CORRESPONDENCE

RELATIVE TO

THE WORKING OF "THE DEBTORS AND CREDITORS ACT, 1862," AND "THE DEBTORS AND CREDITORS ACT AMENDMENT ACT, 1865."

(Return to an Order of the House of Representatives, dated the 12th day of July, 1866.)

That there be laid upon the Table of this House—"Copies of Reports from Inspectors, and other sources, relative to the working of the Debtors and Creditors Acts of 1862 and 1865, now in operation, and of any correspondence explaining the amount of remuneration to be paid to the Inspectors in Bankruptcy."

(Mr. Hargreaves.)

WELLINGTON.

1866.

CORRESPONDENCE

RELATIVE TO

THE WORKING OF "THE DEBTORS AND CREDITORS ACT, 1862," AND "THE DEBTORS AND CREDITORS ACT AMENDMENT ACT, 1865."

No. 1.

Copy of a Letter from Mr. G. Brodie to Mr. R. G. Fountain.

Victoria Chambers, Manse Street, Dunedin,
20th February, 1866.

Sir,—

I have the honor to acknowledge the receipt of your letter of the number and date as per margin. In reply, I beg to state that I lost no time in entering upon the discharge of the duties of my office. I find, however, that the discharge of these duties is embarrassed on all sides, owing to the absolute want of data upon which to proceed. As an example of the difficulties which I met with at the very beginning of my inquiries as to the position of estates brought under the jurisdiction of the Debtors and Creditors Acts of 1862 and 1865, I may state that on formally applying to the Registrar of the Supreme Court for the information described in the copy of the letter enclosed, I was verbally informed by that gentleman that only a small portion of the information asked for could be supplied. It appears to have been the practice to allow the trustees to deal with estates just as they pleased—no one calling them to account. When an estate was placed in the hands of trustees, the Court seems to have taken no further notice of it. No accounts have been rendered; the fees as provided for by both Acts have, in nine cases out of ten, not been paid; and the ordinary costs and charges for payment of which the Insolvent Estates Fund was instituted, have in some instances been defrayed by the Colonial Treasury. A considerable proportion of the fees recoverable under both Acts can, in my opinion, be collected, but to do this effectually, it would be necessary that I should be authorized to employ a clerk. The arrears to be collected under the Act of 1862 are very large, and would be sufficient to cover his salary, and possibly leave a considerable balance to the credit of the Insolvent Estates Fund. As this fund can only be dealt with by order of the Supreme Court it will, I presume, be necessary that I should be authorized to apply to the Judges for such payments out of the aforementioned fund as may be required. In giving effect to the provisions of the Act of 1865, I have no doubt but that I will meet with much opposition, especially from those merchants and others who have had trust funds in their hands for years, and who have also neglected to pay the fees which it will now be my duty to call upon them to do. In order therefore to facilitate the discharge of the duties of Inspector, as well as to relieve that officer from the charge of occasionally using his power in a tyrannical manner, I would respectfully suggest that the Inspectors of the principal Provinces be instructed to proceed to Wellington and, after consultation, draw up a code of rules for their guidance. These rules, if approved by the Government, could be made to have the force and effect of law, by Proclamation under the provisions of clause 25 of the Act of 1865. With the assistance of such a code of rules, I see no difficulty in the way of the proper working of the Act, nor of giving effect to the many beneficial provisions which it contains.

I have, &c.,
Geo. Brodie,
Inspector in Bankruptcy.

R. G. Fountain, Esq.

P.S.—As there is every probability of frequent communications passing between your office and this, I have respectfully to request that I may be permitted to frank letters on Insolvency business.

G. B.

Enclosure in No. 1.

Copy of a Letter from Mr. G. Brodie to Mr. R. Chapman.

Manse Street, Dunedin, 15th February, 1866.

Sir,—

I have the honor to inform you that I have been appointed an Inspector of Bankruptcy for the Province of Otago under "The Debtors and Creditors Act Amendment Act, 1865." My instructions are to enter upon the duties attached to the office at once. In order that I may do so I shall be obliged if you will cause the following information to be furnished to me:—

First, the names of the bankrupts whose estates have not been finally dealt with, and a statement showing the position of the estates as regards money in hand or dividends paid; second, the names and places of residence of the sequestrators, trustees, or receivers to the estates not finally dealt with.

This return will require to be made up from the date of the coming into operation of "The Debtors and Creditors Act, 1865," to the present time, 16th February, 1866.

Hoping you will cause these returns to be forwarded to me with as little delay as possible,

I have, &c.,
Geo. Brodie,
Inspector in Bankruptcy.

To Mr. R. Chapman, Registrar Supreme Court.

No. 2.

Copy of a Letter from Mr. R. G. Fountain to the Inspector in Bankruptcy, Auckland.

(No. 120 G.) Colonial Secretary's Office, (Judicial Branch,)
Wellington, 3rd April, 1866.

Sir,—

I have the honor, by direction of Mr. Stafford, to inform you that it has been determined to hold a Conference, on the 18th instant, at Wellington, of all the Inspectors in Bankruptcy within the Colony, for the purpose of framing a uniform set of rules for the working of the Debtors and Creditors Act of 1862, and its Amendment of 1865, and to request you therefore to be good enough to give your attendance at the above time and place. The Government will provide you with a passage to and from the place of meeting.

I have, &c.,
R. G. Fountain,
(for the Assistant Law Officer.)

