably; and if he is deserving of being relieved from the burden of debt, surely it is not too much to expect of him that he will first of all show enough interest in his own future to apply for his discharge; and in the second place, that he be prepared to pay the cost. The cost would not be unduly heavy, unless there were adjournments. These orders are made to take effect at a postponed date.

The VICE-CHAIRMAN: Would it be satisfactory to the committee if I asked Mr. MacDonald and Mr. Larose to prepare—without saying that we are going to adopt it—an amendment, or a redraft of the clause in order that the suggestion of the Canadian Bar Association that the bankrupt be required to pay in advance the cost of his application be included in this clause? Then we will let it stand?

Mr. FULTON: Not necessarily pay in advance, but that the bankrupt be responsible for the cost.

The VICE-CHAIRMAN: As you like, yes.

Mr. MACDONNELL: In England, where they provide you with dentures and wigs, they have not done this yet.

The VICE-CHAIRMAN: We will let the clause stand.

Mr. QUELCH: Could we refer again to clause 126?

Clause 126, subclause (1) reads:

> The court may by warrant cause a bankrupt to be arrested, and any books, papers and property in his possession to be seized, and him and them to be safely kept as directed until such time as the court may order,

"And him kept". What does that mean exactly?

The VICE-CHAIRMAN: As far as he is concerned he will be in jail and as far as the papers will be concerned they will be in custody.

Mr. QUELCH: Well, how long can they keep him in jail,—as long as the court directs,—until he is granted a discharge?

The VICE-CHAIRMAN: After forty-eight hours he will have to appear before a judge, I believe. Otherwise they take the risk of a habeas corpus writ.

The WITNESS: That would have to be covered in the direction of the court.

Mr. QUELCH: That is all.

Mr. FLEMING: Mr. Chairman, while we are on clause 127, I wonder if we might ask Mr. MacDonald to consider what amendment would be required in this or any other related clauses if we decided not to favour automatic application procedure.

The VICE-CHAIRMAN: We would have to go back to the old Act.

The WITNESS: That would not be extensive. I could not say what sections would be affected but I will run over them and see.

Mr. ASHBOURNE: Mr. Chairman, I would like to know the cost of the discharge, as well. The average cost, say.

The WITNESS: We would hope by tariffs to keep it down to,—this is necessarily a very rough estimate—to let me say $75 in the average case.

Mr. BELZILE: Fees and disbursements, or fees?

The WITNESS: Fees and disbursements.

The VICE-CHAIRMAN: That is very low.

Mr. BELZILE: Fair enough.

Mr. FLEMING: That might be a starting point. You contemplate a very simple case, probably an unopposed application?

The WITNESS: I said the average case or the ordinary case.

The VICE-CHAIRMAN: I thought it was the average fee.

Mr. FLEMING: I was wondering if you might add unopposed application.

Mr. HUNTER: There would be a lot more opposed applications, I think, when this thing is brought up so early. And I should think the discharge as given would be given upon certain terms and conditions as to times and so on.

The VICE-CHAIRMAN: We will have to let clause 128 stand also.

Mr. FULTON: Clause 128 stand? Why?

The VICE-CHAIRMAN: Because it is the same procedure; we will have to let clause 128 stand.

The WITNESS: No, I think clause 128 could be dealt with.

The VICE-CHAIRMAN: There is no material change of the old Act?

Mr. MACDONNELL: There is a lot of odd wording in clause 128 about the middle of subclause (1):

> The trustee shall prepare a report in the prescribed form as to the affairs of the bankrupt, the causes of his bankruptcy, the manner in which the bankrupt has performed the duties imposed on him under this Act or obeyed the orders of the court, and as to his conduct both before and after the bankruptcy, and whether he has been convicted of any offence under this Act, together with any other fact, matter or circumstance that would justify the court in refusing an unconditional order of discharge—

Mr. CANNON: In case there should be facts that would justify the court in refusing the discharge.

Mr. FLEMING: To be sure of getting those facts before the court.

Mr. HUNTER: But on the wording of this it looks as if it has to be shown that he has been convicted of an offence to refuse it, does it not?

The VICE-CHAIRMAN: Clause 128 carried?

Mr. HUNTER: Just a minute now, does that mean that before he can refuse it it has to be shown that he has been convicted of an offence?

Mr. CANNON: No, I do not think so:

> whether he has been convicted of any offence under this Act, together with any other fact, matter or circumstance that would justify the court in refusing an unconditional order of discharge—

Mr. HUNTER: That makes it even stronger, does it not?

Mr. CANNON:—

> and whether he has been convicted of any offence under this Act, together with any other fact, matter or circumstance that would justify the court in refusing an unconditional order of discharge—

It is just the English, the word "whether" in the construction of the paragraph. You were saying that unless you show he has been convicted of an offence and these other matters after—

The WITNESS: Oh, I see what you mean. I could not quite follow that before. "Whether" there, simply means whether he has not been convicted of an offence under the Act and it is just one of the things you have to indicate and then you go over to clause 129:

> the court may either grant or refuse an absolute order of discharge—

It does not say that if you show an offence that the application must be refused.

Mr. CANNON: I still think that you have a point there, Mr. Hunter; that the drafting is not good. If I may point it out here: the trustee shall prepare a report in prescribed form as to the affairs of the bankrupt, the causes of his bankruptcy, the manner in which the bankrupt has performed the duties imposed and—"As to" should be understood there. Now I think "whether" is not good. When you come to the word "whether", I think you ought to alter that to fit in with the words "as to".

Mr. MACDONNELL: "He has been convicted"—that might mean there that he would have to have been convicted of an offence, and also of any other facts which would be linked to any other fact, matter, or circumstances. I do not think it is clear. Instead of having "together" you should repeat "as to" and have it read "as to any other fact, matter or circumstance".

Mr. HUNTER: That would at least make it a little more Christian.

Mr. CANNON: "As to" would be better, I think.

The VICE-CHAIRMAN: I understand you moved the amendment, Mr. Hunter, seconded by Mr. Cannon, that the words "together with" in line 7 of clause 128, subclause (1), be replaced by the words "and as to".

Mr. MACDONNELL: Where does that come in?

The VICE-CHAIRMAN: In line 6.

Mr. CANNON: And before the word "whether"; and "as to whether" in line 6.

The VICE-CHAIRMAN: Pardon me, what is your amendment in line 6, Mr. Cannon?

Mr. CANNON: Mr. Macdonnell suggests that we also add an "as to" in line 6. I think we would clarify that section if we did.

Mr. HUNTER: I think there should be some kind of punctuation after the word "circumstances" to show you have a series; at least a comma after the word "circumstances".

The VICE-CHAIRMAN: Oh, I see where you mean, in line 8.

Mr. HUNTER: Just to make it English, I think.

The VICE-CHAIRMAN: Or even French.

Mr. HUNTER: I do not think that is correct: "the manner in which the bankrupt has performed the duties imposed on him under this Act or obeyed the orders of the court, and as to his conduct both before and after the bankruptcy, and whether he has been convicted of any offence under this Act, together with any other fact, matter or circumstance"—that is where I think the comma should come in.

Mr. FLEMING: Those three things stand on their own ground.

Mr. HUNTER: Yes.

Mr. FLEMING: That is a residual clause. We have the words, "any other fact, matter or circumstance". To what does that relate?

The WITNESS: It relates back to all the previous factors. They have to be included in any report, not only in the report of an offence under the Act.

Mr. MACDONNELL: Could we have the amendment read, please?

The VICE-CHAIRMAN: Then it would read:

> The trustee shall prepare a report in the prescribed form as to the affairs of the bankrupt, the causes of his bankruptcy, the manner in which the bankrupt has performed the duties imposed on him under this Act or obeyed the orders of the court, *as to* his conduct both before and after the bankruptcy, *as to* whether he has been convicted of any offence under this Act, *and as to* any other fact, matter or circumstance that would justify the court in refusing an unconditional order of discharge, etc.

Mr. CANNON: Wait just a moment. In line 5 we should take out the words "and as to". If you leave them in you are just repeating.

The VICE-CHAIRMAN: Yes.

Mr. CANNON: And it is really covered by the "and as to" before it.

The VICE-CHAIRMAN: Oh, I see what you mean; take one out and put one in.

Mr. CANNON: I think it would be better to do that.

Mr. HUNTER: Will you take the others out, or leave that one in?

Mr. CANNON: The "and as to".

The VICE-CHAIRMAN: What did we do? Did we delete the words "and as to" line 5?

Some Hon. MEMBERS: No.

The VICE-CHAIRMAN: We don't? All right. I do not believe the French version should be changed.

Mr. BELZILE: No.

The VICE-CHAIRMAN: The French text cannot be better than it is now. It carries the same meaning and should not be touched.

Mr. HUNTER: We will leave it to Mr. Lesage, he is the authority on the French version of the Bill.

The VICE-CHAIRMAN: No, I am not the only one, there is also Mr. Belzile—perhaps others.

The WITNESS: Could we just have those changes?

The VICE-CHAIRMAN: Oh yes; the first one is in line 6—"and as to whether".

The WITNESS: "And as to whether", not taking out the word whether?

The VICE-CHAIRMAN: No; and in line 7—

The WITNESS: Taking out "together with"—

The VICE-CHAIRMAN: And putting in, "and as to".

The WITNESS: Putting in "and as to".

The VICE-CHAIRMAN: Yes. Now, the French version should not be changed.

Mr. FULTON: Is that carried?

The VICE-CHAIRMAN: That is up to you members.

Carried.

Mr. FULTON: I would like to ask a question with regard to subclause 2 before the clause as amended carries.

The VICE-CHAIRMAN: Yes.

Mr. FULTON: Does that contemplate two different types of application, when an application is pending the trustee shall file the report in the court not less than three days—and so on; and then later on, "and in all other cases the trustee, before proceeding to his discharge, shall file the report in the court and forward a copy to the superintendent". Does the first application refer to the application of the discharged bankrupt and the second one to the discharged trustee?

Mr. BELZILE: The beginning of the section says, "when an application is pending".

Mr. FULTON: Yes, and then in any other case; what are the other cases when an application is not pending?

The VICE-CHAIRMAN: Suppose a trustee ceases to act before he has made a distribution. I do not know of any other case that could be provided for.

Mr. CANNON: Well, the application is pending by clause 127 as passed; the application would be automatically pending unless the bankrupt waives—all the other cases are where the bankrupt waives.

Mr. HUNTER: That is where the trustee retires.

The WITNESS: The situation, Mr. Chairman, is this: where an application is made for discharge before the trustee takes action for his own discharge then he files a report in the court and in less than three days' time forwards a copy to the superintendent; but if no such application is made for discharge of the debtor, then before he takes his own discharge, he files a report in court anyway,

with a copy to the superintendent so that it will be there to await consideration when the debtor makes his own application.

Mr. CANNON: Would it not be better after the debtor gets his own discharge? Wouldn't that cure it?

Mr. FULTON: Why have the second part in there at all? Why not leave it "applications pending", which would cover both the application for the discharge of the bankrupt and the trustee; and then cause him to file his notice within the named number of days set for the hearing of the application.

The VICE-CHAIRMAN: Suppose the trustee retires—

Mr. FULTON: Then he has an application for his own discharge.

Mr. CANNON: No, Mr. Fulton, this whole section applies to discharge of the bankrupt only.

Mr. FULTON: It does not say so.

Mr. CANNON: Yes, at the beginning of the section.

The VICE-CHAIRMAN: Clause 129, is there anything on 129?

Mr. HUNTER: I don't know—are we going to go on forever today?

The VICE-CHAIRMAN: There are a few clauses coming up on which there have been no representations and no substantial change is proposed.

Mr. MACDONNELL: Is it a matter of final and settled policy that 50 cents on the dollar shall be the figure?

Mr. CANNON: It is the same as it was in the old act.

Mr. MACDONNELL: I know, but has there been any question raised over it?

The VICE-CHAIRMAN: No.

Mr. CANNON: What has happened to clause 128?

The VICE-CHAIRMAN: Clause 128 as amended is carried is it not?

Carried.

Clause 129?

Carried.

Clause 131?

Carried.

Clause 132?

Carried.

Clause 133?

Carried.

Mr. MACDONNELL: May I go back to 130 (*a*) and ask Mr. MacDonald to explain to us the real significance of the last five lines—"unless he satisfies the court that the fact that the assets are not of a value equal to 50 cents in the dollar on the amount of his unsecured liabilities—" etc.

The VICE-CHAIRMAN: It is a matter for the courts to decide, Mr. Macdonnell, but there is a whole volume of jurisprudence on the subject.

The WITNESS: I think it can be exemplified without getting into uncertain ground. I suppose the outstanding case would be where a debtor came in and said that when he went into bankruptcy there was almost 90 per cent but the trustee has mishandled the estate.

By Mr. Macdonnell:

Q. That is what I want to know. In other words, these last lines really just refer to inefficient realization of the bankrupt's assets?—A. I would not say

that they were restricted to that, Mr. Macdonnell. I gave it as an example but I would not say that they were restricted to that.

Q. On the face of it this says that a man shall not be discharged unless he pays 50 cents on the dollar.

The VICE-CHAIRMAN: He can always argue that the fact that the sale of his assets was forced is a reason why the trustee cannot get 50 cents on the dollar. That is usually one of the reasons put forward.

Mr. CANNON: I can think of a case where a fellow might have $50,000 of assets and only $5,000 of debts but, if he had a fire and the loss was not covered by insurance he would not be able to pay a cent and he would say that was due to circumstances over which he had no control.

Mr. MACDONNELL: Do we approve of the principle that a good man shall not be discharged unless he pays 50 cents on the dollar?

The VICE-CHAIRMAN: The court has complete jurisdiction.

Mr. MACDONNELL: Yes and no.

The VICE-CHAIRMAN: It is very seldom that you hear of a case where there is 50 cents on the dollar paid.

Mr. BELZILE: It is the general rule but the court can make exceptions.

Mr. MACDONNELL: If he has incurred debts foolishly can he just say that he has done so?

The WITNESS: It does not necessarily result in a refusal of the discharge. If you will look at clause 129 (2), what the court may do on proof of any of these facts is first to refuse the discharge, second to suspend the discharge, or third to grant the discharge but require the bankrupt to perform such other acts as the court directs.

The VICE-CHAIRMAN: Shall clause 134 carry?

Mr. BELZILE: I would like to find out how you read clause 134 in the light of clause 96 and clause 60 (3)? Clause 96 is quite drastic. It says that the wife or the husband as the case may be of a bankrupt is not entitled to claim a dividend as a creditor in respect of any property left by the wife or by the husband for the purpose of the business.

Mr. HUNTER: This would appear to be a qualification?

Mr. FULTON: I do not see any conflict there?

Mr. BELZILE: Yes, it would qualify 93.

The WITNESS: While clauses 60 (3) and 134 relate in part to settlements they refer to different consequences of those settlements. 60 (3) says provisions voiding certain settlements will not apply to the classes mentioned, including settlements before and in consideration of marriage; but notwithstanding that it is not voided under clause 60, if you say that in the case of such a settlement a settlor was not at the time of making the settlement able to pay all his debts without aid of the property comprising the settlement, that will affect the question of his discharge. We say in effect we will not set this settlement aside, that would in the circumstances be unjust, but we will take into consideration, as affecting your discharge, the question of whether you should have made the settlement, whether you had sufficient property.

Mr. BELZILE: Supposing that in the marriage contract the wife has a special provision indicating that she will lend to her husband the sum of $5,000 to enable him to start or carry on a business. They are married but separated as to property. The clause of their marriage contract specifies that they will be separate as to property and if the wife has loaned $5,000 to start her husband in business—

The VICE-CHAIRMAN: She can claim under clause 96.

Mr. BELZILE: Is it not a terribly drastic proposition?

The VICE-CHAIRMAN: She took a risk, didn't she?

The WITNESS: They are so closely associated that you must look at them almost as a unit.

By Mr. Belzile:

Q. There is no unit at all according to the civil law; they are separate as to properties; the wife administers her own property and assets and the husband does the same with his.—A. At law, yes, but in practice, and I think the point was very well brought out by one of the members this morning—if the husband or wife could claim under circumstances like that there would be no way of controlling the situation or ascertaining whether it was a valid claim.

Q. It is easy to prove. The wife says I have my own property which is composed of $50,000 which I inherited from my father.—A. No, but it does not turn that way.

Q. Suppose I as a wife loan my husband $5,000 to start in business.—A. I do not think it turns on the question of whether or not they are separate as to property. It turns more on the relationship, the very close relationship between them as husband and wife.

Q. And then take another case. A man and wife being married have community of property, to be common property. Now, in our law, they are three persons, the husband, the wife, and the community.—A. May I suggest that I do not think that the reason for this clause 96 springs out of any matter such as community of property, or being separated as to property. It springs from the very practical problem of business relationships between spouses.

Q. Could not there be some way to make it possible that the wife or the husband could? Here you just throw it out, that is all. I think it is terribly drastic.

Mr. HUNTER: I do not see it. If my wife is sympathetic or foolish enough to lend me $5,000, then if I lose it, she loses it, too.

Mr. ASHBOURNE: The point brought up this morning was with reference to services and wages. I am inclined to agree with Mr. Belzile.

Mr. BELZILE: It is money which is loaned or entrusted by the wife to the husband. Suppose a wife inherits money from her father. It is her property which, according to the law of the province of Quebec, belongs entirely to her as a wife. Then she loans that money to her husband, and she goes before a notary public and she makes a perfect contract, and the contract is valid according to the law of the province.

Mr. CANNON: Is it? That is the point. Is there not a change being made?

Mr. BELZILE: No, it is entirely valid according to the law of the province for a woman to loan money to her husband. So they make a note or contract or obligation.

Mr. FULTON: Your objection is not under clause 34.

Mr. BELZILE: No, it is under clause 96.

The VICE-CHAIRMAN: We have a system in the province of Quebec which is known as the Lacombe law.

Mr. BELZILE: Yes, and I have been administering it for years.

The VICE-CHAIRMAN: And you know what the number of abuses are.

Mr. BELZILE: No, I do not object to the part about wages, salary or compensation. But the drastic part is in respect of property loaned or entrusted by a wife. I object to that.

Mr. HUNTER: There is a different relationship there.

Mr. BELZILE: Take a husband. I know of a case where a man was declared to be bankrupt. His wife had loaned him money, perfectly good money which belonged to her. But due to the marital relationship, the wife would have found herself in a very difficult situation if she had refused to lend the money to her husband. That is the trouble.

The VICE-CHAIRMAN: Marriage is a common venture.

Mr. BELZILE: Suppose my wife is worth $100,000. Then suppose I drive my car out on the street and I hit or run over a child. Thereupon someone sues me for $10,000. I have not got a red cent. So I go to my wife and I say: "Lend me or let me have $10,000 so that I may be cleared of the court action". So she lends the money to me and I am able to effect a settlement with the father of the child and everything is all right. But suppose six months later somebody comes along and files a petition in bankruptcy against me and I cannot answer it. So I am declared to be a bankrupt and I lose everything and my wife loses everything as well.

Mr. MACDONNELL: Mr. Chairman, can you see a quorum?

Mr. HUNTER: I move we adjourn.

The VICE-CHAIRMAN: Very well. We stand adjourned until tomorrow morning after the orders of the day.

HOUSE OF COMMONS

1949

SECOND SESSION

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Bill No. 149 (Letter F of the Senate) An Act Respecting Bankruptcy

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MINUTES OF PROCEEDINGS AND EVIDENCE

No. 4

THURSDAY, DECEMBER 1, 1949

WITNESS

T. D. MacDonald, Esq., K.C., Superintendent of Bankruptcy, Department of Justice, Ottawa.

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

MINUTES OF PROCEEDINGS

HOUSE OF COMMONS,

THURSDAY, 1st December, 1949.

The Standing Committee on Banking and Commerce met this day at 11.30 a.m. The Chairman, Mr. Hughes Cleaver, presided.

Members Present: Messrs. Belzile, Bennett, Cannon, Cleaver, Dumas, Fleming, Fulford, Fulton, Gour (*Russell*), Hellyer, Laing, Lesage (*Vice-Chairman*), Macnaughton, Prudham, Quelch, Stewart (*Winnipeg North*).—16.

In attendance: Messrs. T. D. MacDonald, Superintendent of Bankruptcy and J. S. Larose, office of Superintendent of Bankruptcy.

Consideration resumed of Bill No. 149, An Act respecting Bankruptcy.

The following clauses were carried, subject to reconsideration at the request of any member: 136 to 144, (both inclusive); 146 to 152 (both inclusive); 154, 155. The following clauses stand for re-drafting by the Superintendent of Bankruptcy: 135, 145 and 153.

Clause 145 (1), on motion of Mr. Lesage,

Resolved,—That this clause be amended by striking out 145 (1) and substituting therefor the following:

"Any order made by a court exercising jurisdiction in bankruptcy under this Act shall be enforced in the courts having jurisdiction in bankruptcy elsewhere in Canada in the same manner in all respects as if the order had been made by the court hereby required to enforce it."

Clause, as amended, carried.

The Committee adjourned to meet again this day at 3.30 p.m.

AFTERNOON SESSION

The Committee resumed at 3.30 p.m. The Chairman, Mr. Hughes Cleaver, presided.

Members present: Messrs. Ashbourne, Belzile, Bennett, Cannon, Cleaver, Fleming, Fulford, Fulton, Gour (*Russell*), Hellyer, Hunter, Lesage (*Vice-Chairman*), Prudham, Quelch, Richard (*Ottawa East*), Stewart (*Winnipeg North*). —16.

In attendance: As at morning session.

Consideration resumed of Bill No. 149, An Act respecting Bankruptcy.

The following clauses were carried, subject to reconsideration at the request of any member: 157, 158 (as amended); 159—162; 164, 165, 166 (as amended); 167—174 (both inclusive); Schedule. The following clauses stand: 156(*a*), 163.

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Clause 156(*a*), stands for re-drafting by the Superintendent of Bankruptcy.

Paragraphs (*b*) and (*c*) carried.

Paragraph (*d*), on motion of Mr. Fulton,

Resolved,—That after the word "or" there be inserted the words "knowingly makes".

Paragraph (*e*), on motion of Mr. Lesage,

Resolved,—That in the first line the word "six" be deleted and the word "twelve" be substituted therefor.

Paragraph (*f*), on motion of Mr. Lesage,

Resolved,—That in the first line the word "six" be deleted and the word "twelve" be substituted therefor.

Paragraph (*g*), on motion of Mr. Fleming,

Resolved,—That paragraph (*g*) be struck out.

Paragraphs (*h*) and (*i*) to be re-lettered (*g*) and (*h*).

New paragraph (*h*), on motion of Mr. Fleming,

Resolved,—That in the first line the word "six" be deleted and the word "twelve" be substituted therefor.

New paragraph (*h*), on motion of Fr. Fleming,

Resolved,—That in the first line the word "six" be deleted and the word "twelve" be substituted therefor.

On motion of Mr. Lesage,

Resolved,—That, in the 43rd line, after the word "years" there be added the words: "and the provisions of section 1035 of the Criminal Code shall not apply".

Clause 156, as amended, agreed to.

On Clause 158(1), on motion of Mr. Lesage,

Resolved,—That paragraphs (*a*) and (*b*) be deleted and the following substituted therefor:

"(*a*) being engaged in any trade or business, at any time during the two years immediately preceding his bankruptcy, he has not kept and preserved proper books of account, or"

Paragraph (*c*) will be re-lettered (*b*).

Clause, as amended, agreed to.

On Clause 166, on motion of Mr. Cannon,

Resolved,—That subclause (4) be amended by inserting after the word "Rules" the words: "shall have effect as if enacted by this Act and"

Clause as amended agreed to.

The Committee adjourned at 5.55 p.m., to meet again tomorrow, Friday, 2nd December, at 11.30 a.m.

T. L. McEvoy,
Clerk of the Committee.

EVIDENCE

House of Commons,
December 1, 1949.

The Standing Committee on Banking and Commerce met this day at 11:30 a.m. The Chairman, Mr. Hughes Cleaver, presided.

Mr. T. D. MacDonald, K.C., Superintendent of Bankruptcy, recalled:

The CHAIRMAN: Order, please. Clause 135. Any recommendations on this clause?

Carried.

Mr. FLEMING: No. I wonder if we could hear a little more about the representations from the Toronto Board of Trade and the Bar of Quebec, which were not adopted?

The WITNESS: What clause is that?

Mr. FLEMING: 135 (1).

The WITNESS: Suggested by the Toronto Board of Trade that 131 (1) (*a*) be deleted This was adopted in part, the section covering taxes and interest having been abandoned but not the provision relating to a fine or penalty or a debt arising out of fraud or misrepresentation and so on, it being felt that these items should be retained

Mr. FLEMING: Mr. Justice Urquhart wanted 37 (1) (*d*) restored. Is the debtor liable for the necessaries of life?

The WITNESS: The suggestion by Mr. Justice Urquhart that 137 (1) (*d*) should be restored was not adopted; alimentary debts are not entertained under the United States Act, the Australian Act or the Scottish Act.

Mr. FLEMING: Are they under the English Act?

The WITNESS: The English Act situation is not covered here.

The CHAIRMAN: What type of living expenses had you in mind, Mr. Fleming, that you thought should not be excepted?

Mr. FLEMING: I did not have anything in mind, I just wanted to explore the reason back of this dropping of 137 (1) (*d*).

The CHAIRMAN: Yes.

Mr. FLEMING: Apparently Mr. Justice Urquhart, who has had a good deal to do with the interpretation of this Act, did not like the idea of dropping those provisions. I was wondering what were the causative reasons for it, apart from the American, Australian and Scottish precedents.

The WITNESS: It was just a question of preference for those provisions as compared with the present provisions, Mr. Fleming.

Mr. FLEMING: Well, it puts the butcher, the baker and the grocer in a better position.

The CHAIRMAN: That type of thing is not carried on in this type of case. So far as the baker, the milkman and so on are concerned, I rather anticipate that in most cases business of that type is now carried on on a cash basis.

Mr. LESAGE: Oh no, Mr. Chairman, I would hardly agree with that.

Mr. CANNON: Should that not be covered by the other clause there, (*e*), "any debt or liability for obtaining property by false pretences or fraudulent misrepresentation; or".

Mr. FLEMING: Apparently not.

Mr. CANNON: Well then, who is responsible for feeding his family?

Mr. LESAGE: Yes, or supposing his family is in boarding school, would the cost of that board be included under 135 (1) (*c*)?

The WITNESS: The original intention of that was to cover such things as maintenance, such as are covered by a maintenance order in a provincial court, for instance, where the parties were living apart.

Mr. LESAGE: What about (*b*) then?

THE WITNESS: There would be maintenance orders falling short of the technical description of alimony; you take an order granted in a provincial court under a provincial act, it is often not an order for alimony.

MR. FLEMING: That raises an interesting point as to what was the understanding back of 135 (1) (*c*). The interpretation Mr. MacDonald has just put on it now would mean that was a liability to the wife and family. Now I gather from Mr. MacDonald's interpretation there that that might mean a debtor's liability to a third party arising out of maintenance and support of the wife and children. I think we had better clear this point up. We may be letting ourselves in for some litigation, if we do not.

THE WITNESS: As a result of this discussion I would say there was room for improvement in the wording of (*c*) to bring it into line with the intention. It was the intention of (c) that it would refer to the sort of situation where the liability was something in the nature of a maintenance order.

MR. FLEMING: In other words, that it is a debt or liability to the wife?

THE WITNESS: Yes.

MR. FLEMING: And not to a third party.

THE WITNESS: No, not to a third party.

MR. LESAGE: For the wife?

THE WITNFSS: Yes.

MR. BENNETT: Would not that be a maintenance agreement?

THE WITNESS: I think it might read: Any liability for maintenance or support of his wife and children under a maintenance order.

THE CHAIRMAN: Would it be wise then to make that suggested amendment wide enough to include both separation agreement and maintenance order and word it this way: Any debt or liability to a wife or child for maintenance, and so on?

THE WITNESS: Just in case it might go wider than that, Mr. Chairman, if you have no objection I would suggest simply: "Any liability for maintenance or support of his wife and children under a maintenance order." As far as a separation is concerned, I believe that it would be taken care of under the description of alimony.

MR. FLEMING: I don't know about that.

THE CHAIRMAN: Oh no, alimony is a court order, and very often folks separated enter into a separation agreement under which agreement the husband agrees to pay so much per week or per month for the support of his wife or child or children; now that, obviously, should not be wiped out by this.

THE WITNESS: Yes, that was the hope. I was thinking of a seperation order; not of a seperation agreeement but of a seperation order.

MR. FLEMING: If we let this stand, Mr. MacDonald can do some work on it. I suggest that if we are going to use the word "order" anywhere we would have

to use words explaining what is meant by the word "order", that what was meant by the word "order" was an order by some court of competent jurisdiction.

THE CHAIRMAN: I would think any liability to a wife or child or children for maintenance or support.

Clause 135 stands.

MR. LESAGE: There may be liability for someone else. It does not always apply to the wife or children, it may be for a mother or some other relative.

MR. BEIZILE: What is alimony? It must be paid to the wife.

MR. LESAGE: Yes, what is alimony? I don't know myself, I am asking; must alimony refer only to the wife?

SOME HON. MEMBERS: Yes.

SOME HON. MEMBERS: No.

MR. LESAGE: There you have it, some of you say yes and and some of you say no; which is it?

MR. FLEMING: Alimony refers to the support of the wife, but then you have actions where for instance there is an order as part of a judgment dissolving a marriage in divorce proceedings in the courts of some of the provinces, directing a payment or payments in lieu of alimony. There cannot be an alimony payment since the bonds of marriage have been dissolved; therefore, the statutes in such cases call it a payment in lieu of alimony.

MR. LESAGE: Oh yes, I see. But alimony is necessarily to the wife?

MR. FLEMING: Yes.

MR. LESAGE: So Mr. MacDonald's suggestion would be all right.

Mr. FLEMING: Yes, I think it is a good idea.

MR. LESAGE: Any debt or liability to the wife and children.

MR. FLEMING: Or children.

Mr. LESAGE: Yes, wife or children for their maintenance and support.

Mr. FLEMING: Or support.

The CHAIRMAN: Yes, maintenance or support.

Clause 135 stands.

Mr. CANNON: Before we go on, Mr. Chairman, is the committee of the opinion that the wife was well protected under the old act? It would look here as though she was not protected at all, because if we give that interpretation to 135 (1) (*c*) I would say she would be just like the ordinary creditors.

Mr. FLEMING: Yes, there is some protection for them. There is some suggestion based on actual experience that a family should not be taken out of the Act.

Mr. CANNON: It seems to me that these people should get some consideration Very often when a man is in financial difficulties he needs the necessities of life more than at any other time. There would appear to be nothing in here which would help him out. I think they should be protected.

Mr. LESAGE: We are agreed that subclause (*d*) of 147 of the old Act should be restored.

The CHAIRMAN: Let us discuss that for a moment. Take for instance, a chap who is faced with very heavy doctors' bills, running up let us say to a couple of thousand dollars: are you reinstating him into civil life properly if you reinstate him and give him a discharge from bankruptcy with a heavy debt hanging over him that he cannot possibly pay?

Mr. FLEMING: Has a surgeon's bill ever been regarded as a necessity of life?

The CHAIRMAN: Oh yes, there are authorities in that connection.

The WITNESS: I think a doctor's bill would be a necessary of life. There is a jurisprudence on the subject.

Mr. FLEMING: There are some classes of people, Mr. Chairman, that we have to recognize—just on humanitarian considerations, those being what they are—who are hardly in a position to refuse to give credit to a man who is not otherwise credit worthy. It would be a pretty shocking thing, for instance, if the corner grocer, the baker or the milkman refused to sell to a man who was not otherwise credit worthy and his family were going to suffer otherwise.

The WITNESS: Suppose that a plumber was wanted to come up and fix the plumbing, or the furnace man maybe was wanted to come up in the wintertime and fix the furnace; I wonder if those things are not almost in the same class as necessities of life.

Mr. LESAGE: They are services, they are not necessities.

The WITNESS: But they are essential services today.

The CHAIRMAN: With welfare provisions as we have them today no families is going to go hungry because the grocer won't extend credit; and if it is proposed to make amendments in this clause, I would certainly strongly urge that we would exclude medical accounts. I have had instances called to my attention of medical and surgical bills running up to two or three thousand dollars, and it would be very unfair to the debtor to start him off with a deficit of that sort.

Mr. CANNON: That would come under the heading of services, Mr. Chairman. If you are going to do that I would think you would need to make a distinction between goods and services. The Act contemplates certain things as being covered by the necessities of life. Services would not be among those things; services would include such things as doctors' bills, plumbers' bills and so on.

Mr. FLEMING: And legal fees?

Mr. LESAGE: Legal fees as well.

Mr. CANNON: Well, the chairman has just drawn our attention to the fact that if we exclude all necessities of life we might go too far. To answer that objection I am suggesting that we might divide necessities of life as between goods and services and grant the privilege to the goods and not to the services.

Mr. FLEMING: Mr. Chairman, we are not agreed as to (*b*) or (*c*), probably we could let this clause stand for further consideration.

The CHAIRMAN: Clause 135 stands.

Mr. FULTON: Just before we do that; I do not see why a specific provision exempting any liabilities arising out of alimony order should be created for this Act.

The WITNESS: Under the view that it would come under (*c*) I take it.

Mr. FULTON: And that would be covered by the word "liability", would it?

The WITNESS: Yes.

Mr. FLEMING: We have to be very careful in that.

The CHAIRMAN: This clause will be allowed to stand. I have no doubt that the ground will be covered thoroughly.

Mr. FLEMING: We want to know just where the liability extends under this subclause. I was wondering if the words "wife and children" are contentious. If we don't provide for it otherwise it might by interpretation be applied as applying only to the wife and lawful children.

The WITNESS: That is a point. I will go into that.

The CHAIRMAN: Clause 136?

Carried.

Clause 137?

Carried.

Clause 138?

Mr. FLEMING: What was the subclause (3) at this point which was deleted?

The CHAIRMAN: Have you got it?

The WITNESS: Yes, we have something on that: 138—(3): Subslause 7 reads as follows—"for the purpose of this section any debt disputed by the bankrupt shall be considered as paid in full if the bankrupt enters into a bond in such form and with such sureties as the court approves to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt with costs, and any debt due to a creditor who cannot be found or who cannot be identified shall be considered as paid in full if paid into court." Is there any question on that?

Mr. FLEMING: I was just wondering whether Mr. MacDonald had any comment to make on the elimination of that subclause, whether anything is lost by the elimination?

The WITNESS: It is a ground of annulment in the present Act that it has been proved to the satisfaction of the court that the debts of the bankrupt were paid in full. That has been dropped from the Bill. The subclause in question appears to have been for the purpose of regulating the decision...

Mr. FLEMING: That is of the old Act?

The WITNESS: Subsection (4) of the old Act, the present Act was for the purpose of the adjustment of the position of certain debts for the purpose of an annulment. That is, if the debtor came and said: here I have paid all my debts in full; then, if there were debts that were disputed or if there were debts where the creditor could not be found, so that technically he might be answered, you have not paid the amount in full, subclause 3 of Bill L-11 (Section 151(4) of the Act) operated to determine whether in the view of the court those debts were to be taken as having been paid in full. Now, the reason for the omission of a right of annulment where all the debts were paid in full, is that in a situation of that kind—which is of course rare—the debtor should proceed by way of composition, and the composition would itself result in cancellation of his bankruptcy. That is, if he is in a position to pay his debts in full then he can make arrangement to that effect with his creditors and that will give him a right to the cancellation of his bankruptcy.

The CHAIRMAN: Carried.

Clause 139:

Mr. BENNETT: In the third line of this clause there are the words "delivered out"; I wonder if we could have an explanation as to what those words mean?

The WITNESS: Delivered out of the office.

Mr. LAING: Does it require use or issue?

The WITNESS: I think it is just for greater certainty.

The CHAIRMAN: Carried.

Clause 140?

Carried.

The CHAIRMAN: Clause 141.

By Mr. Fulton:

Q. What changes are there? Just let us see. Are they changes in the nomenclature of the courts, or are they changes in the courts themselves?—A. The former, Mr. Fulton.

By Mr. Fleming:

Q. I do not understand one point mentioned in the compendium in connection with clause 140 (1) (*e*). We are told by Mr. Justice Urquhart and the Law Society of Upper Canada that the court is wrongly named. I thought a change had been adopted because the court, in the original draft, was the Supreme Court of Ontario.—A. It has been adopted. The compendium which you have brings you up to the time when the new bill went into the Senate committee this Fall.

Q. I see. The compendium does not embrace the changes made in that Senate committee.

The CHAIRMAN: It is certainly correct now.

Mr. FLEMING: Yes, it is certainly correct now.

The CHAIRMAN: Clause 141, carried. Clause 142?

Mr. LESAGE: Would you please revert to clause 141?

The CHAIRMAN: Yes.

By Mr. Cannon:

Q. What are the changes there? The note says that the changes are self-explanatory.—A. The changes are underlined. It was previously section 157 (1). There is no change intended in substance.

By Mr. Fleming:

Q. You say there is no change in substance.—A. The reference is to the Yukon Territory and the Northwest Territories, and the change in respect to the province of Quebec. A particular paragraph was put in with respect to the province of Quebec. It previously read:

> 157. The Chief Justice of each court upon which the powers and jurisdiction are conferred by this Act shall from time to time appoint and assign such registrars....

and so forth.

By Mr. Fulton:

Q. In the case of the Yukon Territories, would not that have formerly been the Chief Justice of the Supreme Court of British Columbia?—A. I cannot tell you offhand. The situation in both the territories is a somewhat complicated one as far as the courts are concerned for the purposes of appeal cases. Appeal cases from the territories go to courts of appeal, I think, all the way from Nova Scotia, perhaps, to British Columbia. But in the territories themselves, there are no courts now, as you know, of the nature of those in the provinces. My strong impression is that the territorial courts do not now function. You have a magistrate in the Northwest Territories who sits with a jury for the trial.

The CHAIRMAN: Are there any further questions?

Mr. FLEMING: In Clause 141, subclause (*b*), in view of the fact that the province of Quebec has been singled out for special provision, should we not have inserted in subclause (*a*), after the words "Chief Justice of the Court", the names of the other nine provinces?

The CHAIRMAN: No. I believe that Quebec has an associate Chief Justice.

Mr. FLEMING: I can understand the difference, but it is a matter of draftsmanship to make clear what we do mean. In (*a*) I think we should have the names of the nine provinces mentioned to which (*a*) applies.

Mr. LESAGE: (*b*), (*c*) and (*d*) are the exceptions.

Mr. MACNAUGHTON: I think it is quite clear in subclause (*b*).

Mr. FLEMING: It is perfectly clear as to subclause (*b*) but I should think in subclause (*a*) you should have some provision to indicate that it applies in the case of the nine provinces.

Mr. MACNAUGHTON: I think that would make it even more difficult to understand.

Mr. BELZILE: Clause 141 I think should be read in connection with clause 140.

The CHAIRMAN: Clause 141 subclause (*a*) undoubtedly gives the chief justice of the court in any province the power. Clause 141 subclause (*b*) gives an additional power in Quebec to the associate chief justice. Clause 141 subclause (*c*) gives the power to a commissioner, where there is no chief justice; and the same with respect to subclause (*d*).

Mr. FULTON: So that in the province of Quebec it is intended there shall be two persons?

The CHAIRMAN: Yes. In Ontario we have no associate chief justice. Does clause 142 carry?

Carried.

Does clause 143 carry?

Carried.

Does clause 144 carry?

Carried.

Mr. FLEMING: Just one second, Mr. Chairman. I am checking on this clause 144 subclause (8). The suggestion made by the Toronto Board of Trade and the Law Society of Upper Canada was that the subclause be amended to permit trial by jury, but it was rejected because it was felt essential that claims be settled or determined expeditiously. What has been the position hitherto with respect to the trial of issues? I do not recall any provision in the present Act for trial of issues by a jury.

The CHAIRMAN: No.

The WITNESS: I do not remember any case.

By Mr. Fleming:

Q. There is nothing in the present Act which provides for trial of issue by a jury.—A. No, there is nothing in the present Act which provides for trial by jury at all.

Q. I do not recall anything in the present Act which affords the opportunity, even inferentially. The references are all to the registrar or to the judge.

The CHAIRMAN: Have you ever run across any such case in your practice where a jury trial was even necessary?

Mr. FLEMING: No.

The CHAIRMAN: Shall the clause carry?

Carried.

Now, clause 145?

By Mr. Lesage:

Q. The first subclause is new. What is contemplated to be covered by that?—A. To provide for the event of reciprocal legislation in another British country.

Q. What would be the evidence required in a Canadian court?

Mr. FLEMING: What is a British country?

By Mr. Lesage:

Q. That question will be coming after but I want to get the principle of it. I believe the principle is dangerous, Mr. MacDonald.—A. That would have to be established by rules under the Act, Mr. Lesage.

By Mr. Belzile:

Q. Suppose a judgment has been entered in the British Indies. What would be the evidence required in a canadian court?

Mr. LESAGE: The evidence required to execute the judgment here in Canada?

Mr. BELZILE: Yes.

The WITNESS: That would have to be covered by the rules.

Mr. STEWART: Why not United States courts as well? Why limit it in this way?

Mr. LESAGE: Yes. What is a British country?

Mr. CANNON: Is India a British country?

Mr. FLEMING: Or Pakistan or Ceylon? They would no boubt be regarded as British countries.

Mr. CANNON: By whom?

Mr. LESAGE: You could say "commonwealth countries".

Mr. FULTON: Why?

Mr. LESAGE: You accept judgments of a court on the other side of the earth on their face, which we do not do at present in Canada.

Mr. BENNETT: We in Ontario under our motor vehicle law have reciprocal legislation between Ontario and Michigan, and Ontario and New York state, and so on. Most of the states have it.

The WITNESS: Might I add that most of the provinces have reciprocal legislation for maintenance orders.

Mr. BELZILE: That is what they call exemplification of a judgment. That is right. But in another country how can we exemplify a judgment?

By Mr. Fulton:

Q. In the past it was only between the provinces in Canada.—A. Yes, as set out in section 170 subsection (1) of the present Act.

By Mr. Fleming:

Q. Where did this clause originate?—A. This clause originated and is to be found in the original bill as prepared in 1946.

Q. What was back of it? Is there any precedent for it in the legislation of any other jurisdiction?

By the Chairman:

Q. What representations resulted in it being incorporated in the bill?—A. Going back that far, I cannot say there were any representations, Mr. Chairman. I would have to put it down as a matter which was developed within the department.

Mr. LESAGE: I would not be willing to accept a judgment from any commonwealth country without such judgment being exemplified. And if we put in that condition, we do not need the subclause. Exemplification means...

Mr. FULTON: Practically proving your case all over again.

Mr. BELZILE: No. You say that such a court in such a British country or in another province is a court which has jurisdiction in this particular province, and that the clerk who signs the judgment is authorized. You just

sign an affidavit. And then the judge renders judgment stating that the judgment will be executed in the province of Quebec.

Mr. LESAGE: There is no special procedure and there is no trial, unless it is contested.

Mr. BELZILE: The only thing is that you must prove that there is such a court and that the clerk is the real clerk of that court.

Mr. FLEMING: That is the same in any common law province. But that proof would not be complete because you would have to prove that there was reciprocal legislation, in the case of reciprocal legislation as between the different provinces of Canada and between Canada and some of the states of the union. In regard to judgments under the motor vehicle law, as Mr. Bennett mentioned, you have got from the government itself—the government of the provinces—the necessary proof that reciprocal legislation exists. But here, who is to determine whether there is or there is not reciprocal legislation? That might become an issue in court.

Mr. LESAGE: Yes, it may become an issue in the courts.

The CHAIRMAN: I think it should be observed that the bankruptcy rules in other countries might not parallel our rules at all.

Mr. FLEMING: There is no federal legislation at the present time which makes provision for reciprocal legislation to enforce bankruptcy orders.

The CHAIRMAN: That is right.

Mr. FLEMING: Therefore, if this clause be adopted, an issue will arise in respect of proceedings whether the country which has exemplified a judgement has, in fact, reciprocal legislation.

The CHAIRMAN: I think that fact should be required to be proven before anyone can take advantage of this clause.

By Mr. Fleming:

Q. I am inclined to view with doubt this kind of legislation because, in every other precedent which I know of for reciprocal recognition of judgements, there is some provision required in the law to establish that recognition by Act of the government, something which then becomes a matter of record. I think this is very vague. It is a rather novel departure.—A. I do not want to take issue with you, Mr. Fleming, but it runs in my mind that I have seen Acts relating to reciprocal measures such as this in which the issue was left to the courts to determine whether the other legislation was substantially of the same kind, and therefore was reciprocal.

Q. I do not want to labour the point, but the only relevant process I am aware of are precedents which depend for their validity on some agreement between the two states or jurisdictions, recognizing or extending reciprocity in the matter of recognition of judgements.

By Mr. Lesage:

Q. Suppose an exporter in British Guiana, Mr. MacDonald, owes me some money.—A. Yes.

Q. No. Suppose I owed some money to an exporter. I am an importer in Canada, and I owe some money to an exporter in British Guiana. He becomes bankrupt and there is an order of the Bankruptcy Court in British Guiana calling upon me to pay what I owe him. Do you mean to say that order will be enfoceable against me in Canada after the judgment is rendered or that I will have to go to British Guiana and contest the judgment? Would he not have to sue me here in Canada? Would he not have to exemplify his judgment here? He would not have to do so under this clause, and I object strongly to it.

Mr. CANNON: Why make exceptions in bankruptcy matters? Why should not a judgment rendered in a bankruptcy matter be on the same footing as any other judgment rendered in any other country? Why should preference be given with respect to bankruptcy judgments? We have no more control over how they are rendered than we have control of how many other judgments are rendered. Why should we have more confidence in a bankruptcy judgment than any other judgment? I do not like the words "British countries". I think they are too indefinite.

By Mr. Fulton:

Q. I think we should observe that even though the clause or subclause use the particular words "reciprocal legislation", it doesn't mean that the principles of their bankruptcy Act must be the same as ours. It is confined here to reciprocal legislation providing for the enforcement by this court of bankruptcy orders made in a country which may have bankruptcy principles entirely different to ours, but which nevertheless may provide for enforcement of bankruptcy orders. We, by this clause, would be bound to recognize orders made under an entirely different system.—A. The rules to be made under the Act, I believe, are the answer to the question you put, Mr. Lesage.

By Mr. Lesage:

Q. I would not wait for the rules to guarantee to a Canadian that he has not to go to British Guiana in order to defend himself against an order of the court there.—A. No. It would be provided by rules, and there would have to be rules setting out the procedure, because the procedure is not in the clause. It would be provided by rules that you could defend in Canada.

Q. I would like to see it not only in the rules but in the law.

By Mr. Bennett:

Q. Mr. Lesage's question has not got anything to do with bankruptcy. Whether you owed money or not would be decided by our local courts. The bankruptcy court would only determine such things as priority and the amount of money to be paid.—A. It is possible that the situation which Mr. Lesage has put forward might arise under our Act.

Q. We have not got jurisdiction. It would be *ultra vires* with us. It is a matter of civil rights, a provincial matter.

The WITNESS: The bankruptcy court itself can sometimes make an order and the defendant would have to pay the money. That is one of the cases. So the situation which Mr. Lesage has put forward, I would say, could arise. That is, it would not be simply a judgment about procedural matters which would come in issue.

By Mr. Laing:

Q. Without any right on his part to contest it in a civil court in Canada? —A. No. That would have to be provided for.

Mr. LESAGE: That would have to be provided for in the rules. That is why I am against it. I want to see it in the law. I do not think we need the clause anyway, if it is going to be provided for in the rules.

Mr. CANNON: What is the advantage?

The CHAIRMAN: The superintendent has indicated to me that he is not going to press it.

By Mr. Belzile:

Q. I do not see any advantage in this particular clause. I think we are making too easy.—A. I think the chairman will cover it.

The CHAIRMAN: Mr. Lesage moves and Mr. Fleming seconds that all the words after the word "act" in the first line of clause 145 subclause (1) down to and including the word "Canada" in the sixth line be deleted.

Shall the amendment carry?

Mr. FULTON: Just a moment, please. How would it read?

The CHAIRMAN: It would read:

> 145 (1) An order made by a court under this Act may be enforced in in any court having jurisdiction in bankruptcy in Canada in the same manner in all respects as if the order had been made by that court in Canada.

Shall the amendment carry?

Carried.

By Mr. Fleming:

Q. Do you need the words "in Canada" at the end?—A. No. There is a slight inconsequential change which should be made in the last two lines. Clause 170 subclause (1) of the present Act reads:

> 170 (1) Any order made by a court exercising jurisdiction in bankruptcy under this Act shall be enforced in the courts having jurisdiction in bankruptcy elsewhere in Canada in the same manner in all respects as if the order had been made by the Court hereby required to enforce it.

The CHAIRMAN: The proper amendment is a motion to restore the wording of section 170 subsection (1) of the old Act.

By Mr. Fulton:

Q. Then I would like to see the words "shall be enforced" in the second last line changed to read: "Shall be enforceable".—A. "enforced" is a word which has stood the test in the present Act for a long time. I am not sure that I quite grasp the distinction.

Q. "shall be enforced" is mandatory. Surely "shall be enforceable" is all you want, or "may be enforced".

By Mr. Fleming:

Q. I should think that "shall be enforced" is preferable because all you are thinking of is that somebody will have to come along to the court and ask that the order referred to be enforced in that court.—A. Any court in Canada will recognize for enforcement the order of any other court in Canada. I would prefer the wording " shall be enforced".

Mr. FLEMING: I suppose we may finish this preliminary review of the Act this morning. We have only 28 clauses left.

The CHAIRMAN: I had hoped we might do that, and then we would take up with Mr. MacDonald some drafted admendments to be followed by the individual clauses which we have allowed to stand.

Mr. FLEMING: That would be this afternoon then.

Mr. LAING: Before you leave, Mr. Chairman, you circularized a number of people.

The CHAIRMAN: Would you mind bringing that up this afternoon, please, Mr. Laing.

The VICE-CHAIRMAN took the chair.

The VICE-CHAIRMAN: Clause 146.

MR. FLEMING: We have decided to restore section 170 subsection (1) of the present Act in its entirety.

The VICE-CHAIRMAN: Yes.

MR. FLEMING: Then subclauses (2) and (3) of clause 145 will be adopted, will they not? We are going to adopt them?

The VICE-CHAIRMAN: Yes. There is no charge in subclause (1) from the old Act. Does clause 145 carry?

Carried.

Does clause 146 carry?

Carried. No representations. Well, the only reference to "custodian" has been deleted. Carried.

Shall clause 147 carry? Subclause (2) is new.

The WITNESS: The procedure proposed in the subclause is to cover proof.

The VICE-CHAIRMAN: That is quite all right.

Carried.

Shall clause 148 carry? There is no recommendation there from anyone. Carried.

Shall clause 149 carry? There is one suggestion by the Toronto Board of Trade.

The VICE-CHAIRMAN: That was adopted and so was the other suggestion.

The WITNESS: Paragraph (a), (b) and (c) are substantially the same. Paragraph (f) relates to clause (11). Paragraph (g) relates to clause (8), subclause (9). Paragraph (h) was formerly paragraph (i) with a change taking out the limitation of $500, since there is a right of appeal.

Mr. FULTON: Paragraph (k). Mr. Chairman, isn't paragraph (k) a little bit sweeping.

MR. FLEMING: That is just to give him power comparable to that of a master of the supreme court in matters relating to practice.

MR. FULTON: It should be remembered that the powers of a master apply practically only in Ontario. Our registrars have not been given the power of a master under out supreme court rules. But our registrars have limited jurisdiction or power in British Columbia in ordinary matters in respect to procedure or otherwise. Yet here you are giving the registrar, because he is the registrar in bankruptcy, powers which he does not have as registrar of the supreme court in other matters.

The VICE-CHAIRMAN: That covers the actual practice, the present practice.

MR. FULTON: But it says that paragraph (k) is new.

The VICE-CHAIRMAN: It sets out more clearly the jurisdiction of the registrar. You may appeal to the court at any time from a decision.

The WITNESS: Yes.

Mr. FULTON: It seems a waste of time.

The WITNESS: Your appeal would have to be resorted to very rarely.

Mr. FLEMING: I should think it is altogether desirable that any sections defining the jurisdiction of the court or of any officer of the court should be most explicit, and as this particular power of the registrar would be recognized in practice it has not been as clearly defined in the bill as it might well be. I think it is a good idea to put it in this clause.

MR. FULTON: You are quite clear that it has been the practice right along?

The WITNESS: Yes it has.

The VICE-CHAIRMAN: Shall 149 carry?

Carried.

Clause 150 — there is no difficulty there.

MR. CANNON: I see in paragraph 2 there is no limit to the power of the registrar to allow fees.

The WITNESS: Yes, it is only the first step, there is an appeal from him.

Mr. CANNON: What about What about (b), Mr. Chairman, that is new?

The VICE-CHAIRMAN: Yes.

Mr. CANNON: Is there any particular reason given for that requirement?

The WITNESS: That is 149 (1) (b)?

MR. CANNON: No, 150 (e).

The WITNESS: Just to cover any case that might be worthy of appeal which does not fall within the enumeration. When the bill was first introduced in 1949, section 150 read like this: "Unless otherwise provided in this Act an appeal lies from the order or decision of a judge of a court to the Court of Appeal with leave of a judge thereof"; and that is all that was said. Now, the trouble when it was left that way was this, that it seemed to us that it was left too much up in the air as to the principles upon which a judge would proceed. I can very well see a judge of the court saying; well, you have not given me very much guidance to help me in determining when I should permit an appeal; so it was thought it would be well to leave it substantially as in the present section of the Act, which is now done in clause 150 of the bill, and then somewhat in line with clause 150 of the original draft bill, to put in paragraph (*e*) so that if the enumeration is not sufficient you provided that the judge can exercise a discretion.

Mr. FLEMING: It is a residuary right?

The WITNESS: Yes. The enumeration is quite complete, but by adding this subclause (*e*) you afford the court a discretion so that he may permit an appeal should there be other cases in which justice is not covered by the enumeration.

Mr. FLEMING: Is this a residual jurisdiction?

The WITNESS: Exactly.

The VICE-CHAIRMAN: Does clause 150 carry?

Carried.

Clause 151.

Mr. FLEMING: What is omitted there? The compendium says, "suggested by Toronto Board of Trade that this be amplified to enable the registrar to act also where the inspectors have failed to act." Then it goes on to say; "not adopted. Instead, this paragraph has been deleted"—what did they leave out?

The WITNESS: They left that out. Section 151 of Bill L11, Mr. Chairman, corresponds to clause 149 of the present bill, so this note refers to clause 149 and not to 151.

Mr. FLEMING: Not to 151 at all?

The WITNESS: No.

The VICE-CHAIRMAN: Shall 151 carry?

Carried.

Clause 152?

Mr. FLEMING: That looks good.

The VICE-CHAIRMAN: Carried.

Clause 153?

Mr. FLEMING: What was the reason for reparting from the provisions of the present 174 sub 4?

The WITNESS: Just to confide it to the ordinary provisions covering appeals to the Supreme Court.

Mr. CANNON: And he has to pay the appeal costs in any of these cases. In the old section he did not have to pay the appeal costs. That is the effect of it, it is not?

The WITNESS: Just one moment, please.

Mr. CANNON: They have taken out the last part of 174.

The VICE-CHAIRMAN: I understand, but in civil cases as a rule you have to give security for costs in the Supreme Court if you want to appeal.

Mr. CANNON: It seems to me it was a special rule in bankruptcy matters that you had to pay only $100, or something like that, but now you have to deposit a much larger sum; you had to deposit only $100 up until now.

The VICE-CHAIRMAN: Yes.

Mr. CANNON: And this section will alter the situation so far as that is concerned.

The VICE-CHAIRMAN: What 153 really says, in effect, is that you will now have to follow the general rules of the Supreme Court. That would be all right. Why should we make a special exception in the case of bankruptcy?

Mr. CANNON: Just because 174 subparagraph 4 has a provision with regard to costs and this new clause does not carry any similar provision I was wondering what the effect would be of the new clause.

The WITNESS: Frankly, I would have to check on that.

The VICE-CHAIRMAN: You might check on that and let us have a report.