The Inspector in Bankruptcy, Auckland.

No. 3.

(No. 121 G.) Similar Letter.
The Inspector in Bankruptcy, Otago.

No. 4.

(No. 122 G.) Similar Letter.
The Inspector in Bankruptcy, Canterbury.

No. 5.

(No. 123 G.) Similar Letter.
The Inspector in Bankruptcy, Southland.

No. 6.

(No. 126 G.) Similar Letter.
The Inspector in Bankruptcy, Nelson.

No. 7.

(No. 127 G.) Similar Letter.
The Inspector in Bankruptcy, Taranaki.

No. 8.

Copy of a Letter from Mr. G. Brodie to the Hon. E. W. Stafford.

Wellington, 26th April, 1866.

Sir,—

I have the honor to enclose herewith a draft copy of rules and regulations for the conduct of business under "The Debtors and Creditors Act, 1862," and "The Debtors and Creditors Act Amendment Act, 1865," and to request that I may, at your convenience, be favored with an interview for the purpose of supplying such detailed information with regard to them as you may deem requisite.

I have, &c.,
Geo. Brodie,
Chairman.

The Hon. the Colonial Secretary.

Enclosure in No. 8.

The Inspectors in Bankruptcy, assembled in conference, have the honor to submit the following suggestions for the consideration and approval of the Government:—

1. That the General Government agent in London be requested to obtain copies of the rules and regulations under which Accountants in Bankruptcy wind up insolvent estates in Scotland.

2. The Inspector of each district should be provided with an office, office furniture, and such clerical assistance as he may require.

3. The Inspectors should have the privilege of franking letters sent on the business of insolvent estates.

4. It would be advisable that, for the better discharge of the duties of their office, the Inspectors in Bankruptcy should be made Justices of the Peace, in order that any false statement made before them, upon oath, should render the person making such false statement liable to the pains and penalties of perjury. At present some of the Judges are doubtful as to whether a false statement made on oath, under section 17 of the Debtors and Creditors Act Amendment Act, would render the person making it liable to the penalty provided for perjury.

5. It is suggested that, inasmuch as the working of the Act has not yet been tried, it would be advisable that the Inspectors should be summoned to meet next year for the purpose of interchanging such experience as they may have acquired.

6. The Inspectors should be salaried officers, the Inspectors in Bankruptcy, assembled in conference, being of opinion that it would relieve them from all suspicion of being actuated by interested motives in the recovery of any fees due under the Act. As the proposed regulations provide a sufficient machinery by which the Government could always be informed as to whether the Inspectors are discharging their duty or otherwise, the argument which might be possibly advanced, that, being simply in the receipt of his salary, the Inspector might be lax in the discharge of his duties, would, under such circumstances, fall to the ground.

7. It may also be urged that, if a fixed salary were named, the fees in some of the Provinces might not cover the Inspector's salary; but the Inspectors are confident that, if the fees from all the Provinces were placed to a common fund, there would not only be sufficient to discharge the cost of inspection, but a considerable balance to the credit of the fund. Even if this were not the case it is suggested that the administration of a law should never depend on the amount of fees incidentally derived from its administration, when the provisions of the Act, properly carried into effect, will result in benefiting the public.

8. The Inspectors in Bankruptcy are of opinion that the cost of their departments throughout the Colony will be under five thousand pounds (£5,000) per annum; and, judging from past experience, after allowing a liberal reduction on account of the altered circumstances of the Colony, they feel justified in stating that the amount of fees payable in any one year, would far exceed the cost of inspection as provided by the Act.

9. It is suggested that the Government should request their Honors the Judges to cause every Registrar to pay into the Colonial Treasury any funds he may have in hand to the credit of the Insolvent Estates Fund. These payments might be made either monthly or quarterly, and any costs or charges properly chargeable against the Insolvent Estates Fund might be paid by the Sub-Treasurer upon an order of any Judge as provided for by section 40 of "The Debtors and Creditors Act, 1862."

10. It is suggested, that whenever the opinion of the Government shall be requested by an Inspector upon any point of practice as to the manner of discharging his duties, a copy of such opinion, when given, should be forwarded to each of the Inspectors.

Sub-Enclosure to Enclosure in No. 8.

I.—*Registrars.*

1. It shall be the duty of every Registrar to forward notices to every sequestrator or trustee appointed by the Court, informing him of his appointment, and requiring from him an intimation as to whether he will accept the office or decline it; and should any such trustee or sequestrator refuse or neglect to accept the office within a reasonable period, it shall be the duty of the Registrar to report the same to the Supreme Court.

2. Every Registrar shall, immediately after the filing of a petition and schedule, furnish to the Inspector in Bankruptcy a copy of the same.

3. Every Registrar shall, at the termination of every six months, furnish upon oath to the Supreme Court a statement of his receipts and disbursements out of the Insolvent Estate Fund.

II.—*Inspectors.*

4. Every Inspector shall keep a book of register as well as a book that shall show a statement of all receipts and expenditure relating to the several estates under administration, which books shall be open during office hours for the inspection of any creditor who has proved his debt, and shall be in the form prescribed in Schedule ., hereunto annexed.

5. When any Inspector shall issue a summons for the attendance of any sequestrator, trustee, receiver, attorney, solicitor, agent, auctioneer, or other person employed in the management or winding up of a sequestrated estate, it shall be in the form prescribed by Schedule ., hereunto annexed.