Mr. FLEMING: There was just one other point on that clause before you leave it. Suppose the judge who grants the leave to appeal directs that an order should be stayed in part only, there does not seem to be any provision here that would enable him to stay it in part and allow it to operate in part. The present clause 174(4) seems to make provision for that. Would it not be a good thing to add the words, "and to the extent to which he shall so order"?

The VICE-CHAIRMAN: We could add that.

Mr. FLEMING: Yes, I think we should add those words to clause 153 to provide for that.

The VICE-CHAIRMAN: Mr. Fleming moves, seconded by Mr. Fulton—

Mr. FLEMING: Excuse me, Mr. Chairman, I think maybe we had better leave that to the Superintendent for redrafting.

The VICE-CHAIRMAN: All right. We will allow the clause to stand.

Mr. FLEMING: Have you got that point?

The WITNESS: Yes. I was going to suggest that I think the point well taken and it probably could be easily covered because we have a previous section to copy; and, subject to further consideration, what would you think of these words: "and to the extent that," to go in just after the word, "unless"?

The VICE-CHAIRMAN: All right, we will leave it there and consider it when we come back to the clause. Is it necessary?

Mr. FLEMING: It may be in the next couple of months.

The VICE-CHAIRMAN: We will let that clause stand.

Clause 155: I believe that the answer to the suggestion of the Canadian Bar Association is contained in a note in the compendium. That relates to subclause—

The WITNESS: That is subclause 3.

The VICE-CHAIRMAN: Oh, yes, subclause 3.

Mr. FLEMING: Could we have some further explanation in connection with subclause 7, Mr. Chairman, on this point recommended by Mr. Wickett, K.C., Toronto, which was discussed in the compendium indicating that there had been some conflict in the official decisions?

The WITNESS: The case mentioned is a case which has not been followed by any other province, to the effect that the increase is not limited to 10 per cent. Mr. Wickett suggested that that decision be followed in the new bill. It was not adopted because that was not the intention behind the draft.

Mr. FLEMING: Well, subclause 7, as I understand it, states what has been the practice prevailing in the Ontario courts; am I right in that?

The WITNESS: Yes, and Mr. Wickett wished that to be departed from in favour of the New Brunswick decision.

Mr. CANNON: What was the effect of the New Brunswick decision; to include that practice of more than 10 per cent?

The WITNESS: It was to the effect that 10 per cent was not a limit, as appears to be the sense of the present clause 162, subclause 3 which reads; "Notwithstanding anything contained herein in any estates where the gross proceeds do not exceed $5,000, the costs or fees payable may by unanimous vote of the inspectors be increased to any amount not to exceed 10 per centum of the gross proceeds of such sale"; and the New Brunswick court said that that 10 per cent mentioned there was not a limit fixed by the section, but could be exceeded.

Mr. CANNON: I cannot see it.

The VICE-CHAIRMAN: Shall clause 155 carry?

Carried.

Clause 156.

Mr. BENNETT: Shall we adjourn now?

Mr. FULFORD: If some of us leave there may no longer be a quorum here, and I have an urgent appointment.

The VICE-CHAIRMAN: We will adjourn until 3.30 o'clock this afternoon.

AFTERNOON SESSION

The committee resumed at 3.30 p.m.

The CHAIRMAN: Gentlemen, I see a quorum.

At the luncheon adjournment the committee was dealing with clause 156. If we take a paragraph at a time perhaps we can deal with it more easily.

Mr. T. D. MacDonald, K.C., Superintendent of Bankruptcy, recalled:

Shall subclause (*a*) carry?

Mr. STEWART: May I ask if there is any material difference between this clause and 191 or is it merely a condensation?

The WITNESS: I would not say there is any material or substantial difference; there is a certain amount of rearrangement.

Mr. LESAGE: In 191 there were a lot of repetitions.

The WITNESS: Just take a spot check. If you notice 191 (*c*) on the right hand side of the page would now be covered by a combination of (*a*) of 156 and clause 117 (*b*).

Mr. FLEMING: I notice that Mr. Justice Urquhart apparently strongly preferred the provisions of the old clause 191 to the new clause. I gather his feeling in general was that the new clause is too drastic in some particulars.

Mr. LESAGE: The old clause was surely not drastic enough and we had a lot of trouble enforcing it. It was not enforceable, as a matter of fact, and in practice there was a lot of trouble.

The WITNESS: I might say to Mr. Fleming that subsequent to Mr. Justice Urquhart's recommendations, the paragraph was extended. He objected to certain omissions, but they have now been taken care of.

By Mr. Fleming:

Q. Do you feel then that the section in its present form largely meets the objections of Mr. Justice Urquhart?—A. I am not sure that I would be justified in putting myself in the position of saying "largely". What I did was to go over the clause in the light of Mr. Justice Urquhart's representations and I concur that there were certain things that were not sufficiently covered and put them in the clause accordingly.

Mr. FLEMING: Mr. Chairman, you remember in that communication you had from Mr. Justice Urquhart on Tuesday—there were a couple of questions that he particularly mentioned. Is this one of them?

The CHAIRMAN: He referred to clause 21, subclause (6).

Mr. FLEMING: Yes, I know that point. That is the one we are going to take up later, I understand.

The CHAIRMAN: Yes, we stood that.

Mr. FLEMING: There is no other section that he mentioned especially?

The CHAIRMAN: Mr. Lesage, in looking over the requirements of clause 117, it would appear to me rather drastic to subject a man to imprisonment for failure to deliver—to make these statements.

Mr. LESAGE: It is according to the general principle of Criminal Law that *mens rea* has to be part of the offence, so if he does not deliver one of his books without intent, he just forgets it for instance, he has a good defence against any criminal prosecution under clause 156. There has to be intent. There has to be *mens rea*.

The CHAIRMAN: You see, that is rather a full statement, names and addresses and all that sort of thing.

Mr. LESAGE: Yes, but *mens rea* is a part of the offence, an essential part. Without *mens rea* there is no offence and of course when you say *mens rea* you imply that there must be an intention to defraud, to go around one of the provisions of the Act.

Mr. FLEMING: In other words, it must be wilful.

Mr. LESAGE: It must be wilful.

Mr. HUNTER: I do not follow your point, Mr. Lesage. In this it says "neglect".

Mr. LESAGE: Yes, but the negligence has to be intentional, wilful; it must be a wilful negligence because *mens rea* is always a part of a criminal affair.

Mr. HUNTER: Surely the very meaning of the word negligence means it is not wilful; you are negligent.

Mr. FLEMING: Might it not, Mr. Chairman, meet the objections and stress the point of *mens rea* if in clause 156 subclause (a) we inserted the word "wilfully", so it would read "wilfully fails, refuses, or neglects" to do any of the things required by clause 117. I think that would meet the point that Mr. Hunter is raising that a neglect simply involves the absence of intent in one way or the other.

Mr. HUNTER: It is an act of omission.

Mr. FLEMING: Yes, if you insert the word wilfully it makes it quite clear.

Mr. LESAGE: There is no objection. It does not change the onus of the proof or evidence; it is always on the prosecution to prove the two elements of the offence, the fact and the *mens rea*.

Mr. FLEMING: Quite, but it will reinforce the point that it is intentional neglect under clause 117 that we are endeavouring to penalize under clause 156 (a).

Mr. STEWART: Will that apply to all the following subclauses too?

The WITNESS: You can put the word "wilfully" after the word "who" and then it will apply to all the following subclauses.

Mr. CANNON: Well, I thought of that but I decided not to recommend it because there are some things here it would not apply to—(b) for instance, "makes any fraudulent disposition."

Mr. LESAGE: If it is fraudulent it has to be wilful.

Mr. FULTON: Referring to another bill that we are considering in the House, it has been shown in discussion of the Crime Comics Bill that where in the criminal code you have the words "knowingly, without lawful justification or excuse", there the crown has to prove affirmatively that he knew and had no lawful justification or excuse, whereas if they were not there, and the word "wilfully" is not here, then it is a rebuttable presumption, to be met by the defendant, that he intended the probable consequences of his act. Therefore, if you put the word "wilfully" in here the crown has to prove an extra element instead of it being a rebuttable presumption against the accused.

Mr. HUNTER: How are you going wilfully to refuse?

The WITNESS: Or wilfully neglect. It is not an apt expression to qualify neglect.

Mr. HUNTER: It is almost a contradiction in terms.

The WITNESS: It is a contradiction in terms in the case of neglect.

Mr. CANNON: I suggest we leave it as it is, leave it to the judge's discretion. As Mr. Lesage says there is always an element of *mens rea* in it. I think if we started inserting the word "wilfully" it may lead to complications in the application of it.

The CHAIRMAN: What paragraph do you believe the addition of "wilfully" should be made in to make it read the way it should, Mr. Cannon?

Mr. CANNON: Well, I am not in favour of inserting the word "wilfully" anywhere. It makes the application of the whole paragraph too difficult by imposing on the prosecution the onus, as Mr. Fulton just said, of providing intent affirmatively, and if you just apply it to subclause (*a*) you make a distinction between subclause (*a*) and the other paragraph which might lead to complications.

Mr. FLEMING: There is no objection to the offences created by subclause (*b*) to (*i*) inclusive, the only question is whether subclause (*a*) is not too drastic; You may be penalizing a mere omission.

Mr. LESAGE: If there is no *mens rea* there is a defence.

Mr. FULTON: In one of the earlier clauses, I thought it was in one of the clauses after 117, an action might be taken against a person who refused by bringing him to court on a warrant.

Mr. CANNON: In the old article there was an option between imprisonment and a fine, and there does not seem to be any option in this one. It is just imprisonment. Now, the chairman said that is too drastic. One way to avoid it being too drastic is to give the judge the option of imposing a fine.

The WITNESS: The object of that was to make it more drastic. With a fine you would be penalizing the creditors rather than the debtor.

The CHAIRMAN: The fine would not be payable out of the estate?

Mr. LESAGE: Where could it come from then?

The CHAIRMAN: It would not come from the bankrupt, it would come from his friends.

Mr. LESAGE: I think where the maximum penalty, the imprisonment penalty is for a year, or less than five years, the attorney-general of the province must always consent.

The CHAIRMAN: For an offence under the Code I doubt very much if that would apply.

Mr. LESAGE: I don't know. I am asking the question.

The CHAIRMAN: I doubt it very much.

The WITNESS: Let me see now, I have something on this—liable on summary conviction to imprisonment for a term not exceeding one year—

Mr. LESAGE: Is there any section saying that the Criminal Code applies?

The WITNESS: Yes, to answer you away from the book; and my immediate impression is that the provisions of 1035 of the Code would apply.

Mr. LESAGE: Would apply?

The WITNESS: Yes. My only mental reservation is on the score of summary convictions.

Mr. LESAGE: Yes, because it is not part 15 of the Criminal Code.

The WITNESS: But upon indictment my recollection is that section 1035 of the Code is one of the general procedural provisions which applies to all Dominion legislation.

Mr. LESAGE: Could we have Crankshaw's Criminal Code?

The CHAIRMAN: It does not make it an indictable offence, it just makes it a summary conviction.

The WITNESS: It is alternative.

The CHAIRMAN: Or on conviction on indictment; yes—no, under indictment it is three years and on summary conviction one year.

The WITNESS: Yes.

Mr. FULTON: Surely if a bankrupt neglects to do anything required of him under clause 117, in view of any of the provisions in clause 117 for giving him due notice of what is required of him with regard to attending his examinations before the trustee and so on; if he neglects—in fact any failure to comply with those orders or directions, and so on, can only be taken to be a deliberate act on his part.

The CHAIRMAN: Well, how about this? Supposing he is not in a position to comply, he would still be liable; supposing he has not in his possession all the papers covering the property.

Mr. LESAGE: If he cannot deliver them physically then he has a good defence in any criminal prosecution and there is no *mens rea*.

The CHAIRMAN: That is why I would like the word "wilfully" put in.

Mr. LESAGE: I do not believe, Mr. Chairman, you should put the word "wilfully" in because *mens rea* is an essential element of any criminal offence.

The CHAIRMAN: Yes, but this is not exactly a criminal offence.

Mr. HUNTER: I do not think there is any *mens rea.*

Mr. LESAGE: Well, what about the situation supposing there is no negligence, what about *mens rea* then?

Mr. FULTON: But that is a criminal offence.

Mr. RICHARD (*Ottawa East*): There is no *mens rea* in it then.

The WITNESS: As I understand, the objection centres not on the words refuses or neglects, as to which I suppose there is no objection, but it attaches to the word "fails". I think that is so, Mr. Chairman.

The CHAIRMAN: It makes it that much more difficult. You would not have *mens rea* just because of the fact that a man fails to deliver a document.

The WITNESS: I am inclined to agree with Mr. Lesage.

Mr. LESAGE: You don't prove *mens rea,* the judge and jury on hearing the case detect *mens rea* from the facts, from the proven facts of evidence.

Mr. FULTON: If an accused establishes that it was impossible for him to comply with the terms then he has the assumption that *mens rea* was there, or that there was an intent.

The CHAIRMAN: *Mens rea* is something which has to do with the commission of crimes. If we by statute set up certain requirements and say that a man shall do this and if he omits to do it or fails to do it he is liable to imprisonment; I may be wrong but I cannot see how *mens rea* figures in that at all.

Mr. FLEMING: May I make a suggestion? There has been objection taken to the words "neglect" and "fails", would it meet the needs of the situation if we were to eliminate those two words and simply say refuses, the word "refuses" definitely implies the element of will.

The CHAIRMAN: Oh yes, you would be perfectly safe if you did that.

Mr. FLEMING: If we simply made that subclause read, "who refuses to do anything"—and that will eliminate completely any possibility of his being prosecuted for anything less than that.

The WITNESS: And it also eliminates a large part of the effectiveness of the section.

Mr. FLEMING: I agree, and in that case the trustee would have to say to this man: you have not complied with such and such provisions of 117, now you must do so; and if he refuses then he is committing an offence.

The WITNESS: But he won't refuse, he will only keep saying: I will do it tomorrow.

Mr. FLEMING: Well, then, you will simply have to take care of that by saying "wilfully fails".

The WITNESS: If there were to be any amelioration of that section it seems to me that the chairman's objection would be met by rephrasing (*a*) to say, "refuses, neglects or fails without reasonable excuse to do any of the things required of him under clause 117".

The CHAIRMAN: I would be quite satisfied with that.

Mr. LESAGE: About that question of *mens rea* under a statutory offence, would you mind if I were to quote the latest judgment in an appeal to the Supreme Court of Canada? I recall something on this line arising out of such an appeal but I cannoot put my hands on it at the moment. The jurisprudence on the point was settled two or three years ago but I do not recall the exact

case at the moment. Would you allow me overnight in which to look it up and speak to the point tomorrow?

The CHAIRMAN: Shall we let the clause stand, or what do you think of Mr. MacDonald's suggestion? It is, "fails, refuses or neglects without reasonable cause".

Mr. CANNON: I think that would cover it.

Mr. LESAGE: Yes.

The WITNESS: Reasonable excuse would only apply to fails, because refuses or neglects is in a different category.

Mr. HUNTER: In this clause as presently constituted, neglects to do something—

The CHAIRMAN: We will come to that in a moment, Mr. Hunter; but I do think the amendment suggested by Mr. Cannon and Mr. MacDonald—fails, refuses or neglects without reasonable cause—

The WITNESS: Might I suggest, Mr. Chairman, that "without reasonable cause" qualifies only the word "fails"?

The CHAIRMAN: Yes. Then it would read "refuses, neglects or fails without reasonable cause".

Mr. FLEMING: No, that is going to be ambiguous, you would have to say "without reasonable cause fails".

Mr. HUNTER: Why qualify "fails" and still leave "neglects" which is a still more minor thing than "fails".

Mr. BENNETT: It is not the word "fails" that should be covered, it is the word "neglects".

The WITNESS: No, a person who neglects to do a thing—the word "neglect" itself implies indifference; as the chairman suggests, amounting almost to *mens rea*.

Mr. FLEMING: There is no harm in putting it this way: "refuses or without reasonable cause fails or neglects to do so and so".

Mr. BENNETT: Why not forget the word "neglect" altogether, and say "refuses or fails without reasonable cause to do any of the things required"?

Mr. FLEMING: It is a little different; "neglect" is only one of the things which might cause failure to do it.

By Mr. Bennett:

Q. "Refuses or fails without reasonable cause".—A. To carry that thought a little further, perhaps "refuses" could come out. I think you may have something there. Perhaps "fails without reasonable cause" is all that we need.

The CHAIRMAN: I think that is right.

Mr. FLEMING: It may be that Mr. MacDonald would like to give some further consideration to this matter.

The CHAIRMAN: I think he has reached a decision.

The WITNESS: I would like to accept it subject to looking it over tonight, and if I want to come back and say something more about it, I shall be allowed to do so.

The CHAIRMAN: It stands then: "fails without reasonable cause". Subclause (b) is carried. Subclause (c)?

Mr. LESAGE: Instead of "neglect" you could put "fails".

Mr. FLEMING: No. You want the wilful element here.

Mr. CANNON: I think it is all right. When it comes to answering a question, he either refuses to do so or says he cannot.

The CHAIRMAN: Subclause (d) is carried.

Mr. STEWART: Subclause (d) may be a little harsh having regard to the arguments which went down with regard to subclause (a). It is possible to make a material omission. I know that I have made false entries in the past.

Mr. FLEMING: I hope you have not made false entries, but rather that you made entries which were untrue. The omission could be quite accidental as a result, let us say, of inadvertence.

Mr. HUNTER: Isn't that inclined to be a dictionary definition of "false"? Are there not other meanings of the word?

The CHAIRMAN: An incorrect entry is not necessarily a false entry.

The WITNESS: You do not need "knowingly" to qualify "false". "False" in that context implies knowledge of the falsity.

By Mr. Fleming:

Q. That does not apply to material omission?—A. I am pretty sure about that because I enquired. I was curious about that point at one time in going through the bill and I looked into it and came to the conclusion that "false" in a context like that would imply "false to the knowledge of the person who made the statement, excluding innocent mistakes."

Mr. HUNTER: Then there is nothing to worry about.

Mr. FLEMING: It does not take care of material omission. It could conceivably be made by inadvertence without any fraudulent intent.

The CHAIRMAN: Or the word "deliberately".

Mr. FLEMING: Or "knowingly".

Mr. BELZILE: "knowingly" would cover it.

The CHAIRMAN: Or "knowingly omit".

By Mr. Lesage:

Q. Instead of "knowingly" put "without cause".—A. You can make a substantial number of omissions just through not taking a little care, without being tied down to "knowingly".

By Mr. Stewart:

Q. We assume that all omissions are made through carelessness.—A. Perhaps I should just mention this—it is no reason, of course, why there should be anything unfair or unjust in this clause—that is not my intention—but the tightening up that occurs in the clause has been as a result of failures of the old section to strike all situations which should be corrected.

The CHAIRMAN: That being so, that brings us to the penalty. Perhaps we could leave it to the discretion of the judge, as long as we give him a discretion, or to the trial magistrate, as long as we give him a discretion of a fine.

By Mr. Fulton:

Q. Is Mr. MacDonald trying in a sense to impose an absolute duty on the bankrupt not to be careless in answering questions?—A. That is right, certainly.

Mr. FLEMING: It goes beyond not being careless. You are imposing upon him a duty of accuracy and I think it would be pretty hard in the case of a lot of people.

The CHAIRMAN: As long as the omission is an important one, it is a violation, even though it is as innocent as can be. Therefore I say that we can safely leave it to the trial magistrate or to the trial judge, so long as we give him a discretion as to penalty.

Mr. FULTON: He has it up to a term not exceeding one year.

The CHAIRMAN: What about a fine?

By Mr. Hunter:

Q. Perhaps Mr. MacDonald could tell us how the practice of a fine is worked out. Can a bankrupt pay a fine?—A. What do you mean?

Q. As a matter of practical everyday life, take a person who has all his assets vested in the trustee, can he pay a fine?—A. Not unless he can get it from a friend or take it out of his future earnings which the trustee is not able to put his hands on, otherwise he has no means of paying a fine.

By Mr. Fleming:

Q. I suppose in ordinary practice these prosecutions would arise only after all the bankrupt's property has been vested in the trustee. We know from clause 135 (1) (*a*) that the order of discharge of a bankrupt does not affect any final penalty that has been imposed upon him. I should think it would be pretty clear that there would be no right on the part of the court which has imposed the fine, after the bankrupt has agreed to pay any claim on the estate.

The CHAIRMAN: It cannot come out of the estate.

Mr. FLEMING: It could not possibly do so under those circumstances.

The CHAIRMAN: It would have to come from his subsequent earnings. It will have to come from his friends, or subsequent earnings.

MR. FLEMING: Either he raises the money from other sources or gets it as you have said. I really do not think there is any danger of its affecting the rights of the creditors.

MR. LESAGE: No, but as a matter of fact it is there at the end of this clause —"is liable on summary conviction to imprisonment for a term not exceeding one year or on conviction under indictment to imprisonment for a term not exceeding three years." There is no alternative, he cannot be fined, he has to serve where there is a conviction, he has to serve three years.

The CHAIRMAN: Where it is by indictment.

MR. LESAGE: Yes, where it is by indictment, under summary conviction it is one year; but the judge has a certain amount of discretionary power according to the provisions of section 1035 of the Criminal Code.

The CHAIRMAN: That is on summary trial and following conviction for an offence.

Mr. LESAGE: Or by any court on indictment, an indictable offence is punishable by imprisonment or a fine in lieu of such punishment, for offences such are contemplated here.

The CHAIRMAN: But on summary conviction there is no alternative.

MR. LESAGE: No, if you look at part XV of the Criminal Code which is summary convictions, the judge cannot fine him, but if you go under indictment, which is a more serious form, then you can give him a fine in lieu of imprisonment.

Mr. HUNTER: Does that apply to bankruptcy offences?

MR. FLEMING: It would, in view of the concluding point in clause 156.

Mr. LESAGE: Yes —"is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding one year or on conviction under indictment to imprisonment for a term not exceeding three years."

MR. HUNTER: It refers there to the powers under section 1035 of the Criminal Code.

MR. LESAGE: Those powers are only for procedure under parts XV and XVI. Part XV deals with summary convictions; and speedy trial, or summary trial, is part XVI; and then you have 17 and 18.

MR. HUNTER: Is there not a provision there that that is limited to offences under the Code?

Mr. FLEMING: It is offences —

Mr. LESAGE: —punishable by indictment.

MR. FLEMING: Yes.

The WITNESS: I think Mr. Lesage is right on that. I think the words should be added there similar to words which are added to many sections of the Code, to the effect that section 1035 of the Code does not apply.

Mr. LESAGE: Or otherwise let us impose a fine in the case of a summary conviction.

MR. CANNON: I think we should go back to the old draft where it applies in both cases, summary conviction and indictment, and leave it up to the judge.

MR. LESAGE: Yes.

MR. FLEMING: I think that is fair enough.

The WITNESS: May I read the notes in the Australian experience, just for the record. The Inspector-General in Bankruptcy for Australia wrote in 1937; to provide for fines against the bankrupt is ludicrous as the property of the bankrupt at the date of sequestration and that which he acquires before his discharge vests in the official receiver or trustee with the exception of such as are required for his sustenance, and any fine inflicted can only be paid out of the creditor's money.

Mr. FULTON: Did you inadvertently leave out the provision for a fine, or was it the intention to leave that out?

The WITNESS: It was intended to leave it out.

Mr. FLEMING: You did that knowingly and deliberately.

The WITNESS: Yes.

The CHAIRMAN: But I still think that this memorandum is in error; a debtor does earn money after his bankruptcy and as to any money that he earns after bankruptcy, he could use that to pay his fine with.

The WITNESS: Yes. The question of a fine would come up ordinarily while he was still bankrupt and without any money, any free money; and any such free money is available to the trustee.

Mr. FLEMING: That is a circumstance which the judge will take into account when the debtor is before him. The man is there giving his evidence and where the judge sees that the imposition of a fine is going to penalize the creditors rather than the accused, in such cases he will exercise his discretion and impose an alternative form of sentence.

The CHAIRMAN: Yes, he will act as he sees fit and impose either suspended sentence or a very small fine.

Mr. FLEMING: Yes.

Mr. HUNTER: Take these penalties in these quasi criminal offences, the tendency seems to be to treat them rather lightly, is it not?

The CHAIRMAN: I do not know on interpretation whether a magistrate could impose a fine in dealing with an offence under the clause as it now stands.

Mr. HUNTER: I know that, but I say there is a tendency to be lenient; that there is a tendency on the part of our magistrates, and we all know it, in cases of a quasi criminal nature, to treat them rather lightly. What are we here trying to do? Are we trying to strengthen this or not?

The WITNESS: The experience has been that it is frequently a very small fine.

Mr. HUNTER: Yes, a very small fine of $25 or ten days.

Mr. LESAGE: But it has never been made against the estate in the past.

Mr. HUNTER: If it is going to strengthen the section let us leave it as it is; if not, put in the fine.

Mr. FLEMING: I would like to be shown that hardship has resulted or an unsatisfactory situation arisen from the law as it has stood over the last thirty years under section 191, with the alternative provision of a fine or imprisonment or both.

Mr. LESAGE: I have known many cases where the debtor, the bankrupt, in the months preceding his failure has done things which surely he would not have done if he had thought or known that the Act carried a penalty of imprisonment for him. It is a deterrent.

The WITNESS: And we receive many complaints and representations to the effect that prosecutions are rendered ineffective because of the light penalty that is imposed.

Mr. FLEMING: Is that due to the fact that a fine can be levied instead of a prison term?

The WITNESS: That is due to the fact that a fine can be levied, a small fine is levied very often.

Mr. FLEMING: There is nothing to prevent a magistrate, or a judge even, if he has got the powed here to imprison, from giving suspended sentence.

Mr. LESAGE: I think that is a matter for the attorney-general.

Mr. HUNTER: If he applies against the bankrupt.

Mr. LESAGE: We will have to put in that provision, that 1035 does not apply.

The CHAIRMAN: If you follow that through to its logical conclusion we are reaching a decision that our magistrates do not use good judgment in the circumstances and we are going to take the matter out of their hands and see that they impose a penalty far greater than they think should be imposed. Mr. MacDonald, your complaint is that they are too lenient, that the fines are too small and are not effective.

Mr. FULTON: It seems to me that Mr. MacDonald's argument has been that under the law as it stood the bankrupt had tended, shall we say, to be careless in making disclosures, in making answers to questions which are asked of him, and that carelessness sometimes appears to be not too serious and the magistrate then imposes a small fine. I take it his argument is—perhaps the thought in the back of his mind—that if the magistrate has no power to impose a fine the prison sentence must follow any such omissions and then the bankrupts are going to be much more careful in making the answers to the questions, and in that way the whole purpose of the Act will be better served. Isn't that your thought?

The WITNESS: A term of imprisonment without the option of a fine generally speaking does have a greater deterring effect than a punishment which contains the option of a fine.

Mr. FULTON: And the magistrate, Mr. Chairman, is naturally dealing with an offence which has occurred, and it would be difficult, for instance, for a magistrate to say that in his opinion this offence is so serious that he should make an example which will have a salutary effect on other people in bankruptcy or facing bankruptcy throughout Canada. He deals with an offence which has just occurred and which seems to him to be trivial, and in so doing he treats it, shall we say, lightly. If this is strengthening the law, if by making certain that the penalty is a prison term without the option of a fine, then perhaps the point is well taken.

Mr. LESAGE: I agree with you, because a chap under those circumstances is going to be a little more careful in the representations he makes.

The CHAIRMAN: I do not mind people being put in the position where you can threaten them and make them do what you think should be done to give effect to the provisions of an Act of this kind, and I do not for a moment believe that one bankrupt in fifty, if he knew he was liable to a prison term, would fail to respond in all proper matters.

Mr. BELZILE: Is it not a fact that a trustee is very reluctant to place a charge against a bankrupt; and is it not your experience that the attorneys-general of the provinces will never proffer an indictment against him in fact?

The WITNESS: Well, I could be factual and say that in so far as I know—

Mr. LESAGE: The attorney-general of the province takes up the case only after the man has been committed for trial, after the primary hearing has been completed and the case sent on to him.

Mr. RICHARD (*Gloucester*): In clause 9, what is meant by the word "speculation"?

Mr. CANNON: If you read clause (*d*) in relation to the concluding clause and you contemplate a man going to jail without the option of a fine, having made hazardous speculations; I think that is another argument in favour of what you said, that it is a good thing to leave out the option of a fine.

Mr. BENNETT: Don't you think it would be more difficult to obtain convictions when there is not the alternative of a fine?

Mr. HUNTER: It seems to me that this is a matter of policy. We are saying in effect, leaving it the way it is, that the general public, including the magistrates, tend to regard these offences rather lightly and we need to raise public morality to a higher level, but you cannot raise public morality to a higher level by legislation, legislation has to go with public morality.

Mr. FULTON: To get back to clause (*b*), out of which the prosecution arises, if you put in there, "who makes a false entry or knowingly makes material omission"—and thereby conceals, is liable to imprisonment for one year you have pretty well covered the case you intended to and you have introduced the element of intent or deliberation; and then, if a man does that, he deserves, surely, not to have the option of a fine.

The CHAIRMAN: "Knowingly makes a material omission" would cover it.

The WITNESS: Or, say, "knowingly or negligently".

Mr. FLEMING: That is mere carelessness. Surely we are not going to penalize mere carelessness, because there is a lot of carelessness in matters of this kind.

The CHAIRMAN: Clause (*d*) carried. Clause (*e*).

Mr. FLEMING: What are we doing with (*d*)?

The CHAIRMAN: Knowingly makes a material omission", Mr. MacDonald accepts that.

Mr. LESAGE: Don't you think six months is too short a period? I had one case in which some books had been mutilated or falsified a little more than seven months before the assignment. At that moment the bankrupt was already insolvent and he had falsified his books.

Mr. CANNON: In a case of that kind could you not have had him apprehended and prosecuted him under the Criminal Code?

Mr. LESAGE: Well, I studied the matter carefully and there was nothing that I could do. These were his own books.

Mr. FLEMING: What do you suggest?

Mr. LESAGE: Two years, the same as in the other clause.

Mr. FLEMING: Clause 158, line 18—"has not kept proper books of account during the two years"— and then (*c*) "after or within the two year period mentioned in paragraph (*a*)".

Mr. LESAGE: That is right, but that is in the case of a person who has been a bankrupt previously—six months is not a very long period, it should be for a longer period than that.

Mr. FLEMING: You would expect him to do that for the current year.

The CHAIRMAN: What would you think of putting the words "after bankruptcy" in the second line, and saying "at any time after insolvency".

Mr. LESAGE: Insolvency has to be proven with his own books and that is very difficult.

Mr. FLEMING: Is there any objection to making it a year?

Mr. LESAGE: A year would be better than six months anyway; so the word "six" would be replaced by the word "twelve".

The CHAIRMAN: Agreed?

Agreed.

Subclause (*f*):

Mr. FLEMING: Is that not the same thing? Should we not make that twelve months with regard to false representations also?

Mr. LESAGE: My case deals with the problem which I have in mind. This man falsified his books and then made a report to the bank, a report which was false, and he obtained credit on it.

Mr. FLEMING: Why should it not be twelve months there, the same as in the preceding clause?

Mr. LESAGE: Yes.

Mr. FLEMING: It is falsification in both cases.

The CHAIRMAN: Now we come to the contentious subclause, (*g*); what are we to do with that?

Mr. LESAGE: I wonder if we should not come back to the first proposition of Mr. Fleming which was to add the word "wilfully" after the word "who" in subclause (*a*). That would avoid all this discussion.

By Mr. Hunter:

Q. Who proposed paragraph (*g*)?—A. (*g*) was taken from the English Act.

Q. And what has been the experience of the English with it? Have you any information about it, Mr. Chairman?—A. No, I have not. It was taken from the English Act and was placed in our bill by a previous superintendent.

Mr. FLEMING: We can leave "gambling" in, but I think we had better take out "by rash or hazardous speculations". A man might decide to make himself rich by purchasing, let us say, oil stocks.

Mr. HUNTER: Would that be gambling?

Mr. FLEMING: He might not think it was gambling. I would just leave in "gambling" and cut out these other references.

Mr. HUNTER: Gambling has a very wide connotation.

Mr. GOUR: I know of a man who was quite honest in his business but he believed that he could get rich by going into big business. The result was that he came very close to bankruptcy. We have not got anything which would apply to a case like that.

The CHAIRMAN: I do not think there would be any serious harm done if we struck out that subclause altogether.

By Mr. Fleming:

Q. Gambling is defined in the Code and also in the Gaming Act.—A. It is not defined in the Code. You have to determine in each case whether it is gambling.

The CHAIRMAN: Is it agreed to cut out (*g*) entirely?

By Mr. Fleming:

Q. There is nothing in the present Act which is a counterpart of it?—A. This is correct.

Q. Very well, I would take it out.

The CHAIRMAN: Is it agreed to cut out (*g*) entirely?

Mr. FLEMING: That would change the lettering of (*h*) and (*i*); and under (*h*) we had better change "six" to "twelve". This is a type of fraud.

The CHAIRMAN: Yes. (*h*) will now be relettered (*g*); and the amendment will be made from "six to twelve months." Is that agreed? And a similar amendment in the following subclause.

By Mr. Stewart:

Q. Does that mean "fraudulently conceals" or "fraudulently removes" in line 31?

Mr. BELZILE: I think that "fraudulently" applies to "removes".

By Mr. Hunter:

Q. That is a matter of interpretation of English. Who is an expert here on that subject?—A. I am not an expert, but I would be of the opinion that "fraudulently" would qualify both words.

By Mr. Fleming:

Q. There is a feature of the new paragraph (*h*), the one which was lettered (*i*) before, with which I do not agree in lines 38 and 39:

> ". . . unless in the case of a trader such pawning, pledging or disposing is in the ordinary way of trade and unless in any case he proves that he had no intent to defraud;"

I dislike very much shifting the normal burden of proof. Why shouldn't it be a part of the regular burden of proof borne by the prosecution to prove intent? I do not like these cases where we are trying to put on the accused the burden of disproving the intent to defraud.

By the Chairman:

Q. What do you say to that?—A. The burden of proof is only shifted under (*i*)

The CLERK OF THE COMMITTEE: New paragraph (*h*).

The WITNESS: Under new paragraph (*h*), yes, the former one marked (*i*), and that is in the case of property obtained on credit. If he disposes of any property which he has obtained on credit and which he has not paid for, you in effect put upon him the presumption that he intended to defraud. The question is whether that is too harsh in a situation where without paying for the property he pledges it to obtain more credit.

By Mr. Fleming:

Q. You have that provision, it is true, under subclause (*n*) of the present Act, section 191 subsection (*n*); unless he proves he had no intent to defraud. Personally, I do not like it.—A. That is the Act in section 191 subsection (*n*) and (*o*), the same idea.

Q. But I do not like it.—A. It doesn't seem to me that it is an unduly harsh provision. Consider the case of a man who has bought goods from you. He is a bankrupt now or he is within six months or a year of becoming a bankrupt and then, in order to get more credit, he pledges those goods to somebody else without having paid you. Is it asking too much to tell that man that he must explain that he did not intend to defraud?

Mr. RICHARD (*Gloucester*): A fellow has the right to protect himself through filing a bill of sale or something in the nature of a lien. He takes his chances.

Mr. FULTON: I agree with Mr. MacDonald. The operation might be this: a person is hard up financially and he says: how can I get some ready cash? Well, I will go and buy a machine and having got posession of that machine I can pledge it to somebody else and get so much money. *Prima facie* it is a fraudulent operation.

Mr. CANNON: There is an element there that is necessary but which is not expressed in the subclause. That is, if a person who buys a machine on the instalment plan does not pay his vendor. Suppose I bought a machine on the instalment plan and it is not paid for. Then I sell it to somebody else. The machine was not paid for when I sold it. It would still be an offence under this clause unless you have something in the clause which makes it an exception.

The WITNESS: All you need to do is come in and explain the circumstances.

Mr. LESAGE: Unless he proves he has no intent to defraud.

Mr. CANNON: That is where it comes in handy.

The CHAIRMAN: Suppose a man got a piece of furniture on credit and then became hard up?

Mr. CANNON: I do not think we are unduly imposing a burden on the man who has not proven his innocence; but the circumstances are suspicious to begin with, in that he has sold something which he bought on credit, and he sells it for cash. So let him prove that his intent is not to defraud.

The CHAIRMAN: Shall the clause carry?

Carried.

By Mr. Lesage:

Q. If the clause carries, I suggest that something be added so that section 1035 of the Criminal Code will not apply.—A. Yes, that would be an appropriate amendment.

Q. If the clause carries, is it the whole clause or subclause (8) only?

The CHAIRMAN: The whole clause. We are through with it now.

Mr. FLEMING: But we have not dealt with the last four lines.

The CHAIRMAN: I understood apropos these amendments we made as we went along that the committee is now content with an imprisonment penalty and not a fine.

Mr. FULTON: Yes, but there is an option of a fine under the indictment procedure.

The CHAIRMAN: And you want to remove it?

Mr. FULTON: That, I think, was the suggestion.

By Mr. Lesage:

Q. But he would not have had it under summary conviction.—A. The last four lines of clause 156 should have contained these words to carry out their intention, "the words and provisions of section 1035 of the Criminal Code shall not apply".

Q. Mr. Hunter wondered if the offence prescribed under indictment under the Bankruptcy Act is to be an indictable offence, because it was not in the Criminal Code.—A. Under section 28 . . .

Mr. LESAGE: Yes, under clause 28 of the Interpretation Act it is.

By Mr. Hunter:

Q. I presume that under a clause worded such as this, the accused would have no option of a trial by judge and jury.—A. Oh, he would, if charged by way of indictment.

Q. No.—A. Oh, he has no option whatever as to whether he is to be charged by way of summary conviction or indictment.

The CHAIRMAN: Carried. Shall clause 157 carry?

Mr. LESAGE: How did you word the amendment? I was not listening at the moment.

The CHAIRMAN: "and the provisions of section 1035 of the Criminal Code shall not apply".

Mr. LESAGE: All right.

The CHAIRMAN: Does clause 157 carry?

By Mr. Stewart:

Q. Can we be told what is the average length of time that a bankrupt remains undischarged after the affairs of the bankrupt have been cleaned up?—A. I do not think I could assign any average time. Sometimes a bankrupt is never discharged. Quite frequently he never takes his discharge.

Mr. LESAGE: That is why there is a provision for automatic discharge in the new bill.

The CHAIRMAN: Carried. Shall clause 158 carry?

Carried.

Mr. RICHARD (*Gloucester*): What about paragraph (*a*)?

Mr. FLEMING: It is:

(*a*) being engaged in any trade or business, he has not kept proper books of account during the two years . . . .

Mr. LESAGE: If he has not been engaged in business for more than one year and has not kept books for more than one year, he is guilty because it reads: "during the two years", and not "during two years"; at any moment during the two years that he should have kept books and did not.

The CHAIRMAN: Clause 159?

Mr. FLEMING: There is a point there. Mr. Lesage says it means at any moment. What is the French translation of clause 158 (1) (*a*), for the word "during"?

Mr. LESAGE: It is "durant".

By Mr. Fleming:

Q. That means he must keep books and must have continued to keep books throughout the entire space of the next two years preceding his bankruptcy.—A. I would think so.

Q. If that is the French version?—A. If that is not the case, then a defence of keeping books for one week would suffice.

Mr. LESAGE: I think it is ambiguous.

By Mr. Fleming:

Q. We ought to clear it up then.—A. Section 193 (1) of the present Act reads:

. . . . during the whole or any part of the two years immediately preceding . . . .

That would support Mr. Fleming.

. . . . during the whole or any part of the two years . . . .

Mr. FLEMING: Suppose he slips up for half a day in keeping his books?

Mr. CANNON: Suppose you say "at any time"?

Mr. FLEMING: Suppose a man slips up for a couple of days and does not keep books for two days. Surely a slip of two days in a space of two years would be pretty drastic, would it not?

Mr. CANNON: It would not be interpreted as not keeping books, if he omitted to make entries for two days.

Mr. FLEMING: All right. Take a more advanced case. Suppose he changes his method of bookkeeping and starts a new set of books and so on, and there is a hiatus between set 1 and set 2 of let us say two days. Has the man committed an infraction of this clause?

Mr. LESAGE: But he is a man who has already been bankrupt once before. We must not forget that fact. We think when a man has been bankrupt once and has been discharged, and some people have lost money on his account,—we think we should impose upon him a very strict obligation.

Mr. FLEMING: That he should keep books 365 days of the year for twenty-four hours a day.

The CHAIRMAN: May I read this for the benefit of Mr. Lesage and Mr. Fleming:

Being engaged in any trade or business at any time during the two years immediately preceding his bankruptcy he has not kept proper books of account.

That is just changing the words around.

Mr. FLEMING: I think that is fair. That implies that his keeping of books must be reasonably continuous, and in respect of being engaged in a trade or business, it is not nearly so rigid as this form would be.

Mr. LESAGE: That is what we mean, all right.

By Mr. Stewart:

Q. Can you give us any definition of what is meant by proper books of account?—A. No, Mr. Stewart.

Q. I know, and you should know.—A. It would be a question of fact in each case.

Q. Would it include all vouchers and all documents relative to the entries in the books? Or would it be pust a mere matter of books?—A. Depending on the circumstances of the case, the judge would have to look at the business carried on and say: is the bookkeeping system adequate for the ordinary purposes of this business?

Q. What do you mean by "bookkeeping system"?—A. Well, one book can be a system.

Mr. FLEMING: The emphasis is on records, keeping records so that somebody can trace his transactions.

Mr. STEWART: I have seen books which had no records to substantiate the entries in them, and the records were very important.

By Mr. Fleming:

Q. The same phrase has been in the Act for thirty years and I do not think it has given any serious difficulty.—A. No, Mr. Fleming.

Mr. STEWART: It is pretty well accepted.

The CHAIRMAN: Carried. Clause 159 "false claim, etc." carried.

Mr. CANNON: I am sorry to refer back to clause 158, but don't you think that clause 158 (1) (*b*) opens the door too wide? If a man ceases doing business a week before bankruptcy and then destroys his books of account, he is perfectly entitled to do so under that provision. If he is not still so engaged it is an entirely different story.

Mr. FLEMING: There is a good point there. Could we not overcome that by combining (*a*) and (*b*) and using the words, "has not kept and preserved proper books of account up to the date of"—

The CHAIRMAN: Yes, kept and preserved.

Mr. LESAGE: Up to the date.

The WITNESS: Just before any change is made, would you look at (*c*) in that connection?

Mr. FLEMING: But it is a question of intent.

Mr. LESAGE: Yes.

Mr. FLEMING: (*c*) creates the offence; unless there was no attempt to conceal; (*b*) deals with the simple case of preservation.

The WITNESS: The expression is in the present Act.

Mr. FLEMING: (*b*) is where he fails to preserve, while (*c*) deals with the attempt to conceal; and then the question comes up as to whether the failure to preserve was a result of the attempt to conceal or not.

Mr. LESAGE: As a matter of fact, Mr. Fleming is right. A man already bankrupt goes back into business. He has some debts, of course. If later on, in the course of a few years, he again becomes bankrupt I believe he should keep all the books pertaining to the old business for a period of years, and I think that should be mandatory.

The WITNESS: But the subsequent bankruptcy may have no relation to the business to which those books apply. For instance, he might at the end of his first bankruptcy go into merchandising and he might carry that sort of business on for five years and then close it out perfectly solvent and go into another business and in the course of another five years become bankrupt.

Mr. LESAGE: But that is after five years. I believe he should be required to keep his books for at least two years. After all, that is not such a terribly long time and it is a good protection. This man has already failed once, at least.

Mr. CANNON: What do you suggest, Mr. Lesage; combining (*a*) and (*b*)?

Mr. LESAGE: Yes, your (*b*) is good.

Mr. FLEMING: Keeping and preserving.

Mr. CANNON: And preserving, yes.

The CHAIRMAN: May I read the subclause as amended: (*b*) will come out entirely and (*a*) will read as follows:

> being engaged in any trade or business at any time during two years immediately preceding his bankruptcy he has not kept and preserved proper books of account.

Agreed?

Agreed.

Mr. FLEMING: And that would change (*c*) to (*b*).

The CHAIRMAN: And it is a reasonable term, I would think.

Mr. BELZILE: Do you keep the word "or" there at the end?

The CHAIRMAN: Yes.

Clause 159—subclause 3 is a new part of that clause.

Mr. FULTON: I do not quite see what 3 means:

> (3) Where the bankrupt enters into any transaction with any person for the purpose of obtaining a benefit or advantage to which either of them would not be entitled, he is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding one year.

The WITNESS: The explanation is on the opposite page, Mr. Fulton, for that particular subclause.

The CHAIRMAN: Carried.

Clause 160.

Carried.

Clause 161.

Carried.

Clause 162.

Carried.

Clause 163.

Mr. FULTON: Mr. MacDonald, these new words which have been added to clause 162—"directed, authorized, condoned or participated"—are they found in the Act of any other countries? The question I had in mind was this: I think the purpose is excellent; I do not think anyone would disagree with it; but is there any chance that they are so wide that they will in fact include some member of the board of directors or something of that sort who did not actually direct, authorize, condone or participate; have you had that experience in other cases?

The WITNESS: Every officer, director or agent of a corporation; if he directs, if he authorizes, if he condones, if he participates—in each of these four situations he has been participant.

Mr. Fulton: And you mean by that participated in the commission of an offence. I would imagine, it would seem possible, that a case might arise where say a Secretary of a company not knowing the whole financial implications of a transaction participated in an official capacity by signing a document which turns out to be an offence; in other words, I wonder whether the element of intent should not be made a little more clear in that section.

The WITNESS: If he has participated—"directed, authorized, condoned or participated"—having regard particularly to those three preceding words, Mr. Fulton, I would think that "participated" would mean participated with the same degree of guilty knowledge as was required to be shown to prove the offence—they participated in the commission of an offence.

The CHAIRMAN: I see your point, Mr. Fulton. You could have a secretary-treasurer of a company who is not a shareholder, just a paid servant who does what he is told, and he is not participating in any way in any of the benefits which would flow from condoning and it might be wrong to hold him liable.

Mr. FLEMING: I think any officer, whether a shareholder, a director or not, who does know of these things ought to be liable.

Mr. FULTON: Apparently the law does not give rise to any hardship yet.

The CHAIRMAN: Shall the clause carry?

Carried.

Clause 164.

Mr. LESAGE: On 163, Mr. Chairman, who suggested subclause 4; and, what is the advantage of it?

The WITNESS: It was developed in the office, Mr. Lesage.

Mr. LESAGE: Was it at the request of the attorneys-general of the province?

The WITNESS: No, not to my knowledge.

MR. LESAGE: It is only imposing on the one who has to prosecute the parties, and I do not see the necessity for it.

The WITNESS: Would you repeat that, please?

Mr. LESAGE: It is only imposing on the prosecuting parties—the trustee is the only one who can prosecute—it is imposing a burden on him for which I do not see the necessity.

The WITNESS: I am not sure that I just follow you.

Mr. LESAGE: I do not see the use of it.

MR. FLEMING: Are you sending a copy of the resolution or order to the crown attorney?

Mr. LESAGE: Yes, I would say we are—a copy of the resolution or order. duly certified as a true copy thereof, together with copies of reports or statements or facts on which the order or resolution was based, to the crown attorney.

MR. BELZILE: But the crown attorney has no jurisdiction.

MR. LESAGE: You are right, it is no business of the crown attorney.

MR. FLEMING: Is the crown attorney at the wrong end of the proceedings in that?

MR. LESAGE: No, the crown attorney will come into the proceedings only if the prosecution is by indictment; that is after a commitment for trial and after preliminary hearing; unless there is a very special case in which possibly the Attorney-General will prosecute. But in my practice as crown prosecutor in Quebec I have prosecuted, I have dealt with such cases, but only at trial after committal for trial. The preliminary inquiry was always conducted by the attorney for the bankruptcy.

The CHAIRMAN: Who lays the information in your province?

MR. LESAGE: The trustee.

The WITNESS: The practice varies from place to place and from time to time.

MR. LESAGE: It would not apply as far as the Province of Quebec is concerned; it would be of no use there.

The CHAIRMAN: It would cover your question if we add the words, "requiring the trustee to lay the information or to send the material to the crown", and the crown then would act.

Mr. FLEMING: Is there any great burden? It does not do any offence to the crown attorney to get these papers.

The WITNESS: There is the element of criminal law connected with these offences and the administration of criminal justice is the responsibility of the provinces.

MR. LESAGE: Yes.

The WITNESS: So there is no anomaly in sending the record to the local prosecuting officer so that he can determine whether he will undertake the responsibility for the prosecution. He may not do so. He may say, the arrangements here are that this is not covered by my instructions; but on the other hand he may take it on. I would not go, even at the present time, so far as to say that in no province or community in Canada if you take a proper case to the prosecuting officer he will not take it up.

MR. BELZILE: It looks to me as though there is a misunderstanding here with reference to the crown attorney. In the Province of Quebec the crown attorney in any district acts only upon special order from the Attorney-General. He acts only when he gets a letter of instructions directing him to proceed, and that applies to the one case only which is referred to him by the Attorney-General.

MR. LESAGE: A prosecutor has general instructions but he cannot prosecute in a case of bankruptcy, unless he has direct instructions so to do. Suppose, for instance, someone has stolen from me; the crown attorney in our province cannot take action to prosecute, he would say that that is a matter of private business between me and the thief.

MR. CANNON: And then we have the relationship of master and servant. They will not do anything which relates to your employee, you have to look after it yourself.

MR. LESAGE: Yes, we had a case like that, we went together on one; and in a case of that kind you have to prosecute yourself, the crown attorney will not take it up for you; you have to take up the case yourself.

The WITNESS: That is what is going to happen, the creditors are going to force the trustee in a particular case to initiate proceedings.

Mr. LESAGE: Who is going to instruct the trustee?

The WITNESS: The creditors; and the trustee is going to, in pursuance of subclause (4), take the record and lay it in the office of the crown attorney. Now the crown attorney is going to do one of two things. He is going to say to the trustee "I am sorry but handling these cases is not within my retainer or my instructions," in which case nothing has been lost. But in another place the prosecuting officer may very well say: "Yes, I am a salaried prosecuting officer and that is part of my work."

Mr. LESAGE: The trustee shall, in either case when he is instructed to prosecute, send a copy of the whole evidence to the attorney general. It will reach the attorney general's office; it will go through months of waiting.

The CHAIRMAN: I have a minor suggestion that, I think, may cure this. Where a trustee is authorized or directed by the inspector or the court to initiate proceedings against any person believed to have committed an offence, he shall either initiate the said proceedings or shall send or cause to be sent all this material, and that would apply then, equally well in Quebec as in Ontario. In Ontario, he will not initiate, he will send copies; in Quebec, he will initiate, I mean the trustee will initiate proceedings.

The WITNESS: Well now, what is going to happen there? I am afraid that the creditors are going to say "All right, we are not going to give you any such instructions because we know that the crown prosecutor in the face of that provision will tell you to prosecute, yourself. And that means the expense of this prosecution will be borne by the estate. We look upon these prosecutions as a public responsibility, we have already lost sufficient as a result of the actions of the bankrupt and we do not see why we should send good money after bad. If this is not a public responsibility we will not do it, and no action will be taken.

Mr. CANNON: My experience with the attorney general's department is—if you leave the option either in the way it has been suggested by the chairman or else if we leave it as drafted now, what will happen will be that the trustee will wait for the attorney general and the attorney general will wait for the trustee and nothing will be done. Leave the responsibility on the trustee to carry out the instructions. If you give him the slightest opportunity of getting away from that responsibility, he will not do anything and the attorney general will not do anything and nothing will be done. I think the only way to get action is to leave the responsibility on the trustee to do it. Now, as has been said, if some other

body intervenes and asks the attorney general to take action and he decides to take action, all the better, but do not leave the door open for the trustee to have the work done by somebody else.

The WITNESS: But those creditors are only creditors in a bankrupt estate once. Now at this date, they have nothing to gain financially by this prosecution. They are only human and they are not going to regard it as their responsibility to vindicate the general bankruptcy law and the first question they are going to ask the trustee is "How much is this going to cost and where is the money coming from?" And the trustee has to reply "It has got to come from you." And then they are going to say "Why should we, having already lost enough out of this case, put in more money to see him prosecuted when it will bring no return to us; that should be a public and not our responsibility." And the result is going to be that there will be no prosecution.

Mr. FULTON: But I do not understand why it is not a public responsibility. It is an offence against a statute for which procedure is provided by the Criminal Code. Surely it becomes a public responsibility, automatically.

The WITNESS: Subclause (4) takes the view that it is.

Mr. LESAGE: Yes, but you know our objection is very serious and if you leave subclause (4) as it is there, knowing the policy of the attorney general's department of the province of Quebec, you might as well delete starting from clause 156 up to there. There will not be any prosecution, because the department of the attorney general in the province of Quebec feels that is not its duty to prosecute in matters of bankruptcy and if Mr. MacDonald can have Mr. Duplessis change his mind, so much the better, but it is not subclause (4) of clause 156 of the Bankruptcy Act that will lead him to change his mind.

Mr. BENNETT: Subclause (13) of clause 8 reads as follows:

> The trustee may initiate such criminal proceedings as may be authorized by the creditors, the inspectors, or the court against any person believed to have committed an offence under this Act.

That is the general authority. I do not see why you have to go further than that because the procedure does vary in the various provinces and even with various crown attorneys, for instance, in Ontario some will take a summary offence and others will not.

The CHAIRMAN: Well, when our Quebec members tell us that in the province of Quebec the crown attorney will not even prosecute in regard to a cheque charge, that indicates their practice there pretty clearly, and I do not want to urge this unduly but I do think if the words are added "requiring the trustee either to initiate the proceedings himself, or to send" and so forth,—

Mr. BENNETT: If you send a resolution to a crown attorney, he may just put it in his basket.

Mr. FULTON: That is not so in any province where the responsibility of the crown attorney is to open prosecution under the Bankruptcy Act, "the trustee shall send".

Mr. LESAGE: But he will. Anyway you do not have to put it in the Act. If he really wants the man to be prosecuted by the creditors, wants the man to be prosecuted, they will instruct without subclause (4), they will instruct the trustee to deliver the evidence to the attorney general or the crown attorney. They will do that without subclause (4). In the past we did not have that subclause (4).

Mr. CANNON: To meet Mr. MacDonald's objection and it is a real one I understand, that the people who are interested in the bankruptcy might not want to put up their own money to prosecute, may we suggest this note be put in the law, that in those provinces in which it is the practice of the attorney

general not to prosecute in such cases that the Department of Justice of the federal government should take upon itself to prosecute through a lawyer in the province.

Mr. LESAGE: What about the constitution, the administration of justice? That is a provincial matter.

Mr. CANNON: Oh yes, but it is a federal matter, this bankruptcy.

The CHAIRMAN: Of course, any offence under the code is a federal offence.

Mr. FLEMING: Would Mr. MacDonald tell us what was the purpose in introducing subclause (4)? Was it to put the responsibility for pressing the prosecution on the attorney general and thereby relieve the trustee or to continue the responsibility on the trustee but simply to bring the alleged offence to the attention of the crown attorney as the legal law enforcement officer.

The WITNESS: I was in the hope that if the case were presented by the trustee to the local crown prosecutor he would regard it as part of his duties in the ordinary enforcement of the law and take it up.

Just one other word, if I may, on private prosecutions or prosecutions at the instance of trustees and creditors. Here is a list of the prosecutions in 1948: (1) accused acquitted; (2) accused fined $50 and made restitution of $500. Now you can see the comparison there between the criminal aspect of it and the other aspect of it. He was fined $50. He made restitution of $500. Now that was a very satisfactory conclusion for that estate but how far that went to discourage other persons from violating the Bankruptcy Act is another matter. (3) Accused sentenced to 30 days' imprisonment; (4) Accused sentenced to 30 days' imprisonment; (5) Proceedings abandoned in view of restitution; (6) Action discontinued on instructions of creditors. It does not say anything about restitution there but you can draw any inference you choose.

Mr. CANNON: Were these cases all private prosecutions?

The WITNESS: They were not taken up by the crown authorities, so far as I know.