6. Before payment of costs, charges, or expenses, by any sequestrator or trustee, an account of them, shall be submitted for approval to the Inspector, who may certify to the same.

7. Every Inspector shall, at the expiration of each calendar month, forward to the Colonial Treasurer or the Sub-Treasurer of his district, a statement showing the amount of fees payable upon the assets realized each month, in respect of the estates under his inspection, such statement to be in the form prescribed in Schedule .

III.—*Sequestrators, Trustees, &c.*

8. Every interim sequestrator, sequestrator, or trustee, shall, immediately after the date of his appointment as sequestrator or trustee of any estate, place himself in communication with the Inspector, who shall thereupon furnish him with a copy of the rules by which he shall be guided in the administration of the estate.

9. Every sequestrator or trustee shall at the expiration of each calendar month furnish to the Inspector a detailed account of receipts and expenditure in any estate which he may hold in trust, together with a statement of the balance then in the Bank belonging to such estate, with such other information as may be likely to affect the position of the estate.

10. Before any sequestrator or trustee shall sell an insolvent estate, he shall first communicate with the Inspector, and obtain his sanction thereto.

11. Every sequestrator or trustee before commencing an action at law with reference to matters having relation to any estate held in trust by him, shall first communicate his intention so to do to the Inspector, and obtain his sanction thereto.

12. Every sequestrator or trustee shall, on or before the fifth day after the expiration of every calendar month, pay into the proper funds the fees payable during the preceding month under section thirty-nine of "The Debtors and Creditors Act, 1862," and section twenty-eight of "The Debtors and Creditors Act Amendment Act, 1865."

13. In the event of any extraordinary meeting of the creditors in any estate being called by the sequestrator or trustee, it shall be the duty of such sequestrator or trustee to notify the same to the Inspector, stating the date and place of meeting.

14. Before the declaration of any dividend by the sequestrator or trustee of any estate, the accounts of the estate shall first have been examined by the Inspector, and sanction obtained as to the payment of a dividend.

15. Every trustee shall, after the expiration of the date for the final winding up of the estate, pay into the Colonial Treasury all unclaimed dividends to the credit of a fund to be called "The Unclaimed Dividend Fund," to be withdrawn by the parties entitled thereto, upon the production of a certificate from the Inspector in Bankruptcy acting for the estate.

16. The final account of any sequestrator or trustee shall be duly verified upon oath.

17. Every sequestrator or trustee, receiver, attorney, solicitor, agent, auctioneer, or other person employed in the management or winding up of sequestered estates, who shall receive an order from the Inspector shall comply with the same.

18. Every sequestrator or trustee shall keep possession of all the books of an insolvent debtor until the final winding up of the estate, when the said books shall be lodged with the Inspector; and in the event of the estate of any insolvent debtor being sold by a sequestrator or trustee, the books of such debtor shall be lodged with the Inspector, who shall, upon an order signed by a sequestrator or trustee, permit the temporary use, for the purpose of proof of debts, of any of the said books; and, in like manner, shall permit the person purchasing the said estate to make any extract from the said books which he may require. Books thus obtained under order of the trustee shall, at the expiration of the time during which their use was requested, be returned forthwith to the Inspector.

19. Every sequestrator, trustee, receiver, attorney, solicitor, agent, auctioneer, or other person employed in the management or winding up of a sequestered estate, who shall be found guilty of disobedience, shall be liable to a fine in any sum not exceeding £100.

20. Whenever any creditor in the estate of an insolvent debtor shall reside outside the Colony, the sequestrator or trustee shall give due notice to such creditor that a certain time has been appointed for proof of debts, and no dividend shall be declared until the expiration of that period.

IV.—*General.*

21. In the event of no distinct provision being made by the creditors, by deed, for the payment of commission to sequestrators and trustees, then the maximum sum of 5 per cent. shall be payable to every sequestrator or trustee as a remuneration for services rendered in the realization of any sequestered estate; but the Inspector shall have power, upon examination as to the character of the services so rendered, to make an order for the payment of a lesser amount of commission to the said sequestrator or trustee, the minimum amount of which shall not be under $2\frac{1}{2}$ per cent.

22. Every debtor shall, immediately upon filing his petition, furnish the Inspector with correct information as to his place of abode, and shall, in case he shall at any time change such place of abode before his final discharge, report the same to the Inspector.

23. Every debtor shall attend, whenever required by the Inspector, for the purpose of assisting in the realization of the estate.

No. 9.

Copy of a Letter from Mr. G. Brodie to the Hon. E. W. Stafford.

Sir,— Wellington, 30th April, 1866.

I have the honor to forward herewith a statement in detail of the probable amount of expenditure for the Department of Inspector in Bankruptcy for the Province of Otago during the year 1866-7.

I have, &c.,

Geo. Brodie,

The Hon. the Colonial Secretary. Inspector in Bankruptcy for the Province of Otago.

Enclosure in No. 9.

For the information of the Colonial Secretary, the Inspector in Bankruptcy for the Province of Otago has the honor to submit a statement showing the probable amount of business likely to be transacted through his office.

In the first place, the Inspector has already been called upon to interfere in a large number of estates which involved a correspondence of over 200 letters and circulars.