Mr. LESAGE: In the province of Quebec, and elsewhere I believe, no prosecution may be abandoned, even at the stage of the preliminary hearing, without the consent of the crown, so the crown had to consent in these two cases because otherwise they could not withdraw the cases.

The WITNESS: The attitude of the crown towards the withdrawal of an information in a case it is not sponsoring as a part of the enforcement of criminal justice, is ordinarily far different from the attitude of the crown when it is prosecuting a case it has undertaken the responsibility to prosecute. Now, let me continue the enumeration: (7) Proceedings abandoned, no assets and whereabouts of accused unknown; (8) Accused forfeited bail but later was convicted on similar charges in another province.

Mr. CANNON: Let me suggest this: that if you leave subclause (4) as it is, you are practically absolving the trustee of the responsibility of doing anything other than sending the document to the attorney general's department and he will not prosecute. I think we ought to take your suggestion, Mr. Chairman, which is to say that the trustee shall institute proceedings and send the document to the attorney general's department. But if you leave it as it is I respectfully submit that you are practically liberating the trustee from the obligation of doing anything at all notwithstanding the instructions he has received from the inspector, except sending the document to the attorney general.

Mr. LESAGE: And he waits for six months?

Mr. CANNON: And he waits for six months and nothing happens.

Mr. FLEMING: What is the advantage of having it in at all?

Mr. CANNON: Well, that is it, what is the advantage of having it in at all.

Mr. HUNTER: Who is going to pay for this prosecution?

Mr. LESAGE: The estate up to the stage of the preliminary hearing and then the crown takes the case over.

Mr. HUNTER: If the prosecution is going to involve any money, the creditors would rather have the money than spend it prosecuting.

Mr. LESAGE: I am convinced of what you say, but I am telling you what happens.

The CHAIRMAN: This clause will stand while the superintendent has a chance to think it over.

The CHAIRMAN: Shall clause 164 carry?

Carried.

Clause 165?

Carried.

Mr. FULTON: That is a new clause. Will there be any limitations on the length of time?

The CHAIRMAN: No.

Clause 166?

Carried.

Clause 167?

Carried.

Clause 168?

Carried.

Clause 169?

Carried.

Mr. FLEMING: Just a moment, Mr. Chairman, what about Clause 166, subclause (4), the suggestion of the Toronto Board of Trade that the words "and shall have effect as if enacted by this Act" be retained?

Mr. LESAGE: Well, they are not necessary.

Mr. FLEMING: It is to give statutory effect to the rules under the Judicature Acts of most of the provinces? It is in the present Act and we are dropping it.

Mr. FULTON: It is going to be judicially noticed.

Mr. LESAGE: It has the same effect. They have complete effect if they are judicially noticed.

Mr. FULTON: Does the Act itself give them force?

Mr. LESAGE: I do not see why. It is not necessary.

Mr. HUNTER: It is considered that they are included in the words "judicially noticed." Is that correct? Is there a distinction between "judicially noticed" and being part of the law?

Mr. LESAGE: There is a distinction, yes, but there is no distinction in effect.

Mr. FLEMING: Yes, there could be a distinction in effect.

The CHAIRMAN: What do you want me to do with them? The general rule was, I believe, *mutatis mutandis*, or something of that sort?

The WITNESS: The rules are not rules establishing offences. They are procedural, and if you do not follow them you are out of court; or else the sanctions are that the bankrupt is punishable, or other persons are punishable if they do not abide by the Act and the rules. So, in view of the fact that the Governor in Council is given power to make rules for the purpose of carrying into effect the object of the Act, it seems to me that the point is covered.

By Mr. Hunter:

Q. Do you need 4 at all?—A. General rules shall be judicially noticed; yes, I think you do. I do not think the Evidence Act goes far enough to say that.

Mr. CANNON: Unless there is something which says that the general rules shall be considered as part of the Act, I do not think you have anything like that.

Mr. FULTON: If you added "shall have the force and effect as though enacted by this Act" you would have covered it completely.

By Mr. Fleming:

Q. Those words are in the Act now, and I would be chary about taking them out. So let us put them back in.—A. I suggest then that they go into subclause 4 "general rules", preceding the phrase "shall be judicially noticed".

Q. "General rules shall have effect as if enacted by this Act and shall be judicially noticed."—A. Yes.

The CHAIRMAN: "Shall be judicially noticed." Does clause 168 carry?

Carried.

Does clause 169 carry?

Carried.

Does clause 170 carry?

Carried.

Does clause 171 carry?

Mr. FLEMING: Clause 171?

The CHAIRMAN: Yes. We ought to take that out.

The WITNESS: What is that?

The CHAIRMAN: "No action against superintendent, etc., without leave of court."

By Mr. Fleming:

Q. I think there must be a mistake in the compendium. It is under 171. There seems to have been some renumbering.—A. Yes, there has been renumbering in a number of instances since that compendium was drawn up. that compendium was drawn up.

The CHAIRMAN: Does section 171 carry?

Carried.

Does section 172 carry?

Carried.

Does section 173 carry?

Carried.

Does setcion 174 carry?

Carried.

By Mr. Fleming:

Q. With respect to section 173, Mr. Justice Urquhart suggested specific reference be made to the present rules. I take it the intention was to preserve them until new rules are brought into effect.—A. I am quite sure that the Interpretation Act provides that where provisions are repealed and other provisions are substituted, then any rules and so forth passed under the previous provisions shall continue in force until altered under the subsequent provisions.

Q. Well, if that is the case, there is no problem.

The CHAIRMAN: Does the schedule carry?

By Mr. Fleming:

Q. With respect to clause 174, the Canadian Bankers Association had a special comment as to Newfoundland. What is the substance of it, and the reason for its rejection?—A. There is a clause which says—oh, you mean, why was it rejected?

Q. Yes. It had reference to clause 63, subclause (2).—A. The point is this: under a clause in the sixties, when a general assignment of book debts is made, if it takes place in a province where there is a registration system it is registered under that system and conforms with the provincial it is good. But in Newfoundland at the moment there is no such system and for that reason they want the clause changed so that it would not apply in Newfoundland until such legislation is passed. Well, that is rather putting the cart before the horse, because the clause says, in effect, that if there is a registration system the assignment can be registered. It is fair that it should be allowed to stand because people can get notice of it. But if there is none, then it is not fair. I think the situation will solve itself, because the Bankers Association have made representations to the Newfoundland government and it is likely that a Book Debt Assignments Act may be passed by the time this Act comes into force.

The CHAIRMAN: Does the schedule carry?

Carried.

We shall meet at 11.30 in the morning, to go over the sections which have been marked "Stand".

HOUSE OF COMMONS

1949

SECOND SESSION

STANDING COMMITTEE

ON

BANKING AND COMMERCE

Bill No. 149 (Letter F of the Senate) An Act Respecting Bankruptcy

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MINUTES OF PROCEEDINGS AND EVIDENCE

No. 5

FRIDAY, DECEMBER 2, 1949

WITNESS

T. D. MacDonald, Esq., K.C., Superintendent of Bankruptcy, Department of Justice, Ottawa.

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

ERRATA

No. 2, page 59, line 14, after word "page" insert "61" in blank space.

No. 3, page 114, line 34, delete "4.00" and insert "3.45".

No. 4, page 136, line 16, delete "(*h*)" and substitute "(*g*)".

No. 4, page 136, line 18, delete "Fr." and insert "Mr.".

No. 4, page 150, line 2, delete "reparting" and insert "departing".

No. 4, page 150, line 4, delete "confide" and insert "confine".

No. 4, page 154, line 29, delete "15" and insert "XV".

No. 4, page 159, line 3 delete "17 and 18" and insert "XVII and XVIII".

51139—1½

REPORT TO THE HOUSE

FRIDAY, 2nd December, 1949.

The Standing Committee on Banking and Commerce begs leave to present the following as a

SECOND REPORT

Your Committee has considered Bill No. 149 (Letter F of the Senate), intituled: "An Act respecting Bankruptcy", and has agreed to report the said Bill, with amendments.

A copy of the minutes of proceedings and evidence is appended.

All of which is respectfully submitted.

HUGHES CLEAVER,
Chairman.

MINUTES OF PROCEEDINGS

HOUSE OF COMMONS,
FRIDAY, 2nd December, 1949

The Standing Committee on Banking and Commerce met this day at 11.30 a.m. The Vice-Chairman, Mr. Jean Lesage, presided.

Members present: Messrs. Ashbourne, Belzile, Bennett, Breithaupt, Cannon, Cleaver, Fleming, Fulford, Gour (*Russell*), Hellyer, Hunter, Isnor, Lesage, Macnaughton, Quelch, Richard (*Ottawa East*), Stewart (*Winnipeg North*).—17.

In attendance: Messrs. T. D. MacDonald, Superintendent of Bankruptcy and J. S. Larose, office of Superintendent of Bankruptcy.

Consideration resumed of Bill No. 149, An Act respecting Bankruptcy.

On Clause 10 (1) (*g*), on motion of Mr. Belzile,

Resolved,—That, in line 25, the word "estate" be deleted and the word "bankrupt" be substituted therefor.

Clause, as amended, agreed to.

On Clause 20, on motion of Mr. Hunter,

Resolved,—That in line 1, the following be inserted at the beginning thereof: "(1)".

Clause, as amended, agreed to.

On Clause 52 (1), on motion of Mr. Fleming,

Resolved,—That, in line 19, the following words be deleted: "or against whom a receiving order has been made"; and in Clause 52 (1) (*a*), in line 23, the following words be deleted: "or receiving order"; and

On Clause 52 (2), in line 46, the following words be deleted: "or receiving order" and on page 44, line 15, after the word "bankruptcy", the following words be deleted: "or the receiving order".

Clause, as amended, agreed to.

On Clause 60 (2), on motion of Mr. Fulford,

Resolved,—That in line 33 the word "and" be deleted and the word "or" be substituted therefor and that in line 34, the word "passed" be deleted and the words "did not pass" be substituted therefor.

Clause, as amended, agreed to.

On Clause 64 (1), on motion of Mr. Breithaupt,

Resolved,—That, in line 17, the following words be deleted "is adjudged bankrupt on a bankruptcy petition presented" and the following substituted therefor: "becomes bankrupt" and, commencing at the end of line 19, the following words be deleted: "or if he makes an authorized assignment within three months after the date of the making, incurring, taking, paying or suffering the same"; and in line 22, after the word "bankrupt", by deleting the words: "or under the authorized assignment".

Clause, as amended, agreed to.

On Clause 65 (1), on motion of Mr. Bennett,

Resolved,—That, in lines 36 and 37, the following words be deleted: "or of an authorized assignment" and in line 40, the following words be deleted: "a receiving order or an authorized assignment"; and substituting, in the latter case, the word "bankruptcy" and in paragraphs (*a*), (*b*), (*c*) and (*d*), that the words "or assignor" be deleted where they occur.

Clause 65 (1), as amended, agreed to.

On 65 (Proviso), on motion of Mr. Quelch,

Resolved,—That on page 49, lines 6 and 7, the following words be deleted: "receiving order or authorized assignment" and the following substituted therefor: "bankruptcy"; and in line 14 delete the word "available" and in line 15, delete the words "or assignor".

Clause 65 (Proviso), as amended, agreed to.

On Clause 79 (3) (*c*), on motion of Mr. Stewart,

Resolved,—That paragraph (*c*) be struck out and the following be substituted therefor:

"(*c*) where the bankrupt is a corporation, any wholly owned subsidiary corporation or any officer, director or employee thereof".

Clause, as amended, agreed to.

Clause 95 (1) (*d*), on motion of Mr. Fleming,

Resolved,—That Clause 95 (1) (*d*) be amended, in line 17, by inserting after the word "case" the following: "together with, in the case of a travelling salesman, disbursements properly incurred by him in and about the bankrupt's business, to the extent of an additional three hundred dollars in each case, during the same period".

Clause, as amended, agreed to.

Clauses 168 and 170, on motion of Mr. Hunter,

Resolved,—That Clause 168 be re-numbered 170 and that Clause 170 be re-numbered 168, and that the explanatory notes be changed accordingly.

Clauses, as thus re-numbered, agreed to.

On Clause 25, to which the Committee reverted, at the request of Mr. Isnor, the Superintendent of Insurance made a statement.

The Committee adjourned at 1.00 p.m., to meet again this day at 3.30 p.m.

AFTERNOON SESSION

The Committee resumed at 3.30 p.m. The Chairman, Mr. Hughes Cleaver, presided.

Members present: Messrs. Ashbourne, Belzile, Breithaupt, Cleaver, Dumas, Fleming, Fulford, Hunter, Isnor, Lesage (*Vice-Chairman*), Prudham, Quelch, Richard (*Gloucester*), Stewart (*Winnipeg North*).—14.

In attendance: As at morning session.

Consideration resumed of Bill No. 149.

Mr. Fleming, by leave, brought to the attention of the Committee a submission from Canadian Credit Men's Trust Association, at the request of Messrs. Smith (*Calgary West*) and Harkness (*Calgary East*).

Clause 21(6) was reconsidered at the request of Mr. Fleming. The Superintendent of Insurance made a statement.

Mr. Fleming moved: That Clause 21(6) be amended by adding thereto after the word "order" in line 31, the words "or may adjudge the debtor a bankrupt".

Motion to amend declared lost.

The Committee agreed to consider the clauses which still stand for reconsideration.

Clause 10 carried.

Clause 12 carried.

On Clause 21(15), on motion of Mr. Lesage,

Resolved,—That Clause 21(15) be amended by adding after the word "claim" in line 1, on page 27, the words "against a partnership" and by deleting in lines 2 and 3 the following: "against all the partners of a firm"

Clause, as amended, agreed to.

On Clause 25, on motion of Mr. Fleming,

Resolved,—That Clause 25 be amended by deleting, in line 20, the word "persons" and substituting therefor the word "individuals" and by deleting, in line 21, the word "person" and substituting therefor the word "individual".

Clause, as amended, agreed to.

On Clause 25, Mr. Isnor moved: That Section 25 be amended in line 20, by inserting after the word "in" the following: "fishing," The Superintendent of Bankruptcy made a statement. The motion was carried, on division.

Clause 25, as amended, agreed to, on division.

Clause 26 carried.

Clause 36 carried.

Clause 49, on motion of Mr. Hunter,

Resolved,—That Clause 49 be amended in line 44 by inserting after the word "respect" the words "to his duties in relation".

Clause, as amended, agreed to.

Clause 52, held over at request of Mr. Beaudry, reconsidered and carried without further amendment.

Clause 107(3) carried.

Clause 117(*b*), on motion of Mr. Hunter,

Resolved,—That Clause 117(*b*) be struck out and the following substituted therefor:

> "deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof, in any way relating to his property or affairs;"

Clause, as amended, agreed to.

Clause 117(*j*), (*l*) and (*o*) carried.

Clause 127 carried, on division.

Clause 135(1), on motion of Mr. Lesage,

Resolved,—That Clause 135(1) be amended by striking out paragraph (*c*) and substituting therefor the following:

"(*c*) any debt or liability under a maintenance or affiliation order or under an agreement for maintenance and support of a spouse or child living apart

from the bankrupt;" and that Clause 135 (1) be further amended by adding the following paragraph:

"(*g*) any debt or liability for goods supplied as necessaries of life and the court may make such order for payment thereof as it deems just or expedient."

Clause, as amended, agreed to.

Clause 153, on motion of Mr. Lesage,

Resolved,—That Clause 153 be amended by inserting in line 2 after the word "unless" the words: "and to the extent that".

Clause, as amended, agreed to.

On clause 156(*a*), on motion of Mr. Hunter,

Resolved,—That Clause 156(*a*) be amended in line one by deleting the words "refuses or neglects" and substituting therefor the words "without reasonable cause".

Clause, as amended, agreed to.

Clause 163(4), on motion of Mr. Lesage,

Resolved,—That Clause 163(4) be amended by inserting in line 23, after the word "shall" the words "institute such proceedings and shall".

Clause, as amended, agreed to.

Clause 2 carried.

The title carried.

On motion of Mr. Lesage,

Ordered,—That the Chairman do report to the House that the Committee has considered Bill No. 149 (Letter F of the Senate), and has agreed to report the said Bill, with amendments.

On motion of Mr. Lesage, the thanks of the Committee were tendered to Mr. MacDonald, Superintendent of Bankruptcy and to Mr. Larose, of the office of the Superintendent, for their very kind and helpful co-operation.

On motion of Mr. Fleming, the Committee expressed its cordial thanks to the "Chairman for the very able way in which he has handled the proceedings" and coupled therewith mention of the Vice-Chairman and the Clerk of the Committee.

The Committee adjourned *sine die*.

T. L. McEVOY,
Clerk of the Committee.

EVIDENCE

House of Commons, December 2, 1949.

The Standing Committee on Banking and Commerce met this day at 11.30 a.m. The Vice-Chairman, Mr. Jean Lesage, presided.

The VICE-CHAIRMAN: Gentlemen, we have a quorum.

Mr. T. D. MacDonald, K.C., Superintendent of Bankruptcy, recalled:

The VICE-CHAIRMAN: I understand that Mr. MacDonald has some minor changes to suggest. Should we go over them now or take them as we go along; whichever the committee prefers.

The WITNESS: They are very short.

The VICE-CHAIRMAN: Mr. MacDonald says they are very short so perhaps we had better take them up now.

Mr. FLEMING: I hope everything will be very short.

The VICE-CHAIRMAN: We will do our best to make it short anyway. The suggestions of Mr. MacDonald are the following:

Clause 8(2)—Change marginal note to read: "Trustee to take possession and make inventory".

The WITNESS: There are a number of these, Mr. Vice-Chairman, which will be attended to by the clerk. Some are merely punctuation but I thought it well to put them on the list.

The VICE-CHAIRMAN: I thought I should bring this first one to your attention because it relates to the marginal title.

Mr. FLEMING: The marginal title or note is not a part of the clause.

The VICE-CHAIRMAN: No, but I am just mentioning that. The next one is: Clause 10(1)(*g*)—Word "incur" to be lower case. Word "bankrupt" to be substituted for "estate". Would you move that one, Mr. Belzile?

Mr. BELZILE: I would so move.

Mr. CANNON: I will second.

Agreed.

The VICE-CHAIRMAN: Clause 20: Clause 20—Figure (1) to be inserted before first clause.

The WITNESS: That will be found on page 23.

The VICE-CHAIRMAN: That merely completes the proper numbering of that section.

The next is Clause 26(5): Clause 26(5)—Second paragraph of explanatory note to be changed to read: "The former subsection (7) is now section 20(2)".

The WITNESS: That is opposite page 29. The explanatory note is incorrect. There was a change made just before the bill went into the Senate. The former subsection (7) was put back and that should read: "The former subsection (7) is now section 20, subsection (2)".

The VICE-CHAIRMAN: The next is clause 52, subclause (1), page 43, in line 19: Clause 52—In subclause (1) the words "or against whom a receiving order has been made" to be deleted. In subclause (1)(*a*) and subclause (2) the words "or receiving order" to be omitted in all three places.

The VICE-CHAIRMAN: And what is the reason for that?

The WITNESS: The reason is that under the definition "becoming a bankrupt" covers that situation. The present Act refers in every instance to persons against whom an order has been made or who makes an assignment, but in the new bill it is not necessary to do that because the expression "bankruptcy" is defined as including both of those conditions. This new section was put in after the bill was introduced in the Senate.

The VICE-CHAIRMAN: And in paragraph (*a*), line 23, the words "or receiving order" should be deleted for the same reason; and in subclause (2), line 46, the last words of the line, "or receiving order" should be deleted for the same reason; and on page 44 the last words on line 15, "or the receiving order" should be deleted for the same reason. Would you move that Mr. Fleming, please?

Mr. FLEMING: Yes.

Amendment agreed to.

The VICE-CHAIRMAN: Clause 60 on page 46: Clause 60(2)—Word "and" in line 33 to be changed to "or" and word "passed" in line 34 to be changed to "did not pass".

The WITNESS: I should say a word about that. It is not so casual as the others. What happened was this. When the bill was introduced in the Senate subclause (2) of clause 60 read somewhat differently. It read like this,—if the members will follow the text before them I will read it as it was when introduced in the Senate.

> (2) Any settlement of property, if the settlor becomes bankrupt within five years after the date of the settlement, is void against the trustee, unless the parties claiming under the settlement can prove that the settlor was, at the time of making the settlement, able to pay all his debts without the aid of the property comprised in the settlement and that the interest of the settlor in the property passed on the execution thereof.

The feeling of the Senate committee and the way they reported it back was that the burden should be changed so as to place it upon the trustee who is contesting the settlement, and with that in mind they changed the wording to the form in which it now shows in the bill before you, that is, to this effect, that if a trustee can prove that a settlor was at the time of making the settlement unable to pay all his debts without the aid of the property contained in the settlement the settlement is void; but now, inadvertently I suppose, the concluding lines of the section were left in the affirmative. To carry out the idea that the Senate interjected into that, those lines should have been made disjunctive and placed in the negative.

The VICE-CHAIRMAN: Yes, the onus was changed. We are to change the word "and" in line 33 to "or".

The WITNESS: In the present Act the person claiming under a settlement had to prove two things affirmatively: both that the settlor was able to make the settlement without the aid of the property; and, (*b*), that the porperty passed. Now, to carry out the Senate idea, the trustee attacking the settlement should be able to succeed—if he shows that either one of these events was not the case.

Mr. FLEMING: And the change you propose there is to change this word "and" to the word "or".

The WITNESS: Yes, and the word "passed" in line 34 to "did not pass".

Mr. FULFORD: I will move the amendment, Mr. Vice-Chairman.

The VICE-CHAIRMAN: The amendment as read is moved by Mr. Fulford.

Agreed?

Agreed.

Mr. FLEMING: Just while we are on that clause I would like to ask Mr. MacDonald a question: Has anything been done in this bill to change the law with respect to concurrent knowledge?

The WITNESS: No.

Mr. FLEMING: Then the rule remains that the parties must have concurrent knowledge.

The WITNESS: The sections on that remain as they were, just changing them to conform with the new phraseology of the Bill. That point was discussed at a previous meeting and I expressed the view at that time that, perhaps, it was not possible just to say simply that there were two schools of thought; the one for concurrent intent, on the one hand, and one for unilateral intent on the other. It is more a case of the court looking at all the facts and saying that the case does or does not come within the intention of section 64; and the view I put forward at that time was that the jurisprudence was in a state of evolution, and that as more cases went to appeal, future decisions could be expected to indicate to us just what the proper rules should be.

Mr. FLEMING: But this bill will not change the present legislation on that subject?

The WITNESS: That is correct.

The VICE-CHAIRMAN: The next is clause 64 (1)—page 48—clause (1) as follows:—

Clause 64 (1)—Delete words "is adjudged bankrupt on a bankruptcy petition presented" and substitute "becomes bankrupt" in lines 17 and 18.

What is the reason for that, Mr. MacDonald?

Mr. FLEMING: Just before Mr. MacDonald goes on, what words are you cutting out?

The VICE-CHAIRMAN: Deleting the words "is adjudged bankrupt on a bankruptcy petition presented".

Mr. FLEMING: You would take those words out and substitute the word "bankrupt"?

The VICE-CHAIRMAN: "Becomes bankrupt", yes.

Mr. BREITHAUPT: That applies within the two-months period, is that correct?

The VICE-CHAIRMAN: Correct. What is the erason?

The WITNESS: The reason is that clauses 64 and 65 were reverted to, as has already been explained, in the Senate committee. That was done quickly, of course, and it was not noticed that some of the phraseology in 64 and 65 was referable to the phraseology in the present Act. It changes nothing in effect, it just reconciles the language in clauses 64 and 65 with the language of the new bill.

By Mr. Cannon:

Q. There is a definition of bankrupt.—A. Yes, there is a definition of bankrupt.

By Mr. Fleming:

Q. I want to make one reservation. I have this point to raise with regard to clause 21 subclause (6) which I discussed with you. There is nothing in this change or in the preceding one which will prejudice it.—A. No. None of the changes will prejudice it.

The VICE-CHAIRMAN: And the following words should also be deleted: in lines 19 to 22: "or if he makes"; that is, at the end of line 18, "or if he makes

an authorized assignment, within three months after the date of the making, incurring, taking, paying or suffering the same".

Of course, those words are not necessary any more.

By Mr. Fleming:

Q. You mean that they should all come out completely?—A. Yes, they are not necessary any more.

The VICE-CHAIRMAN: And of course in lines 22 and 23, starting from the word "or" in line 22: "or under the authorized assignment" should be deleted as well for the same reasons. Now, it would read:

> 64. (1) Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred.... shall, if the person making, incurring, taking, paying or suffering the same becomes bankrupt within three months after the date of the making, incurring, taking, paying or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.

Would you move this amendment carry, Mr. Breithaupt?

Mr. BREITHAUPT: I so move.

By the Vice-Chairman:

Q. Now, clause 65. The amendments proposed are for the same reason. That is right, is it not?—A. That is correct.

Q. In subclause (1) line 36, delete the words: "or of an authorized assignment".—A. That is correct.

Q. That is, as in lines 36 and 37 the same words recurring in lines 40 and 41: "or authorized assignment" are to be deleted.

Mr. CANNON: Should not "receiving order" come out as well?

The VICE-CHAIRMAN: Oh yes; "receiving order" that is right; and the subclause will end with a comma after the word "of".

Mr. BELZILE: What is coming out in line 40?

The VICE-CHAIRMAN: "a receiving order or an authorized assignment".

Mr. BELZILE: You mean "...shall invalidate", and then you read paragraph (*a*)?

The VICE-CHAIRMAN: No. Substitute "bankruptcy", or "the bankruptcy".

The WITNESS: "bankruptcy".

The VICE-CHAIRMAN: "in the case of bankruptcy".

Mr. BELZILE: "in the case of bankruptcy".

The VICE-CHAIRMAN: Now, in paragraphs (*a*), (*b*), (*c*), and (*d*), delete the words "or assignor" wherever they occur.

The WITNESS: They occur once in each paragraph.

The VICE-CHAIRMAN: They occur once each in lines 42, 44, 45 and 48. Do you move that this amendment carry, Mr. Bennett?

Mr. BENNETT: Yes, sir.

The VICE-CHAIRMAN: Carried.

By Mr. Fleming:

Q. It may be that Mr. MacDonald is satisfied that in the light of the debate in the Senate there is no change in the substance of the law being made here?—A. Yes, that is correct, in the sense that the two clauses in the present Bill, clause 64 and clause 65 relating to these preferences are reverted to exactly with the sole exception that the wording is being corrected in the particulars mentioned so that it will be reconciled with the wording of the new Bill.

Q. You are only changing the terms. The definition of the terms leave the substantive law exactly as it has been.—A. Yes.

By the Vice-Chairman:

Q. At the top of page 49, in lines six and seven of the same clause 65, substitute the word "bankruptcy" for " receiving order or authorized assignment". Delete the words "or assignor" in line 15. And in line 14, Mr. MacDonald suggested that we delete the word "available".—A. The word "available" is used in the present Act, and it refers to an available act of bankruptcy. The present bill does not use it.

By Mr. Cannon:

Q. In which line is it?—A. In line 14.

The VICE-CHAIRMAN: "Any Act of Bankruptcy"; there is no reason for the word "available" there. Would you move that this amendment carry, Mr. Quelch?

MR. QUELCH: Yes.

The VICE-CHAIRMAN: Carried.

Now, clause 79 subclause (3) paragraph (*c*) page 55. Mr. MacDonald suggests that we insert at the beginning of subclause (3) paragraph (*c*), the following words: "where the bankrupt is a corporation".

By Mr. Breithaupt:

Q. What is the page?—A. Page 55, line 13.

Q. Thank you.—A. This is consequent to a change made in the Senate when paragraph (*c*) was added. The opening words of paragraph (*c*), should read "where the bankrupt is a corporation . . ." in order to make the sense complete, they are included in paragraph (*b*) as well.

By The Vice-Chairman:

Q. Would it not be simpler to merge paragraphs (*b*) and (*c*)?—A. That is a possibility.

Q. And say: "where the bankrupt is a corporation or any wholly owned subsidiary company . . ." No, that would be a corporation. The change contemplated is that the word "company" in line 12 be changed to "corporation".

MR. CANNON: That is line 13.

The VICE-CHAIRMAN: Yes, line 13 I mean.

MR. BELZILE: You would make it "corporation" instead of "company"?

The VICE-CHAIRMAN: Yes, because the word "corporation" is used elsewhere. Would you move that this amendment carry, Mr. Stewart?

MR. STEWART: Agreed.

The VICE-CHAIRMAN: Carried.

Now, clause 140 subclause (1) (*e*).

MR. BELZILE: I reserve the right to go back to clause 96.

The VICE-CHAIRMAN: Yes, when we have finished.

Mr. MACNAUGHTON: How long will that likely take, Mr. Chairman? How long will it be before we get to clauses 94 and 95?

The VICE-CHAIRMAN: We are dealing now with minor changes which are contemplated and suggested. We shall then go back to all the sections which stood, one by one from the beginning. How many sections have we left, Mr. Clerk?

The CLERK: We have 21.

The VICE-CHAIRMAN: We are at clause 140 subclause (1) (*e*), and the suggestion is that it should not be underlined. There is no change.

The WITNESS: There is no change. That is right.

The VICE-CHAIRMAN: Clause 155 subclause (8), that is on page 93. The last paragraph of explanatory notes opposite on page 93 is to be changed to read: "Subsection (1) of the former section 162 has been deleted." etc.

MR. FLEMING: Subclauses (5) and (6) are to come out.

The VICE-CHAIRMAN: Yes. That is one thing which the clerk will look over. Now, clause 168.

MR. HUNTER: What was the change there? I did not get it.

Mr. FLEMING: The change is just in the explanatory note.

The VICE-CHAIRMAN: The suggestion is that clause 168 be renumbered 170, and that clause 170 be renumbered 168.

The WITNESS: That is correct, because 167 and 170 relate to the same matter and should follow one another.

The VICE-CHAIRMAN: Would you so move, Mr. Hunter?

MR. HUNTER: Yes.

The VICE-CHAIRMAN: Carried.

MR. FLEMING: You are making clause 170 part of clause 167?

The VICE-CHAIRMAN: No, just changing the order.

The WITNESS: Would the clerk make a note in his record to rearrange the explanatory notes?

MR. FLEMING: Is that the law now?

The VICE-CHAIRMAN: Yes.

MR. FLEMING: Mr. Macnaughton has to leave. I am very much interested in the same clauses to which he proposes to speak and I wonder if the committee would mind taking them up before he leaves. Clause 94 has a bearing on clause 12 and the principle of clause 95.

The VICE-CHAIRMAN: Clauses 94 and 95 stood.

The CLERK: Clauses 94, 95 and 12. Clause 12 ties in there.

The VICE-CHAIRMAN: Clause 12, oh yes. Very well, gentlemen.

Mr. MACNAUGHTON: It was proposed by the chairman that perhaps these suggestions could best be considered under clause 94. Briefly, the people who have asked certain members of the committee to make these representations are the Dominion Commercial Travellers' Association. I understand that while they have no quarrel with the text of the law they are concerned with the interpretation of it. The other day I suggested that one solution might be, rather than to change the law, merely to suggest to the superintendent of bankruptcy that he should issue a directive to all trustees to the effect that any preferred creditor whose claim was disallowed either in full or in part should be entitled to be heard by the trustee or by the inspector. Now, under clause 95. paragraph (*d*), page 63, certain persons are mentioned, for example: "clerk, servant, travelling salesman, labourer or workman for services rendered. . . .".

Those classes have priority as listed under clause 95. But in the case of a travelling salesman for example, frequently his sole support is the wage or commission which he receives from his employer, and he has nothing left when his employer becomes bankrupt. Consequently his only right is to file his claim. It is a privileged claim, it is true, and should his claim be rejected by the trustee, he than has the privilege of appealing to the court.

The VICE-CHAIRMAN: To the registrar,————

Mr. MACNAUGHTON: Yes, to the superior court, in any event, but the catch is that at this stage of the proceedings he has no money to further his claim, to pay legal fees, for instance. In other words, he is out in the cold and although he has a legal and a prior right, in fact, it does not amount to very much unless he is able to pay say $300 legal costs to establish his claim. As a practical solution we are suggesting it might be feasible for the superintendent to send a directive to the various trustees that a person mentioned in that particular clause should have the right, once his claim is disallowed by the trustee, to go before him and demand that he rehear this particular claim thus avoiding court costs, and in the case, say, where a trustee has been very busy, and disallowed his claim, it seems to be a fairly reasonable thing to do.

The VICE-CHAIRMAN: Mr. MacDonald, could you do that?

The WITNESS: Yes, I can. I would just like to say for the record that I doubt whether at the present time any requests by such a person claiming to be a preferred creditor to a trustee for a personal interview and an opportunity to present his claim in that way would be refused, but certainly there is no difficulty or objection to my circularizing the trustees, and I should ask them in a case like that not to turn down such a claim where a personal opportunity of presenting it is requested without giving heed to that request.

The VICE-CHAIRMAN: Is that satisfactory, Mr. Macnaughton?

Mr. MACNAUGHTON: Yes.

Mr. ISNOR: I had a similar request from the Maritime Commercial Travellers' Association, which I represented on previous occasions, but I think Mr. Macnaughton has outlined it very well.

Mr. FLEMING: May I take up the theme at that point. I would like to see same changes made in clause 95, subclause 1 (*d*), to meet what I think is a very great need on the part of commercial travellers, who, it seems to me, under the Act or under this new clause, are not going to be treated with justice as they deserve. When the corresponding clause 121 of the present Bankruptcy Act was first enacted thirty years ago, this word "travelling salesman" was put in, and I will venture to say there were very few members of parliament who did not then think that that term covered every commercial traveller. The courts got at this clause however and they interpreted "travelling salesman" as simply a man who is working as an employee of a firm and not as including a man who may have a line or a couple of lines of different companies which he handles in an assigned territory; and that came to a head in the Ontario Court of Appeal in 1923 in the case In *re* Specialty Beggs where the court said: "If the man is master of his own movements in the territory assigned he is not a travelling salesman under this clause and he did not rank for his commissions". Now this present clause 95, subclause (1) (*d*), does not change in any respect the definition of "travelling salesman", so if we pass this in its present form we should understand we are not giving any preference at all to a man who is a travelling salesman and who plans his own movements in the territory assigned to him. He is not, as the courts interpret this, a travelling salesman if he is master of his own particular moves. Now, this clause uses this same language, it adopts the same words "wages, salaries, commissions or compensations". It has one limiting factor though which was not in the clause before which limited the preference to three months prior to the bankruptcy. This clause, however, goes on and adds another limit, namely $500, which I think we should not accept. Now, if there was no reason for limitation under the old Act to $500 I think there is very much less reason now for a limitation of $500 because when you consider a man who is out on the road at a busy season of the year, the three months is still there but there is also a maximum of $500, and $500 does not go very far. It certainly does not go as far today as it has gone in the thirty years the Bankruptcy Act has been in effect. There is another aspect of this: in the

matter of expenses incurred by commercial travellers, every one of us knows how travelling and hotel expenses have increased at a terrific rate in recent years.

Mr. ISNOR: It is $30 a day.

Mr. FLEMING: Yes, and I venture to say that the majority of commercial travellers on the road, unless they are simply employees, are advancing their own travelling expenses, and you will find many cases today where the commercial traveller has a big bill of expenses which is in a large number of cases out of his pocket, and to put a $500 limit on everything he can claim—and the compensation now would have to include his expenses—we are going to do a very great injustice to these men who are out on the road incurring expenses. Now, I would urge that we ought to do away with that limit of $500. In the first place, I cannot see any justification for it, especially when we are dealing with the dollars of today. As long as you have a three months' limitation surely that is enough in the case of employees and travelling salesmen and I think we ought to cut out the $500 entirely. I would like to see us go further and establish in this clause 95, subclause (1) (*d*), that the compensation for which we are prepared to give a three months preference shall include "expenses of travelling in and about his employer's business during the same period."

He pays out those expenses in order to earn this kind of income, namely commission or compensation, and it seems to me there is no reason at all why his expenses paid out to earn that kind of income should not be included in the claim for which he is given a preference here, provided they are incurred in the three months' period. Now, I entirely support the point that Mr. Macnaughton has raised. I think that is reasonable and fair, that in those cases where you are dealing with employees and travelling salesmen that they should have the right of a personal hearing before the trustee before the claim is disallowed because they are not people who can afford to take appeals in most cases. But in addition to that I do suggest that we make two changes under clause 95, subclause (1) (*d*): eliminate the words "to the extent of $500 in each case", and also insert the words in the first part of the subclause "including", in the case of a travelling salesman, "expenses of travelling properly incurred by him in and about his employer's business during the same period."

Mr. LESAGE: The bankrupt's business.

—At this point Mr. Cleaver resumed the chair.

Mr. HELLYER: If you took off the $500 limit, in most cases these commercial travellers are paid a set commission, and their expenses are at their own discretion and although I can see the point that they could easily incur expenses of more than $500 in a three months' period, it means they would come out on the short end if this clause is left in, but if you remove the $500 limit, does not that automatically take care of the other expenses?

Mr. FLEMING: That is a matter of interpretation. In some cases there will be an agreement where the travelling expenses are in addition to the commissions. I think the proper course would be to make it quite clear that commission and compensation do include his travelling expenses. You see, it still remains for him to prove under his agreement with the bankrupt that he is entitled to be paid his expenses.

Mr. MACNAUGHTON: Just one word on that, the word "disbursements" might even be better than the word "expenses" and there seems to be some authority for that because if you refer to the compendium, page 26, under clause 95, subclause (1), (*b*), priority of claims, cost of administration, you will see that the Toronto Board of Trade suggested certain claims and that the Senate apparently adopted this interpretation: "the expenses include disbursements and inspectors' fees". After all, if the inspectors are entitled to charge disbursements, surely a commercial traveller ought to be able to charge his disbursements.

Mr. FLEMING: That might be an improvement on the language. I am proposing that we put in there the saving words: "properly incurred by him in and about his employer's business".

Mr. CANNON: Would you have to have something there whereby he could recover them only if under his agreement with his employers he is entitled to a reimbursement?

Mr. FLEMING: There is nothing in this that would change his contract with his employer. There is nothing here that will give him a right to more than he earned in his contract.

Mr. LESAGE: There is no doubt about that. Now, Mr. Fleming, I would be very ready to go as far with you as to include travelling expenses, but about the $500 limit, we must think of the other creditors and we must not forget that that travelling salesman is preferred for the first $500, and if he has a claim of over $500, he is entitled to his share with the other creditors for the remainder of his claim.

Mr. FLEMING: My answer to that is that the people we are dealing with here are people who are working on a wage or salary or commission. Now, surely those men ought to get a preference, but why do you limit it to $500? You have a limitation already of three months on their earnings properly earned within three months prior to the bankruptcy. Surely that limitation is enough. Now, $500 is not an awful lot these days. You take a man who is trying to support a family and is hoping his employer will be able to weather the storm and carry on; say he is working in the shop or trying to sell; he may not be in touch with the way things are going in the office and he is going ahead incurring expense and $500 will not go very far.

Mr. STEWART: And, in any event, he is solely dependent on his commission for income, whereas the other creditors are not.

Mr. CANNON: If your suggestion is adopted and he is entitled to travelling expenses, the $500 is not adequate.

Mr. FLEMING: His trips may take him weeks on end, incurring heavy expenses in travelling, taking sample rooms in a hotel as well as a room for himself; it can easily be seen that $500 is just nothing on a long trip undertaken by a travelling salesman.

Mr. ISNOR: He is not liable for income tax purposes until he receives those earnings.

Mr. STEWART: The point I tried to make is that the salesman is entirely dependent on his commissions for income whereas the other creditors are not.

Mr. FLEMING: This is his one source of income.

Mr. BELZILE: I guess it is all right.

Mr. FLEMING: If Mr. Macnaughton is satisfied on the point that he raised with the assurance that Mr. MacDonald has given him, I then move my two amendments to clause 95, (1), (*d*): the first would be to strike out the words in lines 16 and 17: "to the extent of $500".

The CHAIRMAN: I would suggest perhaps that it might be better first if we heard from the superintendent of bankruptcy. This is rather a drastic amendment. Shall we hear from him, Mr. Fleming?

Mr. ISNOR: Would you care to read the first amendment so that we will understand Mr. MacDonald's explanation?

The CHAIRMAN: The first motion would be to delete the words "to the extent of $500 in each case" at lines 16 and 17 in subclause (*d*) of clause 95.

Mr. CANNON: Before Mr. MacDonald gives his explanation may I say that I think that $500 is not enough but that we should put some limitation on it, perhaps $750 or $1,000.

Mr. FLEMING: You have three months?

The CHAIRMAN: The three months refers only to delivery of goods.

Mr. CANNON: You must think of the other creditors.

Mr. BREITHAUPT: There have been cases of padded expense accounts.

Mr. CANNON: Perhaps, Mr. Breithaupt is one who knows about such things.

Mr. FULFORD: All of us who have been in business know about them.

The CHAIRMAN: The other workmen are also included in this clause, and other officials, and the three months' delivery period you spoke of as being a restrictive period only applies to commissions of commercial travellers; it does not apply to salaries of the secretary treasurer and others.

Mr. BELZILE: Oh, I do not know.

The CHAIRMAN: Well read it.

Mr. BELZILE: "Wages, salaries, commissions or compensation of any... travelling salesmen, labourer or workman for services rendered during three months..."

The CHAIRMAN: Well, I have read the first amendment and the second amendment will be the addition of the words "including in the case of a travelling salesman disbursements properly incurred by him in or about his employer's business during the same period."

Mr. FLEMING: That amendment would follow the word "bankruptcy" in line 16?

The CHAIRMAN: I am wondering if an amendment could be drafted whereby a ceiling would remain or whereby there would be a ceiling fixed on wages and, in addition to that, a ceiling in regard to commercial travellers that would be an additional allowance for expenses? If you put the ceiling high enough to take care of the travelling salesman then you put it higher than it should be to take care of the other folk who are not entitled to travelling expenses.

Mr. FLEMING: Could you meet that situation by reason of the amount? Mr. Cannon mentioned a couple of figures. I would like to ask him whether his thought is that you would simply take the disbursements out of the $500 limit or does he propose a higher limit to include proper disbursements?

Mr. CANNON: My suggestion was that the higher amount should include disbursements.

Mr. FLEMING: An over-all ceiling?

Mr. CANNON: Yes.

Mr. FLEMING: Then I would suggest that it be $1,000.

The CHAIRMAN: Now that we have the problem before us perhaps Mr. MacDonald could give his comments?

The WITNESS: The limit of $500, as Mr. Fleming remarked, comes in for the first time in this bill. I just wish to make that point clear. The second thing is that the priority given to this class of claimant has been moved up by a number of notches. Thirdly, according to the standard bankruptcy text, which I checked this morning, and it is borne out by cases, compensation is construed to include expenses of travel properly incurred by a commercial traveller in and about his employer's business. The date of that text is 1932 and I was able, before I left the office this morning, to check the cases back to 1941. That interpretation still stands, and I have someone checking back over the period from 1941 to 1932. Those words of interpretation are practically the same as the amendment suggested by Mr. Isnor.

Mr. FLEMING: May I interject that there has been a conflict of judicial interpretation on that point, and I think we should settle the question in view of that conflict.

The WITNESS: I understand that is true, but at the moment I have not come across the cases that take the opposite view.

Mr. FLEMING: There have been some cases.

The CHAIRMAN: The ruling has been that compensation, wages, salaries, commissions, are included in disbursements.

Mr. FLEMING: I am aware of a conflict of judicial decisions on the point and I think that we had better settle it here.

The WITNESS: The jurisprudence as expressed in the book is the same as the suggestion of Mr. Isnor; if there is any doubt about it then it is proper for us to clear it up. On the other point which Mr. Fleming mentioned I just happened to look at the specialty bag case and it appears that it went against the claimant on the ground that there must be some element of master and servant in the relationship. The court says that the Act does not mean that the servant must work exclusively for the debtor or be exclusively under his control, but there must be an element of master and servant in the relationship. It appears the claim in that particular case was by an independent operator who maintained his own office. He got in touch with the bag manufacturer and said in effect that he was on the road in this district and that he would like, from time to time, to place orders for the bag manufacturer, without making any commitment that he would do so. He asked what commission he would get and the bag manufacturer replied that the commission would be anything between the bag company list price to the salesman and the price at which the bags were sold. The salesman concerned, with his other lines, went out in the district and from time to time he placed orders for paper bags but he was under no obligation to work for the bag manufacturer or to place the orders.

Mr. CANNON: I think that is a good judgment. A man like that should not be covered by the Act; he should have no privilege; there is no relation of employer and employee but he is an agent.

The CHAIRMAN: Yes, a manufacturer's agent.

The WITNESS: I hope that I put the proper construction on the case, but, Mr. Fleming, I am sure you are familiar with it.

Mr. FLEMING: Yes, I am. In practice some people say that if a man has one line he comes within the clause but if he has more than one line he does not. That, I think, is not the true test. If the salesman is under orders of the bankrupt as an employee would be he comes within the clause. On the other hand, if he arranges his own time and movements in the territory and covers it in any way he wishes then, the inclination is to treat him as not coming within the clause. It is a matter of interpretation and I hope that most trustees will have regard to the remedial purposes of the act. I think it was not the intent that a man of that kind should get the benefit of the preference. It is a wide field but I think it does emphasize that we should try and meet the needs of such persons.

The CHAIRMAN: Just where do you suggest that the additional words should be inserted?

Mr. FLEMING: Where we suggest taking out the words "$500 in each case".

Mr. LESAGE: Mr. MacDonald has not commented on the removal of the ceiling of $500?

Mr. FLEMING: He pointed out that it appears for the first time in this bill.

The WITNESS: I do not think there is much more I can say on that; it is a question of policy as to what preference these particular classes of claimants should be given.

Mr. BENNETT: The new Act would give them a priority of $500.

The WITNESS: And a degree of priority they didn't have before.

MR. BENNETT: Yes.

MR. LESAGE: And that was the reason why the ceiling was put on.

The WITNESS: And that is one reason why the ceiling was put on.

MR. ISNOR: I have a feeling that it should be more than that. I wonder if you could tell us what the provision of the Australia Act is, if their ceiling is $500.

The WITNESS: I am sorry I haven't got the Australia Act here, I would have to check on that at the office. The United States limit is $600.

MR. BENNETT: I think we should have a ceiling in this clause.

MR. LESAGE: What would you suggest?

MR. BENNETT: I like the chairman's suggestion. I think $500 is a pretty good ceiling. We could leave that in the clause, but I think the travelling salesman should be allowed expenses of say $250.

Mr. BELZILE: Don't you think for wages, salaries, commissions, disbursements, travelling expenses and so on, that a ceiling of $500 would not be enough in relation to that limit of three months? Any man who makes less than $200 or $175 a month is not getting a very high salary, and if you limit it to three months at $175 a month, that gives $525; so we lose right there $25 of his wages; and then if he has any travelling or out-of-pocket expenses or makes any disbursements, well, that would be just out of his own pocket and he would only have an ordinary claim as against the bankrupt estate. I think the ceiling is somewhat low.

The CHAIRMAN: What would you think of this amendment: Leave the $500 in and insert these words at the end of "in each case": "And including in the case of a travelling salesman disbursements properly incurred by him in and about his employer's business to the extent of $250 in each case".

MR. FLEMING: You would have to say an additional $250 in each case?

The WITNESS: Yes.

MR. HELLYER: How would that apply to a case like this. I know a number of people personally who within a three month period in the proper season earn $10,000 in commissions and in doing that they incur an out-of-pocket expense of $4,000. That might be the case only during certain seasons of the year, but they would get no commission on the work on which they were engaged at all. Within that whole arrangement what would they get under this proposal.

The CHAIRMAN: They would get $750. But I might answer that. That sounds like a case of real hardship, but in a case of that kind where the salesman is selling an article that was selling so very well that he could earn $10,000 in three months, I should not think that firm is going bankrupt.

MR. FLEMING: No.

MR. HELLYER: I know of one firm today where the salesman made more than that but that firm just now is facing bankruptcy, it has not gone into bankruptcy, but it is in very bad financial state.

MR. FULFORD: Don't you think the position of the travelling salesman is different from that of any others mentioned in this subclause? perhaps we should have a subclause to take care of that class of people, because a loss of that kind would not affect a servant, a clerk, a labourer or so on; it could affect people who had heavy travelling expenses.

MR. CANNON: Selling expense would apply only in the case of travelling salesmen.

Mr. FULFORD: And the travelling salesman would be limited to $500 in cases like that.

MR. FLEMING: You might have an employee who drives a car; he would have car expense.

MR. FULFORD: $500 would certainly cover any car expense.

MR. ISNOR: Mr. Chairman, I think your amendment is quite in order. I am inclined to think that the average commercial traveller would be reasonably covered by that—$500 plus expenses to the extent of $250.

MR. CANNON: I think that is a good compromise.

The CHAIRMAN: It is at least a start in the right direction.

MR. ISNOR: It is reasonable to suppose that a commercial traveller is going to send in his expense accounts every month, and it is reasonable to suppose that the employer is going to settle once every month.

The CHAIRMAN: Yes, and the average traveller has a drawing account in connection with expenses of this kind. What do you think of that?

Mr. FLEMING: I appreciate the willingness of the committee to meet this situation in a spirit of fairness, and I don't want to hold to a position of compromise on it. Would you consider raising that $250 to say $300, Mr. Chairman? I am thinking more of those men who are out on long tours.

The CHAIRMAN: I would say that is quite all right.

Mr. FLEMING: I know from experience that the expenses these men are under today are simply terrific.

Mr. BELZILE: That is all right.

The CHAIRMAN: Then Mr. Fleming moves, seconded by Mr. Isnor, that clause (*b*) be amended by adding the following words after the word "bankruptcy" in the 16th line of subclause (*b*) of clause 95; "and including in the case of a travelling salesman disbursements properly incurred by him in and about his employer's business to the extent of an additional $300 in each case."

Mr. LESAGE: That would be after the word "case" in line 17?

Mr. CANNON: Yes.

Mr. FLEMING: Yes.

The CHAIRMAN: All right. Just a minute now, I want the reporter to get this right. Would you mind correcting the insertion; it is to be made after the word "case" in line 16, instead of after the word "bankruptcy" in line 19.

Mr. CANNON: I think to do that we should phrase it in this way: say that it is to be $500 "together with" the amount you indicated.

The CHAIRMAN: I think you are right.

Mr. FLEMING: And I think the word "employee" should be changed to "bankrupt"; "in and about the bankrupt's business".

The CHAIRMAN: You have a note of that, Mr. MacDonald?

The WITNESS: Yes.

Mr. FLEMING: Would you read it now once more, please Mr. Chairman.

The CHAIRMAN: The motion is to insert in line 17 of subclause (*b*) of clause 95 after the word "case" the following words, "together with in the case of a travelling salesman disbursements properly incurred by him in and about the bankrupt's business"—

Mr. FLEMING: I think you'd better finish it and say, to the extent of $300 in each case.

The CHAIRMAN: "—to the extent of an additional $300 in each case."
All those in favour of the amendment will please signify?

Mr. HELLYER: Before the amendment is put, I observe that you have the words "properly incurred" there again. If it is part of his contract that he receive expense allowances, how is that going to compensate a man who provides expense money out of his own pocket?

Mr. FLEMING: That man would not get anything. He would be out the $500.

Mr. CANNON: I did not grasp it. Have you got the words "during the same period" in the amendment?

Mr. FLEMING: I think they should come after the word "business", Mr. Chairman.

The CHAIRMAN: We already have "during the three months period".

Mr. CANNON: Yes, but so that there will not be any misunderstanding as to the exemption of the privilege for expenses, I think we should say "during the same period"; otherwise travelling salesmen might come along with bills for arrears in salary for three months, or for arrears of expense money for six months.

The CHAIRMAN: I think it would be more satisfactory if this amendment were typed out with all the recommendations which have been made. So we will stand the clause meanwhile.

By Mr. Stewart:

Q. Before we go on, there is a question I asked a while ago: could you tell me, Mr. MacDonald, when the $600 priority was put into the American Act? In what year?—A. No, I cannot tell you right off the bat.

Q. I am still not convinced that $500 is high enough.

Mr. ISNOR: If there is nothing before the chair, might I inquire if it is your purpose to take up clause 25 at this time?

The CHAIRMAN: Yes. Mr. Stewart, in answer to your question, I have been thinking it over, and I agree with you that the $500 limit, having regard to today's labour market, would certainly not take care of more than two months' wages. But on the other hand, a very high priority is being given to the wage-earner, and I think that the over-all benefit which would accrue to the wage-earner from this amended clause would be very much greater than the over-all benefit which would accrue to him under the old set-up.

Mr. ISNOR: Yes, it is a substantial improvement.

Mr. FLEMING: Would the committee consider making the $500 figure the same as the American figure of $600, Mr. Chairman?

Mr. LESAGE: There he goes again.

Mr. FLEMING: All right; it may be that you will become a wage-earner yourself someday.

(Discussion took place off the record).

The CHAIRMAN: Mr. Fleming moved seconded by Mr. Isnor, that Clause 95, subclause (1), (*d*) be amended by inserting in line 17 after the word "case", the following:

> together with in the case of a travelling salesman disbursements properly incurred by him in and about the bankrupt's business to the extent of an additional $300 in each case during the same period.

All those in favour of the amendment, please signify.

Carried.

Mr. HUNTER: I still think, Mr. Chairman, you may have trouble with that word "properly". Who is going to decide that they are proper?

Mr. LESAGE: The registrar or the court.

The CHAIRMAN: Are there any further amendments to clause 95 or shall clause 95 carry?

Mr. STEWART: I would like to hear Mr. MacDonald's opinion on the suggestion I made the other day on employees' pension funds.

The WITNESS: I have had a chance to think about it, Mr. Stewart, and I think that is a matter on which my opinion is not particularly helpful. I want to give you all the assistance I possibly can on anything on which I can usefully express an opinion, but this seems to me a pure question of policy as to whether such a provision should be put in the Bankruptcy Act and it is more a question for members than it is for myself, I mean to express an opinion about. One thought I have had on it is this, that I doubt whether you could get into the Bankruptcy Act all the provisions necessary to regulate that sort of matter if you do undertake to regulate it. That is, if claims of pension funds are to be regulated, then it would appear to me that the regulating provisions would have to go further than the mere insertion of such a provision as is now under discussion, in the Bankruptcy Act because you will have to define exactly the circumstances to which this priority is going to apply. That, in itself, may be a very difficult thing to do. You have got to consider what protection is to be accorded the beneficiaries in the fund, then you have got to consider a possible distinction between the case where the fund is entirely under the control of the beneficiaries or their representatives and the case where it depends simply on an undertaking by the company which has kept complete control of the assets or what goes to make up the funds, and all those things are going to be difficult of decision and difficult to provide for and difficult even to phrase satisfactorily. Now, I know that that is not very much help, but I am afraid it is all that I can contribute to what is fundamentally a matter of policy relating to the management an dsupervision of pension funds.

Mr. LESAGE: There is nothing to lead us to an amendment in this matter. It would be a very complicated thing and we would be working in the dark. I think we had better leave it at the moment. I, for one, would not try to draft anything which would cover the situation.

The CHAIRMAN: Mr. Stewart, would you mind if we gave you a little special assignment on this question? Mr. Forsyth of the income tax branch is, I believe, the officer in charge of pension funds. It occurred to me that perhaps a definition of what is meant by trust property in section 39 of the Bankruptcy Act would achieve your desired ends. Mr. Forsyth is an experienced lawyer and he might be able to make some helpful suggestion. I have every sympathy with your point but I have not been able to conjure up appropriate words which would be wide enough to accomplish the purpose but not be too wide.

Mr. STEWART: I see the difficulties and I will get in touch with Mr. Forsyth during the luncheon hour.

The CHAIRMAN: We will undertake to revert back to clause 39 if we need to. Shall clause 95 as amended carry?

Carried.

I would like to announce now that it is most important that this bill be reported to the House not later than tonight and that we would like to have a quorum promptly at 3.30. We will sit this evening if we require to do so to finish.

Mr. ISNOR: Can we clean up clause 25 now?

The CHAIRMAN: Yes, and you have the floor, Mr. Isnor.

Mr. ISNOR: I would be prepared to listen to Mr. MacDonald.