When it is considered that the arrears under "The Debtors and Creditors Act, 1862," consist of 177 estates to be wound up under deed of assignment, the sworn assets of which estates are £220,000; and that in addition there are over 300 estates not taken out of Court, the gross amount of assets being over £400,000, it will be seen that for the first twelve or eighteen months the business of the office must necessarily be very heavy. The clerical assistance required will in many cases be of the nature of the work of an accountant, and hence the necessity of obtaining the services of a person who is capable of performing duties other than those of an ordinary clerk. It is impossible to say how many of the estates may be brought under the notice of the Inspector, because sequestrators and trustees have not, so far as I am aware, obtained the sanction of the Supreme Court to the final accounts. As they have not thus relieved themselves from the responsibilities attached to their trust, discontented creditors are now taking the opportunity of looking into their conduct. Again, it is the opinion of Judge Richmond that if the Inspector is to obtain correct information "as to the true state of affairs" of each estate, he should attend every meeting of creditors, be present at their first, second, and third hearings at the Supreme Court, be in a position to answer any query of the Judge as to the conduct of the insolvent, and, when necessary, question the insolvent in Court. For this purpose the Inspector has been allowed by Judge Richmond a *locus standi* in Court.

As regards the current business of the office, the Inspector has to report that since his appointment the number of insolvencies have averaged about two a week.

Geo. Brodie,

Inspector in Bankruptcy, Otago.

	£	s.	d.
Inspector's salary	600	0	0
Clerical assistance	300	0	0
Office rent	52	0	0
Office furniture and contingencies	48	0	0
	£1,000	0	0

GEO. BRODIE,
Inspector in Bankruptcy, Otago.

No. 10.

Copy of a Letter from Mr. R. G. FOUNTAIN to the INSPECTOR IN BANKRUPTCY, Otago.

(No. 176 G.) Colonial Secretary's Office, (Judicial Branch,)
Wellington, 2nd May, 1865.

SIR,—

I have the honor to acknowledge the receipt of your letter of the date quoted in the margin, (30th April, 1866) and in reply am directed by Mr. Stafford to inform you that he has authorized the following annual expenditure in connection with your department, viz.:—Inspector's salary, £600; clerical assistance, £300; office rent, £52; furniture and contingencies, £48. Total, £1,000.

I have, &c.,
R. G. FOUNTAIN,
(for the Assistant Law Officer.)

The Inspector in Bankruptcy,
Otago.

No. 11.

Copy of a Letter from Mr. W. R. E. BROWN to Hon. E. W. STAFFORD.

SIR,— Wellington, 30th April, 1866.

I have the honor to forward herewith a statement in detail of the probable amount of expenditure of the Department of Inspector in Bankruptcy for the Province of Wellington during the year 1866-7.

I have, &c.,
W. R. E. BROWN,
Inspector in Bankruptcy for the Province of Wellington.

The Hon, the Colonial Secretary.

STATEMENT of the probable amount of Expenditure of the Department of Inspector in Bankruptcy for the Province of Wellington during the year 1866-7.

	£	s.	d.
Inspector	250	0	0
Stationery and contingencies	25	0	0
	£275	0	0

No. 12.

Copy of a Letter from Mr. R. G. FOUNTAIN to the INSPECTOR IN BANKRUPTCY, Wellington.

(No. 177 G.) Colonial Secretary's Office, (Judicial Branch,)
Wellington, 2nd May, 1866.

SIR,—

I have the honor to acknowledge the receipt of your letter of the date quoted in the margin, (30th April, 1866) and in reply am directed by Mr. Stafford to inform you, that having regard to the salary already received by you in another capacity, and to the probable amount of work to be done by you as Inspector in Bankruptcy, the Government has for the present authorized an expenditure at the rate of £200 per annum, to cover all the expenses of your office.

I have, &c.,
R. G. FOUNTAIN,
(for the Assistant Law Officer.)

The Inspector in Bankruptcy,
Wellington.

No. 13.

Copy of a Letter from Mr. R. POLLOCK to the Hon. E. W. STAFFORD.

SIR,— Wellington, 30th April, 1866.

I have the honor to forward herewith a statement in detail of the probable amount of expenditure of the Department of Inspector in Bankruptcy for the Province of Nelson during the year 1866-7.

I have, &c.,
ROBERT POLLOCK,
Inspector in Bankruptcy for the Province of Nelson.

The Honorable the Colonial Secretary.

	£	s.	d.
Inspector's salary	350	0	0
Clerical assistance	120	0	0
Office rent	30	0	0
Office furniture	25	0	0
Contingencies	25	0	0
	£550	0	0

ROBERT POLLOCK,
Inspector in Bankruptcy, Nelson.

No. 14.

Copy of a Letter from Mr. R. G. Fountain to the Inspector in Bankruptcy, Nelson.

(No. 178G.)
Colonial Secretary's Office, (Judicial Branch,)
Wellington, 2nd May, 1866.

Sir,—

I have the honour to acknowledge the receipt of your letter of the date quoted in the margin, (30th April, 1866,) and in reply am directed by Mr. Stafford to inform you that, having regard to the probable amount of business to be done by you as Inspector in Bankruptcy for the Provinces of Nelson and Marlborough, and to the fact that you are also about to be appointed Curator of Intestate Estates for the former Province, the Government is of opinion that your salary should be £300 per annum. The authorized expenditure of your Department is therefore as follows:—

	£	s.	d.
Inspector's salary	300	0	0
Clerical assistance	120	0	0
Office rent	30	0	0
Office furniture	25	0	0
Contingencies	25	0	0
	£500	0	0

I have, &c.,
R. G. Fountain,
(For the Assistant Law Officer.)

The Inspector in Bankruptcy, Nelson.

No. 15.

Copy of a Letter from Mr. R. F. Porter to the Hon. E. W. Stafford.

Sir,—
Wellington, 30th April, 1866.

I have the honour to forward herewith a statement in detail of the probable amount of expenditure of the Department of Inspector in Bankruptcy for the Province of Auckland during the year 1866-7.

I have, &c.,
R. F. Porter,
Inspector in Bankruptcy for the Province of Auckland.

The Honourable the Colonial Secretary.

	£	s.	d.
Inspector	247	0	0
Clerical assistance	156	0	0
Office rent	52	0	0
Office furniture	25	0	0
Contingencies	25	0	0
	£505	0	0

R. F. Porter,
Inspector in Bankruptcy, Auckland.

No. 16.

Copy of a Letter from Mr. R. G. Fountain to the Inspector in Bankruptcy, Auckland.

(No. 175 G.)
Colonial Secretary's Office, (Judicial Branch,)
Wellington, 2nd May, 1866.

Sir,—

I have the honor to acknowledge the receipt of your letter of the date quoted in the margin, (30th April, 1866) and in reply am directed by Mr. Stafford to inform you that he has authorized the following annual expenditure in connection with your department, viz.:—Inspector's salary, £247; clerical assistance, £156; office rent, £52; office furniture, £25; contingencies, £25. Total, £505.

I have, &c.,
R. G. Fountain,
(for the Assistant Law Officer.)

The Inspector in Bankruptcy,
Auckland.

No. 17.

Copy of a Circular from Mr. C. T. Batkin to Inspectors in Bankruptcy.

Sir,—
Treasury, Wellington, 17th May, 1866.

In order that funds may be provided for the expenses of the several Departments of Inspector in Bankruptcy, and for other charges incurred in giving effect to "The Debtors and Creditors Act, 1865," throughout the Colony, I am directed by the Hon. the Colonial Treasurer to request that the fees received by you under the 28th section of the Act may be paid to the Sub-Treasurer at Auckland on the 1st or 2nd of each month.

I have, &c.,
C. T. Batkin,
(For the Assistant-Treasurer.)

Mr. R. F. Porter, Inspector in Bankruptcy.
Auckland.

No. 18.

Copy of a Letter from Mr. W. R. E. Browne to Mr. C. T. Batkin.

Office of Inspector in Bankruptcy,
Wellington, 19th May, 1866.

Sir,—

I have the honor to acknowledge the receipt of your circular of number and date quoted in the margin, (680, 17th May, 1866) requesting me to pay into the Treasury on certain dates all fees received by me as Inspector in Bankruptcy.

In reply I would remark that the Act referred to in no way makes the Inspector in Bankruptcy a responsible officer as far as to the actual receipts or disbursements of moneys by him.

The estates of insolvents are vested in trustees who are personally responsible to the Government for the payment of all fees. It is the duty of the Inspectors to make returns to the Government of all fees that may be due by such trustees, but it is very doubtful how far the Act empowers the Inspector to personally sue the trustees for the amounts so due, or to take any other steps for their recovery than by a report to the Government or an order of the Supreme Court. I am of opinion that the Inspector, having made his report to the Government, it then lies with the Government to enforce the payment of the fees due by the respective trustees or sequestrators who may be in arrears.

I am endeavouring at present to obtain information from the various trustees of insolvent estates that will form the basis of the return of fees due, to be forwarded to the Government by me as Inspector.

I have, &c.,
W. R. E. Brown,
Inspector in Bankruptcy.

C. T. Batkin, Esq.,
Colonial Treasury.

No. 19.

Copy of a Letter from Mr. R. G. Fountain to the Inspector in Bankruptcy, Wellington.

(No. 239 G.)

Colonial Secretary's Office, (Judicial Branch,)
Wellington, 11th June, 1866.

Sir,—

I have the honor to acknowledge the receipt of your letter, of the date quoted in the margin, (19th May 1866) addressed to Mr. Batkin, and am directed by Mr. Stafford to state that you should report as provided by sections 15 and 18 of "The Debtors and Creditors Act Amendment Act, 1865," to the Supreme Court, in case sequestrators or trustees fail to account, and send a copy of such report to the Colonial Secretary.

I have, &c.,
R. G. Fountain,
(for the Assistant Law Officer.)

The Inspector in Bankruptcy,
Wellington.

No. 20.

Copy of a Letter from Mr. J. E. Graham to the Hon. E. W. Stafford.

Office of Inspector in Bankruptcy,
Christchurch, 26th May, 1866.

Sir,—

Having entered into the duties of my office, I respectfully beg to be informed on the following points:—

1. Office.—Will the Government provide Inspectors in Bankruptcy with a suitable office wherein to carry on their duties, it being necessary, as by the late regulations just issued, that the Inspector's books should be open to creditors during certain hours. At present I am using an upstairs room adjoining the Chamber of Commerce; but it is desirable that I should have an office on the ground floor, in a central situation, which I could obtain for about £50 a year.

2. Office furniture.—I require some little under this head, such as a desk for books, table, two chairs, and a small safe for the custody of books and vouchers—£25 to cover this expense in the first instance.

3. Stationery.—A list of requirements under this head, not including any forms or articles to be printed, I have handed the Sub-Treasurer, Mr. McKellar.

4. Books and printing.—Are the Inspectors permitted to choose the books required by the Act, or will they be printed, as also forms of notice, at Wellington?