The WITNESS: As to the first part of Mr. Isnor's inquiry, whether fishermen should be included in clause 25, it is a question of policy to be determined upon a consideration of all the circumstances of the fishermen and other persons in primary industry who might also consider themselves so entitled to any advantage and that is a point upon which my opinion would be of no value to

you. As far as the mechanics of including fishermen are concerned, I can only say that in so far as I am aware fishermen could be placed in clause 25 in the same way that farmers are placed there. On the question of policy I do not feel I can contribute anything of value.

Coming to the other point, Mr. Isnor, I understood your question to be: "Is it an advantage or a disadvantage for a farmer to be relieved from the provisions of the Bankruptcy Act relating to petitions?"

My answer would be it is an advantage, because it gives the farmer an option as to whether or not he will become a bankrupt under the Act. He can go into bankruptcy voluntarily but he cannot be put into bankruptcy compulsorily. It is difficult, however, to appraise the value of this advantage. It means that he can prevent the description of "bankrupt" ever being legally applied to him. It also means that he can, when a crisis comes in his affairs, control his assets a little longer because less time would be required to put him into bankruptcy than for his creditors to proceed against him in the ordinary way. Nevertheless his creditors will catch up with him in any event. Then again, there may possibly be some dispositions of property made prior to insolvency which would be void if the Bankruptcy Act applied, but remain valid if it does not apply. The foregoing does not take into consideration the situation that obtains in the prairie provinces where a farmer, if he proposes a composition and makes default therein, is liable to the petition sections of the Bankruptcy Act like any person else.

The CHAIRMAN: May I ask one question in regard to the delay feature? Is it not true that the only delay feature would be in regard to real estate? The creditors would get judgment and proceed under execution of judgment as to all personal property, practically and apparently as though under bankruptcy, but as to real estate, that is in a different field, in the Sheriff's office on final proceedings.

The WITNESS: It would depend on the nature and the amount of the claim and the extent to which the defence if so minded are able to delay the proceedings. It seems to me that even in respect to personal property as distinct from realty there is a greater opportunity for delay in case of proceeding to judgment and execution in the ordinary way than in the case of bankruptcy proceedings.

The CHAIRMAN: Mr. Isnor, in view of the answer, do you wish to make an amendment?

Mr. ISNOR: I would like to have a little time in which to study the answer and see how it applies to a farmer in bankruptcy.

The CHAIRMAN: All right. Then shall we adjourn until 3.30 o'clock this afternoon.

Agreed.

AFTERNOON SESSION

—The committee resumed at 3.30 p.m.

T. D. MacDonald, K.C., Superintendent of Bankruptcy, recalled:

The VICE-CHAIRMAN: Shall we take the clauses that we have left? Clause 2, I think is the first one.

Mr. FLEMING: On clause 2 I was just handed by my colleagues, Mr. Smith and Mr. Harkness of Calgary, a few minutes ago a letter which they had

received from The Canadian Credit Men's Trust Association, Limited, Manitoba Division, which includes a copy of a letter written to the Minister of Justice dated November 24, 1949. I think the chairman and Mr. MacDonald have a copy of it. I would just like to read it, if I may:

The Canadian Credit Men's Trust Association Limited,
Manitoba Division,
November 24, 1949.

HONOURABLE STUART S. GARSON,
Minister of Justice,
Parliament Buildings,
Ottawa, Ontario.

HONOURABLE SIR:

Re: Bankruptcy Act, Amendment
Senate "Bill F"

The Manitoba Branch of The Canadian Credit Men's Trust Association Limited has only just received a copy of the above "Bill F" and has had the privilege of examining the representations made by the Toronto Board of Trade and The Canadian Credit Men's Trust Association.

On the whole, this new bill is an improvement on the present Act in many ways and is therefore a very acceptable move.

From the representations made by the association and the Toronto Board of Trade, however, it would appear as if a very important oversight has crept in with respect to the provisions of the proposed section 2, subsection 1, paragraph (*a*) which raises the amount of the debit owing to the petitioning creditor or creditors from $500 to $1,000.

In the provinces of Saskatchewan and Alberta, legislation is in effect which virtually denies creditors the protection provided through the courts by way of judgment and execution. For example, the Province of Saskatchewan has a provision whereby a sheriff may assemble a board of enquiry to decide as to whether an execution or chattel mortgage in his hands shall be given effect to.

Since these boards must necessarily be set up in most cases in small towns, such boards will be composed, for the most part, of friends of the debtor. The creditor has no notice and can make no representations at a hearing. Even if he were notified, the expense of proceeding to the point of enquiry would be denied all rights to take any action to enforce collection from debtors who did not wish to honour their obligations.

It is suggested that if these facts had been presented to the committee of the Senate that their action upon the request of the association that the original amount fixed should remain would have received more satisfactory consideration. We would therefore respectfully suggest that necessary steps be taken to see that the present Act is not amended in this respect.

Yours very truly,
The Canadian Credit Men's Trust Association Limited
Manitoba Division
Chairman, Legislation Committee.

I think Mr. MacDonald has considered this point, Mr. Chairman; perhaps, he would like to make a comment on it.

(Mr. Cleaver assumed the chair)

MR. LESAGE: We discussed that matter under clause 21; representations have been made by the Toronto Board of Trade to that effect. You will find that on page 12 of the compendium, and some reasons why it was left like that by the Senate.

MR. FLEMINGS Well, I have raised the matter and perhaps the representations might be considered. As Mr. Lesage said, my point was considered earlier.

MR. LESAGE: That is just the point; they are saying in effect that we used to have that in the Bankruptcy Act but it is now under provincial legislation and the effect of it is to change the Bankruptcy Act and the result is that they fall back on the provincial legislation.

Mr. HUNTER: It would be all right if you went up to the $1,000 instead of $500.

MR. FLEMING: They want the previous amount restored.

The WITNESS: I am just checking up the representations made by The Canadian Credit Men's Trust Association, and they appear to be these; this is a meeting of March 10, 1949 of the Senate Committee on Banking and Commerce, reading from page 50:

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

I have read that at length from this report of the Senate committee.

Mr. HUNTER: I think it should be set at a reasonable amount.

The WITNESS: Under these provisions, now in the Bankruptcy Act, which exclude from realization certain assets which would not be leviable upon under execution by provincial law, they might have exactly the same complaint, that it is open to the province to do something very similar in principle to what they are complaining about in here.

Mr. HUNTER: And they do it.

The WITNESS: And they do it. The purpose of the Bankruptcy Act is not to affect exemption from execution in individual provinces but only to provide an equitable distribution of assets, of the proceeds of such assets as are available.

Mr. HUNTER: I think we should leave it at that, $1,000 is not an exorbitant amount.

The CHAIRMAN: Shall we finish up clause 21 while we are at it? There is another point on clause 21 which Judge Urquhart raised in regard to adjudging a debtor to be a bankrupt.

Mr. FLEMING: May I speak to a point which is in clause 21(6) which now reads:

> (6) At the hearing the court shall require proof of the facts alleged in the petition and of the service of the petition, and, if satisfied with the proof, may make a receiving order.

I would like to propose that some words be added to that to bring the clause into line with the present law and also the views expressed by Mr. Justice Urquhart and others in their submissions to the Senate committee. The present law, contained in clause 4, subclause 6 of the present Act, provides that a court—this is a direct quotation—

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

Now, the difference between this new form and the present law is that there is no provision in the new law for adjudging the debtor a bankrupt. Now, it is important, I think, that that should be done. The view taken in the Senate committee, as I understand it, was that if a court makes a receiving order then it falls that the man is a bankrupt. A receiving order itself would not formally declare a man to be adjudged a bankrupt, as in the present law. Now, there is no reason why, in my submission—

Mr. LESAGE: I am sure if you read clause 2(c) you will agree that a person against whom a receiving order has been made is a bankrupt.

Mr. FLEMING: Yes, a bankrupt, I agree with you; but there is nothing in a receiving order that adjudges him a bankrupt.

Mr. LESAGE: That law does.

Mr. FLEMING: And I think it should be done.

Mr. LESAGE: 2(c) does.

Mr. FLEMING: It is argued that if a receiving order is made that a man is adjudged to be a bankrupt, and it falls by reason of the other provisions of the Act that he is a bankrupt; but I am arguing—and this is, as I say, in view of Mr. Justice Urquhart's representations when he appeared before the Senate Committee—that we should have a formal adjudication, a formal order that a man is adjudged a bankrupt. There are reasons for that in other legislation. The British North America Act, section 31, provides that a senator vacates his seat—"if he is adjudged bankrupt or insolvent". Now, that provision itself I think makes it desirable that we should provide that a receiving order should contain formal adjudication to that effect. The practice in England is the practice which has always been followed here in our Bankruptcy Act during the last thirty years, that there should be no receiving order without a formal adjudication that a man is a bankrupt. Now, I submit to the committee that there is no good reason for taking it out and there are good reasons for having it in; and I would urge, Mr. Chairman, that we should restore the effect contained in the present law and that the subclause should be amended accordingly.

Mr. LESAGE: I could raise an objection, but I do not insist, because after all, as a matter of fact, the present form says, the receiving order form says,—and it is further ordered—pardon me, it is ordered that the said A.B. be and he is adjudged bankrupt and the receiving order is hereby made against A.B.; so there is no change in the form of the information.

Mr. FLEMING: I do not think Mr. MacDonald has any objection, Mr. Chairman.

The WITNESS: I can state my position very shortly. I do not think it involves any distinction in principle and for that reason I am not strongly opposed to it; but to make my position clear I will have to go further and say that I am in complete accord with the views of the Senate committee; but I repeat that it is not a difference of principle.

Mr. HUNTER: It seems to me that a man is adjudged to be bankrupt when a receiving order is made; by virtue of the statutes, he is automatically considered a bankrupt. I am not pressing the point. I think it is there.

The WITNESS: May I elaborate? Just a moment, could I see the paper, Mr. Fleming? The expression "adjudged mankrupt" comes from the English Act. There is not the same need for it in the Canadian Act because under the English Act there were two separate operations, the making of a receiving order and the adjudication of bankruptcy. So you cannot just draw a parallel between the two Acts. Under the present Bankruptcy Act, the expression is used and certain consequences are attached to it. But under the new bill the same consequences attach to the state of bankruptcy. So that as far as the bill itself is concerned, nothing suffers from the failure to use those words. That is, all the following consequences of the bill come into play because a receiving order has been made or because an assignment has been made. It is true that the British North America Act for instance provides that a senator vacate his seat if he be adjudged bankrupt or insolvent or applies for the benefit of any law relating to insolvent debtors, or becomes a public defaulter. So it would appear to me that it is sufficiently wide to cover the case of an assignor or a person against whom a receiving order has been made under the new bill. These are general words, the purpose of which is to pick up any situation to which they were intended to apply. For example, there are no words in the present Act which apply the expression "adjudged bankrupt" in the case of a person who makes an assignment. So that a possible objection could have been raised since 1867 as to the present law. That is to say, if the objection be that the failure to put in the words "adjudged bankrupt" does not permit the Bankruptcy Act to tie in with the British North America Act, then I say the same difficulty has been there since the beginning in respect to assignments, because the Canadian Act never applied the words "adjudged bankrupt" in the case of an assignment.

Mr. HUNTER: Are you talking about something entirely theoretical?

Mr. LESAGE: Is it not your principle that the fewer words you have in the law the better it is?

Mr. FLEMING: No. I think the principle here is that you are making a change and there is no sensible reason for that change.

Mr. LESAGE: There is no change.

Mr. FLEMING: You are leaving it to further inference and other provisions in the Act that certain incidents follow from the making of a receiving order. But even though the state of bankruptcy be deemed to follow the making of a receiving order, there is nothing in this bill which says that the debtor is adjudged bankrupt. Moreover, the present form of receiving order under the present Act does contain those specific words. So I can see no good reason for departing from it. In fact I can see some reason why it might be desirable in the future to have such a provision included. Moreover, certain opinions which are worth very much more than my own—I cite Mr. Justice Uurquhart,—are very strong about it. I refer to those who are administering this Act all the time. They feel quite strongly about it. There cannot be any objection to it.

The WITNESS: Just to conclude: I would like to read from the volume entitled "Bankruptcy in Canada by Duncan and Reilley". This is the standard bankruptcy text. I shall read a passage which I had not noticed before or I

would have cited it. "It is the adjudication . . . ." He is speaking there about the English Act: "It is the adjudication and not the receiving order which vests in the trustee the property of the debtor. Under the Bankruptcy Act on the other hand, it is the receiving order which vests the property of the debtor in the trustee, and the adjudication does little more than attach the label of bankrupt to the debtor."

Mr. FLEMING: May I rejoin that there is no authority contained in Duncan and Reilley for the statement you have just read, and that it is purely the personal opinion of the authors. There is no foot-note authority for the statement in the volume itself.

The CHAIRMAN: Could we not resolve our differences in this way, by following in subclause (6) the actual terms of the receiving order which has been called to the attention of the committee by Mr. Lesage,—form No. 1-3 of the Consolidated Rules and Forms dated 1945, and simply add the words at the end of paragraph (6) as follows:

. . . . if satisfied with the proof may make a receiving order declaring the debtor to be a bankrupt.

Mr. FLEMING: You had better say "adjudging".

The CHAIRMAN: Yes, "adjudging the debtor to be a bankrupt".

Mr. FLEMING: I propose that we put those words in.

The CHAIRMAN: I notice that Mr. Justice Urquhart referred to the fact that under the Criminal Code there are certainly offences for which a bankrupt becomes liable should he commit them.

MR. HUNTER: I think it is unnecessary, but I have no objection.

MR. LESAGE: I think it is unnecessary. Even if there are some offences in the Criminal Code, there would be a reference in them to the bankrupt.

The WITNESS: No, there are not any.

By Mr. Lesage:

Q. Clause (2) (c): First it says: "a man against whom a receiving order has been made".—A. Sections 417 and 418 of the Criminal Code do not mention bankruptcy.

Mr. BENNETT: If the court makes a receiving order, would not that adjudge the debtor a bankrupt?

MR. FLEMING: It would at the present time under the present Act. But the new bill is not going to contain a formal adjudication of bankruptcy.

MR. BENNETT: But if the court does make a receiving order, then you may go to clause (2) (c), where you will find that a receiving order means a bankruptcy.

MR. FLEMING: Well, there are those whose opinions are entitled to very great weight who think otherwise, and they include Mr. Justice Urquhart. He is one of them.

The CHAIRMAN: If these express words be added in this subclause would you not have to go all through the Act and add them here and there, otherwise there might be an omission in the other clauses, or some implication might arise? You get that point very clearly, I take it?

By Mr. Fleming:

Q. I would like to know how that is going to work out. Could we have an example?—A. Suppose you add to subclause (6) of clause 21 on page 25 the words:

and make an adjudication of bankruptcy.

Q. Adjudge a debtor a bankrupt?—A. All right, "adjudge a debtor a bankrupt". Now, there is no such provision in the case of an assignment and there never has been under our Act. It seems to me that you immediately raise an implication in connection with the British North America Act that it catches the case where there is a petition and receiving order but it does not catch the case where there is only an assignment. I do not think that is the intention.

Q. I understand your point, Mr. MacDonald, but I am afraid I do not agree with it. Here we are simply proposing to preserve the present section, to preserve the law as it has been.

MR. LESAGE: I think the committee is quite familiar now with the question. Could it not now be put?

MR. FLEMING: Very well. I move that clause 21 subclause (6) be amended by inserting in line 30, after the word "may" the following words:

adjudge the debtor a bankrupt and

That is the end of the quote. That will bring the present clause into conformity with the existing law. Subsection (6) would now read:

may adjudge the debtor a bankrupt and in pursuance to a petition make an order under this Act called a receiving order.

The CHAIRMAN: Are you ready for the question? is there any further discussion? all those in favour? All those opposed? the motion is lost. Are there any other questions on clause 21? If not, it is carried. What is the next clause? I believe this point has been covered but I want to make sure it is in our record. Mr. Lesage moves, seconded by Mr. Fleming that clause 21 subclause 15 be amended by adding the words after the word "claim" in line one:

against a partnership,

And by striking out the words in lines 2 and 3:

against all the partners of a firm.

So that subclause 15 would read:

Any creditor whose claim against a partnership is sufficient to entitle him to present a bankruptcy petition may present a petition against any one or more partners of the firm without including the others.

Does the amendment carry?

Carried.

MR. FLEMING: I am so anxious to support anything which Mr. Lesage suggests, after the strong support he gave to my last amendment, that I would second it with pleasure.

The CHAIRMAN: Clause 26 subclause (6).

Mr. LESAGE: Have we carried clause (2) yet?

Mr. BENNETT: Do you not think that "creditor" or "creditors" should go in subclause (6)? Do you not remember our discussion on that point?

The CHAIRMAN: "any creditor or creditors".

Mr. BENNETT: Yes.

Mr. LESAGE: No, we decided it would be better not to put it in.

The CHAIRMAN: I believe it was decided that it was covered in the interpretation clause.

Mr. BENNETT: Oh, I was not here.

The CHAIRMAN: What is the next one?

Mr. LESAGE: We did not carry clause (2), Mr. Chairman.

The CHAIRMAN: Not yet. We are going to come to it last. Now, clause 26 subclause (6).

What is the question on that, Mr. MacDonald?

The WITNESS: The question is whether it should be raised.

Mr. LESAGE: It was understood that Mr. MacDonald would give to the committee some figures as to the proportion of the failures in 1948 in which amount the realized assets over what is mentioned there did not exceed $500.

The WITNESS: That is correct.

Mr. FLEMING: The view of some, Mr. Chairman, was that if there is merit in the procedure in small estates that we might as well extend it to estates of more than $500. Mr. MacDonald's expressed view was that this is an experiment and we have to start the experiment with these small amounts.

The WITNESS: In 1948 the total number of bankruptcies closed was 450; 175 of those fell into the first group of $500 or under, and that figure relates to the realized assets, including secured creditors.—

Mr. BELZILE: How many are there in the other category from $500 to $1,000?

Mr. LESAGE: Mr. MacDonald has not finished, there are others that are to be added.

The WITNESS:—Including secured creditors claims that were handled by the trustees. That is, 175 cases out of the 450 for that year at the minimum would come under the summary administration provision, and the actual number would be larger because it would take in an undeterminable number of estates which, according to these figures, are grouped in the next classification of $500 to $1,000, the number of estates in that classification being 43, and some of those 43, I cannot tell you how many, would fall into the first group, so out of 450 estates for that year 175 plus would be the number that would come under the summary administration provision, which is a substantial proportion.

Mr. HUNTER: I support that increase to $1,000 but I would like to hear more about it from the opposition.

Mr. FLEMING: Mr. MacDonald told us the other day when we were discussing this clause that in the light of the way the experiment succeeds he thinks the range of the estates to which the summary procedure should apply should be widened, and he will recommend accordingly.

The CHAIRMAN: Yes, and it is taking care under present conditions of about forty per cent of the total.

Mr. FLEMING: Yes, I think that percentage is surprising to us all.

The CHAIRMAN: Shall the clause carry?

Carried.

We are considering clause 36.

Mr. ISNOR: I wonder if Mr. MacDonald would tell us whether he receives a record of all bankruptcy cases or only those dealt with by trustees.

The WITNESS: Only those dealt with by trustees, Mr. Isnor, I mean only those that are dealt with under the Act. I should put it that way perhaps. It is possible for an estate to start off under the Act to be a bankruptcy and to be dropped at some preliminary stage and not to reach a trustee. Now, we would get a record of that estate but we would not get records of bankruptcies that occur outside the Act and about which nothing is done under the Act.

Mr. ISNOR: I asked that question because it would add largely to the number 175 in that lower class. A large number of trust companies would not, of course, handle small estates; there is no money in it for them.

The CHAIRMAN: Now, we are on clause 36. Some members were a little concerned about the wording of this clause. Members of committee will have

had plenty of time by now to read it over. Is the clause in its present form, Mr. MacDonald, satisfactory to you?

The WITNESS: Mr. Chairman, I do not think I informed Mr. Isnor as I should have done. Mr. Isnor, this is another way of putting what I said; all bankruptcies that are such by reference to the terms of the Bankruptcy Act come to our attention. The case I meant that did not come to our attention was the case of the man who is popularly called a bankrupt because he cannot pay his debts and he just goes out of business. No creditor does anything about it, and of course, there is no way you could get figures.

Mr. ISNOR: That is what I had in mind. Of course, I am not a lawyer and the chairman passed over my question very quickly; I appreciate that point too.

The CHAIRMAN: Mr. Isnor, I hope on reconsideration you do not feel so badly because I want to assure you there was no intention of that kind.

Mr. ISNOR: Thank you.

The CHAIRMAN: Clause 36?

Mr. LESAGE: Could Mr. MacDonald say whether he is satisfied with the wording?

The WITNESS: Yes. This is Mr. Macdonnell's point and since he is not here, perhaps I could read into the record what I was going to reply to him anyway and then he will see it. He raised a question as to what could be done under expression "injustice" in clause 36, subclause 1, and particularly he wanted to know whether if the debtor came into new assets after the composition was made, whether the composition could be set aside then on the ground that there was an injustice. The jurisprudence is to the contrary. I have been unable by reference to Duncan and Reilly to find any jurisprudence on the meaning of the word "injustice" in clause 36, previously section 19 of the Act. Duncan and Reilley does, however, contain a passage at page 169 the effect of which seems to be that unless the composition or scheme of arrangement so provides expressly or by necessary implication, after-acquired property is not brought within the scheme or the composition. The passage is as follows:

> Distinction between composition and receiving order as regards property affected. A composition or scheme of arrangement, though approved by the court and so by statute binding on all the creditors, depends on a contract between the parties. It thus differs, so far as property affected is concerned, from a receiving order. Under a composition or scheme of arrangement, after-acquired property is not brought in unless the contract says so. In the absence of such a provision and of words indicating an intent to define exactly the property to be taken by the trustee, the property of the debtor divisible among his creditors will, it is considered, be the property to which the debtor was entitled at the date of the approval of the scheme by the court when it became completely operative. Such property would probably include a reversionary interest whether vested or contingent, but not a mere expectancy.

The CHAIRMAN: Thank you, Mr. MacDonald.

Shall clause 36 carry?

Carried.

We are now on clause 49. I remember the question was raised in regard to clause 49 as to the protection given to creditors under the Conditional Sales Act in Ontario and in similar unregistered credit transactions.

Mr. FLEMING: Yes, that was in the compendium. I remember the view expressed by the Toronto Board of Trade, among others, that it should not simply be left to depend on registration alone. The Canadian Manufacturers'

Association suggested that the word "unregistered" be deleted and replaced by the words "not registered or not protected against creditors under the law of the province". I think there is ample reason for that, having regard to the possibility of establishing validity even without registration in the cases you have mentioned. The words that they propose would certainly take account amply of the provincial legislation. I think that the present form does not completely take care of the provincial legislation. It takes account only of one of the grounds of establishing liability of the lien or charge.

Mr. LESAGE: I am afraid of that. I will give you an example of what happens in Quebec. Suppose that I go to a store and buy a stove on a conditional sale. There is no registration of the lien but if I am a tenant, the vendor is protected by sending a notice by registered letter to my landlord. There is no registration and yet there would be protection, a certain amount of protection, under the laws of the province.

Mr. FLEMING: I would think that the form suggested would adequately take account of that situation. The clause as it stands now would not take account of the validity of such a lien.

Mr. LESAGE: I do not want the trustee to be personally responsible because he could have no knowledge of the sending of such notice to the landlord by registered mail.

Mr. FLEMING: Well, Mr. Chairman, I think we discussed the point adequately. We had a long discussion on it the other day. If Mr. Lesage will move this amendment, I will second it.

Mr. LESAGE: There is no amendment.

The CHAIRMAN: I believe Mr. MacDonald feels that the trustee would be guilty of negligence if he ignored the provisions of the Conditional Sales Act in Ontario; that is if there was a piece of equipment there with a name plate on it giving the name and address of the manufacturer and he did not send out a notice to that manufacturer before selling that article, he would be guilty of negligence, would he not?

Mr. BELZILE: There is no such provision in the province of Quebec as you have in the Conditional Sales Act in Ontario.

Mr. FLEMING: Therefore, the proposed amendment would adequately take care of that because it says "not registered or not protected against creditors under the law of the province".

Mr. LESAGE: There is protection for creditors to a certain extent under our laws but the trustee cannot be aware of the situation and we cannot therefore hold him responsible.

Mr. FLEMING: Well, I stand by my offer.

The CHAIRMAN: If we cannot persuade Mr. Lesage to move Mr. Fleming's amendment, shall the clause carry?

Mr. HUNTER: I think the words "with respect to property" are vague. Does the act mean negligence with respect to his dealing with the property?

The CHAIRMAN: Negligence with respect to the sale of the property—for instance a piece of equipment with the name plate on it, complying with the Ontario Conditional Sales Act, giving the name and address of the manufacturer—and a trustee in Ontario seeing that would immediately notify the firm. Should he not do so he would be guilty of negligence.

Mr. HUNTER: Then let us say that.

The CHAIRMAN: That is what this act says.

Mr. HUNTER: I do not think so.

Mr. BELZILE: Property is defined.

Mr. FLEMING: We are troubled by the words "with respect".

Mr. HUNTER: I think it is with respect to disposal.

The CHAIRMAN: Would you prefer the old wording? Would you prefer "with respect to the same"?

Mr. FLEMING: No, there must be a participle in there.

Mr. LESAGE: What if the trustee has goods on hand and allows them to perish by negligence?

Mr. HUNTER: What are you trying to accomplish? Does this mean negligence with respect to seizure and disposal or is it negligence with respect to the actual storing and handling of the property? I would judge from the first part of it that it is with respect to seizure and disposal.

The WITNESS: I think it would cover both.

Mr. FLEMING: I think there is a good deal of weight to be given to Mr. Hunter's argument. There is nothing to tie the words "negligence with respect" to the property. Could we meet the situation by saying "negligence with respect to his duties in relation to the property?"

Mr. HUNTER: Yes, that might do it.

The CHAIRMAN: Mr. Hunter moves, and Mr. Fleming seconds, that clause 49 be amended by adding the following words after the word "respect" in line 44— "to his duties in relation".

Shall the clause carry with that amendment?

Carried.

Clauses 52 and 53. Does anyone present know what Mr. Beaudry has in mind here.

The WITNESS: He had a proposal to make for clearing up a point in further favour of the copyright owner, but I do not recall the exact nature of it.

Mr. LESAGE: It is something to the effect that if an author has had an advance of money from a publisher the author should not be asked to give back all of the money to the estate should the publisher become bankrupt. The author of the book would have worked on the book and would have a contract with the publisher. The publisher would have advanced him a certain amount of money against the publication of the book and Mr. Beaudry does not want the author to have to pay back the publisher, if he goes bankrupt, a certain amount of the advance which has been given.

MR. FLEMING: How can that relate to any of clause 50?

MR. LESAGE: It relates to clause 52.

Mr. FLEMING: Oh, I beg your pardon.

The WITNESS: My idea is that the point involves subclause (*a*) where it says that if the work covered by copyright has not been published and put on the market at the time of the bankruptcy and no expense has been incurred in connection therewith, then it goes back to the author. Mr. Beaudry's idea was that there was some expense which should not be counted there, and notwithstanding which it should go back to the author, but he and I had only a casual conversation on the matter.

MR. LESAGE: Mr. Beaudry mentioned something about $500. The author himself incurs some expense when dealing with the publisher. Apparently the author always incurs some expense and his time is precious and he should keep at least $500 of the advance payment.

The WITNESS: That was the point perhaps.

The CHAIRMAN: We might leave the clause stand until the very last moment in case Mr. Beaudry can be contacted.

Mr. LESAGE: He will not be here.

The CHAIRMAN: We come now to clause 107 (3).

Mr. HUNTER: What was the objection here?

MR. LESAGE: It concerned the personal liability of the trustee.

The WITNESS: It was a question of whether the old section should be reverted to as it lays down definite rules of time and amounts, or whether the present flexibility should be adopted.

MR. HUNTER: I think the objection was that the major creditors might disregard some of the smaller creditors. I do not know how practical Mr. Fleming's suggestion is—I am not saying that it is impractical; I just do not know.

MR. LESAGE: The superintendent of bankruptcy looks after these matters very well.