5. Government *Gazette*.—May I be permitted to have a copy of the General Government *Gazette*, commencing at No. 29 of 1866?

6. Salary and expenses.—I have not as yet received any official intimation as to amount of my salary, or how the same is to be paid, nor do the regulations just issued point out what allowances are made for clerical assistance, or necessary and incidental expenses.

As I have heavy arrears of work to do for this Province, I shall esteem it a great favour if you will urge as soon as practicable my being put in possession of all the appliances required in my office, such as books, forms, and stationery.

I have, &c.,
Jas. E. Graham,
Inspector for Canterbury.

The Hon. E. W. Stafford, Colonial Secretary.

No. 21.

Copy of a Letter from Mr. R. G. Fountain to the Inspector in Bankruptcy, Canterbury.

(No. 234 G.)

Colonial Secretary's Office, (Judicial Branch,)
Wellington, 9th June, 1866.

Sir,—

I have the honor to acknowledge the receipt of your letter, of the date quoted in the margin, (26th May, 1866) and in reply am directed by Mr. Stafford to inform you that he has authorized the following expenditure in connection with your department, which however can be paid only as the fund set apart for that purpose admits of it, there being no other funds appropriated for the purpose:—Inspector's salary, £500 per annum; clerical assistance not exceeding £250 per annum; office rent not exceeding £50 per annum; furniture, £10. Total, £810.

I have, &c.,
R. G. Fountain,
(for the Assistant Law Officer.)

The Inspector in Bankruptcy,
Canterbury.

P.S.—The books required by Inspectors are being bound, and a copy of each will be forwarded to you as soon as ready. A supply of Forms is forwarded herewith. The Government Printer has been instructed to forward the *Gazette* to you regularly, and copies of the numbers asked for are transmitted herewith.

R. G. F.

No. 22.

Copy of a Letter from Mr. G. Brodie to the Hon. E. W. Stafford.

(No. 58.)

Office of Inspector in Bankruptcy, Otago,
Victoria Chambers, Manse Street, Dunedin, 28th May, 1866.

Sir,—

I have the honor to forward a draft proposed Bill amending the Debtors and Creditors Acts of 1862 and 1865, and in reference to its provisions have to state that it does not in any manner contemplate interfering with the principle of the present law of debtor and creditor, viz., the management of the insolvent debtor's estate by the creditors, but seeks to provide more definite machinery by which that duty may be performed, and whereby the rights of all interested may be better conserved.

To accomplish this object the Inspector has been made Interim Sequestrator, and he will hold the estate until the appointment of trustees. The machinery of the Sheriff's office is employed to get at the estate for the purposes of the sequestration. Increased powers are given to the Supreme Court to punish the debtor in cases of fraud, and a provision is made by which if the debtor is insolvent twice in three years the Judge may suspend or refuse his certificate.

Facilities for proof of debts; the means by which a searching examination of the insolvent as to his position and affairs, without employing the expensive machinery of the Supreme Court, are also provided. Punishment for those who may collude with the debtor is provided for—an omission in the Acts of 1862 and 1865. And generally to facilitate the speedy winding up estates, and more completely defining the machinery of the Act of 1865, as well as giving creditors further facilities for the management of insolvent estates.

The foregoing is but a brief sketch of the provisions of the Bill, and I will therefore take an early opportunity of furnishing a more elaborate synopsis of it.

I have, &c.,
Geo. Brodie,
Inspector in Bankruptcy.

The Hon. the Colonial Secretary,
(Judicial Branch,) Wellington.

Enclosure in No. 23.

A Bill to further amend "The Debtors and Creditors Act 1862" and to amend "The Debtors and Creditors Act Amendment Act 1865."

Preamble

Whereas it is expedient and necessary to further amend "The Debtors and Creditors Act 1862" and to amend "The Debtors and Creditors Act Amendment Act 1865."

Be it enacted by the General Assembly of New Zealand in Parliament assembled and by authority of the same as follows—

Short Title

1. The Short Title of this Act shall be "The Debtors and Creditors Acts Amendment Act 1866."

Court to appoint a day for hearing petition and make order for an *ad interim* sequestration to Inspector in Bankruptcy

2. Whenever any application shall be made by petition by debtor or creditor in the manner provided by the said "Debtors and Creditors Act 1862" on being satisfied of the truth of the matters contained in such petition it shall be lawful for any Judge of the Supreme Court to appoint a day for hearing such petition and at the same time the said Judge shall by order under his hand direct the *ad interim* sequestration of all the estate and effects of the debtor and shall by such order direct that all the estate and effects of the debtor shall be taken and held by the Inspector in Bankruptcy acting in and for the Province or district in which such debtor shall reside.

Lodging with Sheriff the order of sequestration and other proceedings thereon

3. The person obtaining any order for sequestration shall forthwith lodge the same with the Sheriff in and for the Province or district in which the debtor shall reside and the said Sheriff shall enregister the said order and note thereon the day and hour of its production and shall forthwith deliver or cause the same to be delivered to the said Inspector who shall cause the same to be notified in the Government *Gazette* published in and for the Province or district in which the debtor shall reside and every debtor obtaining any order for sequestration shall also lodge with the said Inspector a list containing to the best of his knowledge and belief the names and abodes of his several creditors.

Attachment upon the estate and how to be made

4. The said Inspector upon any estate being placed under sequestration in his hands shall by his messenger authorized by warrant under his hand enter and seize and lay attachment on the moneys securities for money estate and effects of the debtor wheresoever and with whomsoever they shall be and make an inventory thereof and it shall be lawful for the debtor or any of the creditors or for the agent of any of the creditors of the debtor to accompany the messenger and to be present with him while making out the inventory aforesaid.

Attachment of moveable property how to be made and penalty for defeating same

5. When any moveable property belonging to any debtor is attached as aforesaid in virtue of any order for the sequestration thereof the messenger making such attachment shall leave with the person in whose possession any such property is attached a copy of the said inventory having subjoined thereto a notice that the property of the debtor has been attached by the said messenger by virtue of an order for the sequestration thereof and that any person who knowing the same to have been so attached

shall dispose of remove retain embezzle conceal or receive the same or any part thereof with intent to defeat the said attachment is liable on conviction of such offence to be imprisoned with or without hard labour for any period not exceeding three years Provided always that it shall be lawful for such messenger to secure on the premises by sealing up any repository room or closet any articles which in the discharge of his duty it shall seem to him expedient so to secure causing no unnecessary hindrance or inconvenience to any party by so doing or to leave some person on the premises in custody thereof and the said messenger shall forthwith report his execution of the said attachment to the said Inspector who shall take such measures and give such directions for the safe custody of the said property as to him shall seem fit.

Inspectors to aid under rule of Court

6. The Inspectors in Bankruptcy in their respective Provinces or districts shall aid and assist in carrying this Act and the said recited Acts and the provisions thereof into effect and for that purpose shall do and execute all such matters and things as they shall be required to do and execute by any rule or order of the Supreme Court or any Judge thereof by virtue of this or the said recited Acts.

Sheriff or his deputies to execute duties of messenger

7. The Sheriff in and for the Province or district in which the debtor shall reside either by himself or his deputies being thereunto required by the Inspector in Bankruptcy of the said Province or district shall within the districts in which they have respectively been or shall be appointed to act do and execute the duties directed by this Act or by any rule or order of the Supreme Court or any Judge thereof in pursuance of this Act to be done and executed by a messenger and shall receive to their own use for such service out of the assets of any debtor's estate as to which they may be so employed such reasonable fees as are or shall be allowed by the Supreme Court for their service.

Effect of order of sequestration upon the estate of debtor

8. Every order for the sequestration of a debtor's estate under this Act shall from the time of the making thereof have the effect in the law of divesting the debtor of all his estate rights and property of every kind and vesting the same in the Inspector of Bankruptcy acting for the estate for the time being as effectually and in the same manner and to the same extent in all respects as is provided and declared in and by the eighth section of "The Debtors and Creditors Act Amendment Act 1865" shall be the effect of every order for the sequestration of a debtor's estate which may have been declared a vesting order until the appointment of a trustee or trustees as hereinafter provided.

Effect of order of sequestration upon judgments

9. Further execution of any judgment or process against the person or estate of any debtor shall after any order for the sequestration of such estate is lodged with the Sheriff for registration be stayed and it shall and may be lawful for the person having right to such judgment to prove his debts and costs against the sequestrated estate and to take the benefit thereof upon distribution of the said estate rateably with the other creditors and where any property has been attached by legal process for satisfaction of any judgment and has not been sold such property shall be placed under sequestration in the same manner as any other part of the debtor's estate.

Effect of order of sequestration upon actions against debtor

10. No action shall be brought against any debtor for any debt or demand proveable against his estate and all proceedings in any action then pending shall upon any order being made for the sequestration of such estate in virtue thereof be stayed and it shall and may be lawful for the plaintiff in such action to prove his debt together with the taxed costs of it then incurred against the sequestrated estate and to take the benefit thereof upon distribution of the said estate Provided however that all actions pending against any debtor for damages alleged to have been sustained from any injury or wrong or breach of any contract committed by him such damages being uncertain or for the recovery of any claim unliquidated as to its amount and all proceedings therein shall upon any order being made for the sequestration of his estate be stayed until a trustee or trustees shall be elected for the administration thereof if the sequestration shall remain in force so long and thereupon the plaintiff in such action after summoning the trustee or trustees to take up and defend the said action may proceed to obtain the judgment of the Court thereon and the said judgment when recovered together with the taxed costs of suit shall be a debt proveable against the said estate.

Effect of order of sequestration on bankrupt in custody under legal process

11. Any debtor who at the time any order for the sequestration of his estate is lodged with the Sheriff for registration shall be in custody of the said Sheriff or of any gaoler or officer either under mesne process or in execution on any judgment for any debt or demand proveable under this Act shall be entitled to be on the order of any Judge and shall be forthwith discharged out of custody in respect thereof either absolutely or on such condition or conditions as such Judge shall think fit to impose.

Effect of order of sequestration upon action commenced by bankrupt

12. All actions commenced by any person whose estate shall afterwards be placed under sequestration as bankrupt for any debt or demand due to the said estate and all proceedings therein shall upon the order of such sequestration being made be stayed until the trustee or trustees thereafter appointed for the administration of the said estate shall make election to prosecute or discontinue the same and the trustee or trustees shall be bound to make such election within six weeks after notice to that effect shall be served upon him or them by any defendant in any such action or otherwise shall be deemed to have abandoned the same Provided however that any debtor shall be permitted to continue in his own name and for his own benefit any action commenced by him previous to his bankruptcy for any personal injury or wrong done to himself or to any of his family.