MR. FLEMING: I cannot say that I have seen any instance of it.

MR. LESAGE: I believe that we shall not see it as long as the superintendent of bankruptcy keeps his eye on every bankruptcy as he does now.

The CHAIRMAN: Shall the clause carry?

Carried.

Clause 117 (*b*), (*j*), (1), and (0).

MR. LESAGE: This was the question of income tax returns.

MR. FLEMING: Mr. MacDonald was going to draft an amendment.

The WITNESS: I have a note here but I do not know whether you were to do the drafting or whether I was to do it. I have not done it but it can be done in short order.

> deliver to the trustee all books, documents, writings, papers, insurance policies,—

MR. FLEMING: "—income tax assessments and copies of income tax returns—".

MR. BELZILE: Are those not papers, documents, writings, and records?

Mr. LESAGE: They are instruments of torture.

MR. FLEMING: They are not records.

MR. BELZILE: They are writings.

MR. FLEMING: You do not leave out insurance policies, and you might also argue that a title deed was a paper.

MR. ISNOR: I think income tax returns are records. During the standard profit period you were asked for your records and with "records" they were able to arrive at the position of your standard profit.

MR. HUNTER: It seems to me that there are already two unnecessary items here; one is insurance policies and the other is title deeds.

The CHAIRMAN: Mr. MacDonald is willing that the words go in but he feels that their insertion would weaken the clause. In view of that thought do you feel like pressing for it, Mr. Fleming?

Mr. FLEMING: Does Mr. MacDonald entertain a similar fear because of the words insurance policies and title deeds? They are specific things; they are not general matters like books, records, documents, writings, and papers.

MR. ISNOR: Insurance policies are quite another item. You may not treat them in the same way as records.

Mr. FLEMING: I think, Mr. Chairman, with all respect to Mr. MacDonald, that that is something that ought to be in there. It is in the realm of doubt. Different members of the committee may have different degrees of doubt about it but certainly we are all in agreement that the bankrupt should deliver to

the trustee his income tax statements and copies of his income tax returns; and there is only doubt, it seems to me, as to whether these things are covered by the pertinent subclause, and if so whether we ought to put it in. It could come in after the word "papers"—income tax statements and copies of income tax returns. I move it and Mr. Lesage seconds it.

The CHAIRMAN: Mr. MacDonald suggests that the wording should be, "including papers relating to tax records and returns".

Mr. FLEMING: All right.

The WITNESS: Might I make a further suggestion, just for comparison; if you turn the paragraph around so it will read like this—

The CHAIRMAN: Don't go too fast.

The WITNESS: "Deliver to the trustee, all books, records, documents, title deeds, writings, insurance policies and papers, including without prejudice to the generality of the foregoing, papers relating to tax records and returns."

Mr. HUNTER: "Without limiting the generality of the foregoing"—why not include in those designated things, books, records, documents, insurance policies and so on, these tax records and returns.

The CHAIRMAN: Mr. Hunter, would you please write that out. What is the next subclause, (*j*)?

Mr. FLEMING: What was wrong with (*j*)? Oh yes, the question was as to who was required. It says "as required"; and the question was, by whom, who has the right to require?

Mr. LESAGE: Anyone who has the right. It is as easy as that.

The CHAIRMAN: Well then, strike out the words "as required".

Mr. FLEMING: It would not have any meaning then.

Mr. LESAGE: Who is to be required to do it?

Mr. FLEMING: Yes, who would have the right to requirement if we realize it in its present form?

Mr. BELZILE: Oh, the trustee, the inspector, the creditors, the courts.

The WITNESS: Yes, beginning at clause 120 with the official receiver.

Mr. FLEMING: What you mean then is this, is it not, Mr. MacDonald? Submitting himself for examination under oath with respect to his private affairs as may be required in accordance with the provisions of this Act; isn't that it?

Mr. LESAGE: How could it be otherwise, Mr. Fleming?

The CHAIRMAN: I do not think you could improve on the wording as it is very much. Shall it carry? The other clause provides as to who has the right to examine him, and this clause simply puts the obligation on the bankrupt to submit to examination.

Carried.

The CHAIRMAN: Next is (*l*) and (*o*).

Mr. FLEMING: That is the same thing.

Mr. HUNTER: I would suggest this: "deliver to the trustee all books, records, documents, writings and papers relating to his property or affairs, and without in any way limiting the generality of the foregoing to deliver all title papers, insurance policies, income tax statements and returns."

The CHAIRMAN: Would you pass that to me, please? What was the point with regard to (*l*) and (*o*)?

Mr. FLEMING: (*l*) was as may be required. What was (*o*)?

The CLERK: The suggestion was that they should be joined.

Mr. FLEMING: Oh yes, this is linking it up with the one that went before, is it not?

Mr. LESAGE: Yes, to add (*o*) to (*l*).

The CHAIRMAN: That adds nothing to the meaning of the Act, it merely streamlines it.

Mr. LESAGE: Yes, that was the proposition, Mr. Chairman.

The CHAIRMAN: As this legislation was initiated in the Senate, should we make any unnecessary amendments?

Mr. HUNTER: But the point is it may be required—by whom?

Mr. FLEMING: That is the same point as in (*j*).

Mr. LESAGE: And he wanted to link (*o*) with (*l*).

The CHAIRMAN: Carried.

Mr. FLEMING: What about (*b*) now.

The CHAIRMAN: We will have that in a minute. The next is clause 127. That is marked carried.

Mr. FLEMING: No, I think we held that one over. There was some difference of opinion in principle as to whether we should provide in the receiving order that an assignment is automatic, or something along that line.

Mr. LESAGE: And also to provide for the costs of the trustee. If I recall what Mr. MacDonald told us the rule would be that from now on the fee would be fixed for the discharge in favour of the trustee. I discussed it with Mr. Cannon and he wanted to be sure that this fee would be paid by the bankrupt himself and not out of the estate. That is the point there—the cost of the discharge being paid by the bankrupt and not out of the moneys of the estate.

Mr. BELZILE: The point raised by Mr. Cannon was that paragraph 4 stated that a court may require.

Mr. HUNTER: You could easily have a deposit or guarantee given; the bankrupt might be in a position to deposit money, or he might cover it by a bond.

The CHAIRMAN: Can we not properly leave that to the discretion of the court?

Mr. LESAGE: It is quite all right if you do that; but I want to be sure that the cost of the discharge would not be paid by the estate.

Mr. ASHBOURNE: Can a man carry on business again once he has been discharged from bankruptcy?

The WITNESS: Yes, after he is discharged.

The CHAIRMAN: While you are thinking that point over may I now submit this amendment to 117 (*b*): Moved by Mr. Fleming, seconded by Mr. Hunter:

> Deliver to the trustee all books, records, documents, writings and papers, including. without restricting the generality of the foregoing, title papers, insurance policies, tax records and returns in any way relating to his property or affairs.

Carried.

Now, coming to this question of costs in subclause 4 of 127.

Mr. LESAGE: By 127, Mr. MacDonald, the cost of the discharge is not going to be paid out of the money of the estate; am I correct in that interpretation of it?

The WITNESS: It will be under the present clause.

Mr. LESAGE: By the present clause. Then, if we are going to have these costs paid by the debtor we will have to make an amendment.

The WITNESS: Yes.

Mr. LESAGE: And then the application of a trustee to proceed with the discharge—

The WITNESS: That will have to be amended too.

Mr. HUNTER: Could we do it this way: require the bankrupt to deposit such security by way of moneys, sureties or bond as may be satisfactory to the trustee?

The WITNESS: If he has not got it or cannot give the guarantee, you cannot have, I think, a compulsory discharge, or the kind of discharge contemplated by clause 127 when it is coming out of the estate. I am not saying that by way of argument at the moment for continuing the clause; but that is just the fact. If you change the provision whereby it comes out of the estate, you must change the principle of the clause.

By Mr. Lesage:

Q. Then you will have to fix the fee of the trustee by the rules.—A. In either event.

Q. By the rules.

By Mr. Hunter:

Q. Why do you say that you cannot?—A. Well, what makes section 127 go is the fact that the fee of the trustee for the discharge comes out of the estate.

Q. Oh, I see.

By Mr. Ashbourne:

Q. Could you give us some idea as to the number or proportion of bankrupts who obtain their discharge?—A. Yes, we can do that for you in just a moment.

By the Chairman:

Q. And what is the cost you are talking about?—A. We estimated last day that it might be $75 but I believe Mr. Lesage thought that was a little low.

Mr. BENNETT: Are there many more clauses remaining?

The CHAIRMAN: Not very many, but they will take a little time. Under this subclause (4) the amount we are talking about is $75 and we have to weigh the benefits on one side offered through the cost of the automatic application of the discharge coming out of the estate.

Mr. BELZILE: I think it is all right. I think this automatic feature should deserve consideration. The judge may decide that the required sums should be paid by the debtor. By subclause (4) we get an automatic way of paying for a discharge and then if the trustee thinks that no such funds are available he may apply to the court.

The CHAIRMAN: Should we carry the clause?

Mr. BELZILE: Yes.

Carried.

Mr. FLEMING: I have doubts about the wisdom of this provision concerning automatic application. I think it may end up with a considerable number of these applications cluttering the business of the court. It seems to me that if a bankrupt is not sufficiently interested in applying for his own discharge, there is no reason why the trustee should be put to the trouble of performing that service for him. I am not going to move an amendment, but I hope I shall be proven to be wrong through experience. I think this is just a lot of mollycoddling a bankrupt.

The CHAIRMAN: Carried, on division.

Mr. ASHBOURNE: Do you not think it would add a certain degree of finality to the thing? That was the observation I would make.

The CHAIRMAN: Clause 135 (1) (*c*).

Mr. FLEMING: The question of affiliation. Mr. MacDonald was going to draft an amendment I think.

The CHAIRMAN: Any debt or liability for maintenance for the support of a wife or child.

Mr. LESAGE: There was an amendment I believe.

The CHAIRMAN: Whether under private contract or court order.

Mr. FLEMING: I think you should mention an affiliation order specifically as well.

The CHAIRMAN: Either that or put in a definition to mean that a child shall mean an adopted child as well as a natural child.

By Mr. Isnor:

Q. Is it not recognized that way these days?—A. Not generally.

Mr. HUNTER: What is the point?

Mr. ISNOR: A child other than one which has been mentioned. Suppose I adopt a child, is he recognized?

Mr. BELZILE: If you adopt a child in court, that child has all the right of a legal or ordinary child.

Mr. FLEMING: The difficulty is not that of an adopted child here, but rather of a child whose father is not the husband of his mother.

By Mr. Lesage:

Q. A common law wife, or something like that.—A. "Any debt or liability under a maintenance or affiliation order or under a contract". Suppose we say "agreement", or under an agreement for maintenance and support of a spouse or child living apart from the bankrupt". A spouse might conceivably be the wife.

The CHAIRMAN: Is that agreed?

Carried.

Mr. LESAGE: Now, as far as grocers and butchers and suppliers of necessities of life are concerned in the same clause 135, we have suggested that subclause (*d*) of clause 147 (1) of the old Act be restored. But the chairman had an objection. He said that at times it happened that doctors' and hospital bills might be incurred amounting to thousands of dollars. I have here an amendment which would distinguish between goods and services. I refer on the page opposite page 84, to section 147 (1) (d) of the present Act and follow "from any debt or liability . . . ."

Mr. FLEMING: You do not want the words "from any debt".

Mr. LESAGE: No. I shall add something.

from any debt or liability

and then I add:

for goods supplied as necessaries of life, and the court may make such order for payment thereof as it deems just and expedient.

Mr. BENNETT: Mr. Fleming means in the new bill.

Mr. LESAGE: Oh yes, of course.

Mr. HUNTER: Would it not be a little too broad? It would include coal, for instance?

Mr. LESAGE: Yes, goods supplied as necessaries of life.

Mr. FLEMING: You are retaining part of the provisions of the present Act?

Mr. LESAGE: Yes, excluding "services" but keeping "goods".

Mr. FLEMING: I think that is a good idea.

The CHAIRMAN: The amendment is moved by Mr. Lesage and seconded by Mr. Fleming that clause 135 be amended by adding thereto subclause (*f*) "any debt or liability for goods supplied as necessaries of life".

Mr. LESAGE: "And the court may make such order for payment thereof as it deems just and expedient".

The CHAIRMAN: I do not understand those last words.

Mr. FLEMING: Oh, they are in the present Act.

Mr. LESAGE: Yes, they are in the present Act.

Mr. FLEMING: If a bankrupt apply for his discharge, the order apart from such provision would not make any provision for the debt or liability for goods supplied as necessaries such as payment to the butcher, baker and the candlestick maker. They would have to start proceedings all over again in order to get a judgment against the debtor. Now you have the parties before the court and the judge in bankruptcy can say: "All right. Before I give you your order of discharge from bankruptcy I want you to pay your butcher, baker and the candlestick maker and so on. I am going to order you to pay those debts, for example, at the rate of $15 a month."

Mr. LESAGE: That is exactly what they do.

The CHAIRMAN: Will you read it again?

Mr. LESAGE: They are already recited, Mr. Chairman, on the page opposite page 84.

Mr. FLEMING: At the very bottom of the page, paragraph (d).

The CHAIRMAN: "And the court may make such order for payment thereof as it deems just and expedient".

Mr. HUNTER: I have never seen that done.

Mr. FLEMING: I do not think it has been done very often in Toronto.

Mr. LESAGE: Oh, I have done it myself for a creditor, for a grocer.

The CHAIRMAN: What is the next clause to be dealt with.

The CLERK: The next one is clause 153.

MR. BENNETT: You will notice there was already a paragraph (*f*) there. You stated the new paragraph would be (*f*).

The CHAIRMAN: Oh, it will be (*g*). Thank you. Now, you say clause 153?

The CLERK: Yes, clause 153.

MR. FLEMING: I think we agreed on an amendment to this effect: that the appeal was to operate to the extent to which the judge ordered in a case where he ordered a stay in part but not as to all.

The WITNESS: I was under the impression that the committee had settled the words. This is clause 153?

The CHAIRMAN: I had it marked as carried.

The WITNESS: "An appeal to the Supreme Court of Canada shall not operate as a stay of proceedings unless and to the extent that the judge who grants leave to appeal so orders".

MR. LESAGE: It was left over not so much on that account but because it had not been agreed upon. Mr. Cannon asked Mr. MacDonald what was the situation as far as security for costs was concerned under the new wording.

MR. ISNOR: I would move, seconded by Mr. Ashbourne that clause 25 be amended in the twentieth line by inserting before the word "farming" the word "fishing".

The CHAIRMAN: Are you ready for the question?

MR. FLEMING: That comes in after the word "solely".

The CHAIRMAN: Yes.

MR. HUNTER: How does it read now?

MR. FLEMING: "in fishing, in farming".

MR. BENNETT: I do not like to oppose Mr. Isnor but I do not know why he should pick out fishermen.

MR. ISNOR: Why pick out the farmer?

MR. FLEMING: I do not recall the discussion on this before. Could Mr. MacDonald give us a short comment on it?

The WITNESS: The only comment that I made this morning was to say, Mr. Fleming, that I was of the opinion that it was a slight advantage to the farmer to be in clause 25; an advantage very difficult of appraisal; that as to the fisherman he could be put in as far as the mechanics go but as to the policy of putting him in that was not a matter in which I could be of very much assistance.

MR. BENNETT: For instance, there are fairly large firms engaged in fishing, who operate three and four tugs.

MR. HUNTER: Some of them operate dozens of boats.

MR. BENNETT: That is right. They might be exempt.

MR. HUNTER: I mean if you made one exception and it is a major exception—I should think we should be very chary of broadening it. I would like to insert "lawyers".

The CHAIRMAN: I do not like to do this but I think we had better let this clause stand.

Clause 156 (*a*), can we agree on that subclause?

MR. LESAGE: It was proposed that the words in line 2, "refuses, or neglects" would be replaced by "without reasonable cause".

The CHAIRMAN: "fails without reasonable cause" and subclause (*d*), do we agree on "makes a false entry or knowingly makes an omission".

MR. LESAGE: When we let subclause (*a*) stand, it was because it refers to clause 117 which was left over.

MR. FLEMING: I thought we had disposed of all these points.

MR. LESAGE: That is what we did; we disposed of all except the amendments we are mentioning now, that is right.

The CHAIRMAN: Then clause 156 is carried as amended?

Carried.

The CHAIRMAN: Clause 163, subclause 4, that is the attorney-general's clause.

MR. LESAGE: I move that subclause 4 be deleted.

MR. FLEMING: Is Mr. MacDonald going to be very disappointed if that course is followed?

The WITNESS: I understood that you had an alternative suggestion, Mr. Lesage?

MR. LESAGE: I have two.

The WITNESS: Which was to insert a disjunctive?

MR. LESAGE: One, I would say in line 23 "the trustee shall initiate such proceedings and send or cause" and my other suggestion would be "or send or cause".

The WITNESS: I think the "or" ties it in more fittingly with clause 8, subclause 13, on page 12.

Mr. LESAGE: Mr. Cannon strongly believes that if we put "or" there certain trustees will say "I have sent it to the attorney general's department and am waiting for the answer."

Mr. FLEMING: And he will have satisfied the clause?

Mr. LESAGE: Yes, that is the objection to it.

Mr. HUNTER: I think it is quite a good objection.

Mr. LESAGE: And if we put "and", then my objection is we are putting a burden on the trustee who has to proceed all by himself to do something which is not necessary.

Mr. FLEMING: All he is doing is sending copies.

Mr. HUNTER: No, he institutes proceedings.

Mr. LESAGE: I mean the additional burden.

Mr. FLEMING: Well, what is that?

Mr. LESAGE: Well, you have to pay for that.

The CHAIRMAN: Then, give him the option and let him take a choice.

Mr. LESAGE: Yes, but the objection then is—

The CHAIRMAN: You cannot have it both ways. "Shall initiate and shall send".

Mr. LESAGE: I do not like it.

Mr. FLEMING: Will Mr. MacDonald come up with the answer that is going to solve all our problems?

The WITNESS: What is the suggestion, Mr. Lesage? "Where a trustee is authorized or directed by the creditors, the inspectors or the courts to initiate proceedings against any person believed to have committed an offence, the trustee shall send or cause to be sent" . . .

Mr. LESAGE: "shall initiate such proceedings" and then should it be "and" or "or"? That is why my first proposition was to delete the subclause entirely because then we will not have the problem and, moreover, we do not have it in the present Act.

Mr. BENNETT: May I ask a question, Mr. Chairman? If the proceedings are initiated by way of indictment the trustee lays the information, and then the crown attorney carries on, or if the crown attorney does not think he has a good case, he will not carry on. Is that it?

Mr. LESAGE: In the province of Quebec he will not carry on.

Mr. BENNETT: Why should he lay the information if the trustee thinks he has not a good case?

Mr. LESAGE: Because he is instructed by the court, or the inspectors he has to proceed.

Mr. HUNTER: All he has to do is to lay an information or a complaint.

Mr. LESAGE: I am safe in saying that when he is instructed to lay an information against anybody or take an indictment, he has been receiving advice from an attorney,—that is the usual practice.

The CHAIRMAN: Would you please make up your mind?

Mr. LESAGE: Mr. MacDonald is studying the matter.

The WITNESS: Of course, I favour it as it is.

Mr. LESAGE: Well I told you that as it is—

Mr. BENNETT: I do not see the object of the clause in view of clause 8, subclause 13.

Mr. LESAGE: That is why I wanted to delete it.

Mr. BELZILE: The real thing is to have the attorney general or the crown take up the proceedings.

Mr. BENNETT: They should do that anyway.

Mr. BELZILE: They will not do it in the province of Quebec.

Mr. FLEMING: Would this meet the situation where you are not wanting to relieve the trustee of proceedings that have been directed by the creditors, by the inspectors, or by the court to be taken. Could we not change these words that where the trustee has initiated proceedings in accordance with the authorization of the creditors, inspectors or the court against any person believed to have committed an offence, the trustee shall do so and that where the trustee has been directed to take proceedings, he will take them, and when he has initiated them, he will send copies of the papers to the crown attorney.

Mr. LESAGE: That would fit our position but it would not fit the case when the crown attorney is ready to go on from the beginning.

Mr. HUNTER: Surely you have to furnish the crown attorney with all this information anyway. What is he going to base his charge on if he doesn't get it?

The CHAIRMAN: Mr. MacDonald has reached a decision. He will accept the "and" amendment.

Mr. LESAGE: So in either case the trustee will have to send copies of the resolution.

The CHAIRMAN: And the amendment will be in line 23 after the word trustee "shall initiate such proceedings and".

Mr. LESAGE: So in every case where the trustee is authorized to initiate proceedings he will have to go on and then he sends a copy to the crown attorney or attorney general.

Mr. BENNETT: Should not clause 8, subclause 13 be amended to read that the trustee "shall"? It says "may". That is on page 12.

The WITNESS: I think that is only set out there as completing, as rounding out, the duties of the trustee. In this clause we are getting into the actual mechanics.

Mr. BENNETT: I agree except that subclause 10 above says "the trustee shall," subclause 11 says "may" and subclause 13 says "may" the heading of clause 8 reads "Duties and Powers of Trustees".

Mr. LESAGE: I will give you an example, Mr. Bennett. Suppose that the inspectors are together, and as happened in a case in Montreal recently—it was a case of conspiracy or something arising out of a bankruptcy, and the inspectors looked at the records and decided that the bankrupt should be prosecuted. It was a very important matter and they directed the trustee to report in an interview to one of the crown attorneys. The crown attorney reports to the attorney general and says "we must proceed in this" and they decide to proceed right away. Now, the inspectors do not have to authorize the trustee to take these criminal proceedings. If you know the distinction I am making here, it is covered by the last subclause of clause 163 by "and". There is a difference between power to do and doing something and the obligation of doing it. You give him the power to do it in subclause 13 of clause (8), and we place on him by clause 163(4) the obligation of doing it when he is so directed by the creditors, the court or the inspectors.

The CHAIRMAN: Are you content, Mr. Bennett?

Mr. BENNETT: All right.

The CHAIRMAN: Mr. Isnor would you move your amendment now?

Mr. FLEMING: I think Mr. Isnor's amendment raises a larger question which concerns the word "persons" in clause 25. The definition of "person" in

clause 2, subclause (*m*) includes a partnership, an unincorporated association, a corporation, and so forth. I presume there might be, theoretically, corporations engaged exclusively in the business of farming or tilling the soil. There could also be corporations engaged in fishing. I do not think Mr. Isnor's intention is that corporations engaged in fishing should come within the provision of this clause. It seems to me there are no reasons for including corporations engaged in farming. I think we ought to change the word "person" to make it quite clear that it applies to natural persons.

Mr. LESAGE: "Individuals".

Mr. FLEMING: If we could change the word "persons" to "individuals" I would be quite prepared to support Mr. Isnor's amendment.

Mr. ISNOR: Your thought would be to change "persons" to "individuals".

Mr. FLEMING: Yes, wherever it appears in this clause.

Mr. RICHARD (*Gloucester*): Would a corporation engage in farming?

Mr. FLEMING: Theoretically a corporation could be engaged exclusively in farming.

Mr. RICHARD (*Gloucester*): Would they fall within this clause then?

Mr. FLEMING: Yes.

Mr. RICHARD (*Gloucester*): Do you think that it should be the intention to include them?

Mr. FLEMING: I think that regardless of whether we adopt Mr. Isnor's amendment or not we should change the word "persons" to "individuals".

Mr. ISNOR: I think the last few lines make it quite clear where it says "who does not on his own account carry on business".

The CHAIRMAN: Shall we hear from the superintendent in regard to this clause?

The WITNESS: I have pretty well exhausted what I can say about this. Personally, if fishing were put in, it would have to be limited very carefully to the case of an individual engaged in fishing. I do not remember any cases, looking at the practical aspect, where fishermen have been placed in bankruptcy. The collective memory of the office is that the records do not disclose a single case in the last five years.

Mr. ISNOR: Then, summing up, you could say that there will be no danger as a result of the amendment.

Mr. HUNTER: What about logging, timbering, and mining?

Mr. RICHARD (*Gloucester*): Why do you make an exception for the farmer and exclude everybody else? I think the proper thing would be to say farmers, fishermen, and workmen whose net income does not exceed $2,500. Then you are not treating the farmer in a preferential way. The farmer's income may be unlimited and yet he has a priority over workmen.

Mr. HUNTER: I do not know the basic reason for the farmers being exempted?

Mr. BELZILE: Because he is otherwise protected by the Farmers' Creditors' Arrangement Act.

Mr. FLEMING: There was a specific reason given in the earlier discussion, but it was mentioned that we have the Farmers' Creditors' Arrangement Act.

The CHAIRMAN: The farmer is dependent upon weather conditions, crop conditions, and all that sort of thing.

Mr. RICHARD (*Gloucester*): So is the fishermen; but he braves far more weather than does the farmer.

The CHAIRMAN: You are quite right about that but if you do not leave the farm to the the farmer he never makes a recovery.

Mr. RICHARD (*Gloucester*): We have been courting the farmer for too long.

The CHAIRMAN: There are no records of fishermen having been thrown into bankruptcy. I have fishermen in my riding and I know something about the inland fishing industry. A little port in my riding ships over $100,000 worth of fish each year to the United States.

Mr. RICHARD (*Gloucester*): What do you think of my suggestion of "farmer, fishermen, and workmen, whose income does not exceed $2,500—"

Mr. FLEMING: You have it there now?

Mr. RICHARD (*Gloucester*): We have workmen but the farmer is not included?

The CHAIRMAN: Well I shall put the amendment.

Mr. FLEMING: Do you mind if I first put my amendment. I think you need it to get support for Mr. Isnor's motion. If Mr. MacDonald does not see any reason to the contrary, I would move that we change the word "persons" in line 20 to "individuals" and in line 21 change the word "person" to "individual".

Mr. RICHARD (*Gloucester*): As I look at the point the farmer earns his living by working and I do not see why he should have an unlimited income and not be petitioned into bankruptcy. A workman, if he earns over $2,500 may be petitioned, and also that applies to the fisherman.

The CHAIRMAN: All those in favour of the amendment striking out the word "persons" in line 20 and substituting in lieu therefor the word "individuals", and striking out the word "person" in line 21 and substituting in lieu therefor the word "individual".

Carried.

Mr. HUNTER: I wonder if I could get the reason for the farmer being exempted. Somebody said that it was because of the Farmers' Creditors' Arrangement Act but that is not so. The Farmers' Creditors' Arrangement Act was passed long after the Bankruptcy Act. Was it decided to exempt the farmer out of sympathy for him and the perils of his task?

The WITNESS: I could not find any enlightenment on the matter.

Mr. FLEMING: Perhaps one of the reasons was that he was not originally included in the groups which pay income tax?

The CHAIRMAN: In the absence of any information on the point I am going to put Mr. Isnor's amendment. It is moved by Mr. Isnor, seconded by Mr. Ashbourne, that clause 25 be amended by adding the word "fishing" after the word "in" in line 20. The amended clause would read "engaged solely in fishing, farming, or the tillage of the soil—". Shall the amendment carry?

Carried.

Shall Clause 2 carry?

Carried.

Shall the title carry?

Carried.

Shall I report the bill?

Carried.

Mr. BELZILE: I have just one comment to make. There is a special provision in the Bank Act to the effect that the Bank Act shall be revised every ten years. Has such provision ever been considered with respect to the Bankruptcy Act?

The WITNESS: No.

Mr. BELZILE: Would it be of any advantage?

The WITNESS: No.

The CHAIRMAN: The conditions are not comparable.

Mr. LESAGE: We should thank Mr. MacDonald and Mr. Larose for their very kind co-operation.

Mr. FLEMING: And we should thank the chairman of the committee for the able way in which he has handled the proceedings. Those remarks should also apply to the vice-chairman and to the clerk.

APPENDIX H.

Extract from Minutes of the Proceedings of the Senate of Canada, Tuesday, 6th December, 1949, at page 296:

> Pursuant to the Order of the Day, the Senate proceeded to the consideration of the amendments made by the House of Commons to the Bill (F), intituled: "An Act respecting Bankruptcy".
>
> The said amendments were concurred in.
>
> *Ordered.* That a message be sent to the House of Commons to acquaint that House that the Senate have agreed to the amendments made by the House of Commons to this Bill, without any amendment.