Appointment and notice by the Inspector of two public meetings of creditors for proof of debts and election of trustees

13. The Inspector in Bankruptcy shall after any estate has been placed under sequestration upon surrender thereof as bankrupt or has been adjudged to be sequestrated forthwith cause notice thereof to be given in the Government *Gazette* of the Province wherein the debtor shall reside and in at least one local newspaper published in the said Province and shall thereby appoint two public meetings of the creditors of such estate at such times and places as he shall deem most convenient for all the parties concerned the first for receiving proof of debts against the said estate and the second for the same purpose and for electing a trustee or trustees for the collection administration and distribution thereof and such publication shall be deemed notice thereof to all persons and the times and place so fixed for the holding of any of the meetings aforesaid may on cause shown to the said Inspector by any party dissatisfied with the appointment so made be altered of which alteration notice shall be forthwith given in the said Government *Gazette* Provided always that if it shall appear to the said Inspector before causing notice to be given as aforesaid that the goods and effects of the said debtor available for the payment of his debts are not above the value of one hundred pounds he shall specify the same in the said advertisement and shall therein also give notice that unless it shall be shown at the first meeting

called as aforesaid that the goods and effects of the debtor exceed the said value of one hundred pounds the Inspector holding such meeting will summarily proceed to rank the debts which shall be proved at such meeting according to their respective preferences and to direct the proceeds of the bankrupt estate to be forthwith distributed accordingly by a trustee or trustees to be then elected by the greater part of the creditors in number or value attending at such meeting and in such case the debtor at such first meeting attend before the creditors to account for his bankruptcy and shall being thereunto required do and perform all such other matters and things as may be required of him by order of the Inspector for the better administration of his estate and if at the said first meeting it shall still appear to the Inspector before whom the same is holden that the available assets of the said estate do not exceed the amount of one hundred pounds it shall and may be lawful for the said Inspector to rank the creditors who shall prove their debts at such meeting according to the legal order of their preference and for the creditors to elect a trustee or trustees for the collection administration and distribution of the estate of the said debtor according to the order of ranking and to direct the said trustee or trustees forthwith to collect administer and distribute the same accordingly and further at the said meeting the said Inspector shall execute all the powers and authority which may be executed by him at any meeting of creditors under the provisions of this Act and shall also do and perform thereat all matters and things required to be done for the final settlement of the said estate and the majority of the creditors present at the said meeting shall then determine what part of the wearing apparel bedding household furniture and tools of trade of the debtor shall be excepted from the sale of his moveable property and shall be allowed to him and shall also give to the said trustee or trustees such directions as to the management of the said estate as to them shall seem fit and no other meeting shall thereafter be holden unless upon cause shown the said Inspector shall think fit to order the same.

Hearing of petition

14. In case it shall happen that the several meetings of creditors last aforesaid shall not have been holden before the day appointed by the Supreme Court for the hearing of a petition of a debtor the hearing of the said petition shall be adjourned by the Court until any day after the said meetings shall have been holden that the said Court may think to appoint.

Where meetings of creditors to be holden

15. In all cases where any meetings of creditors for the proof of debts or for the election of trustees shall be appointed the same shall take place before the Inspector in Bankruptcy acting in and for the Province or district wherein the debtor shall reside and the said Inspector shall take the votes of the creditors and declare the person or persons elected trustee or trustees of the said estate.

Meetings of creditors how to conducted

16. All business which may be transacted at any meeting of creditors called for the transaction of any business whatsoever either under the provisions of this Act or the said recited Acts shall be conducted in accordance with the rules of the Supreme Court which are now or hereafter may be made for the conduct of meetings of creditors and the transaction of business.

Attendance delivery of inventory and surrender by debtor at the meeting for electing trustees

17. At the meeting for electing trustees and at any adjournment thereof the debtor shall attend before the creditors to account for the said bankruptcy and shall being thereunto required by the creditors lodge with the Inspector to be by him delivered to the trustee or trustees when confirmed a true inventory of the whole of such estate and effects real and personal wheresoever the same may be situated and of all estate and effects in expectancy or contingency or to which the debtor may have any eventual right and all debts due to and by him to the best of his knowledge and belief and all books of accounts papers writings documents bills and vouchers relating to the said estate which are in his custody or power and the said debtor shall upon being thereunto required surrender the said books papers writings documents bills and vouchers to the Inspector to be by him delivered to the trustee or trustees when confirmed.

Proof of debts

18. Every creditor shall prove his debt against the said estate by affidavit or otherwise to the satisfaction of the Inspector who shall admit any debt or reject the same as not proved subject to appeal from his decision to any Judge of the Supreme Court and it shall and may be lawful for the said Judge on the application of any party interested finally to admit or reject any debt admitted or rejected by the said Inspector or to allow any action which may have been instituted for the proof or recovery of any such debt against the debtor prior to the sequestration and which has in consequence thereof been stayed to be proceeded in after the election of a trustee or trustees shall have taken place and after the trustee or trustees so elected shall have been duly summoned to take up and defend such action and if the plaintiff shall thereafter obtain judgment thereon he shall be ranked on the bankrupt estate for the amount of such judgment.

What debts proveable in cases of mutual credit

19. All debts due by any debtor at the time of adjudication or surrender may be proved against his estate and when there has been mutual credit given by the debtor and any other person or where there are mutual debts between the debtor and any other person upon which a set off can by law be pleaded on either side the Inspector taking the proof of debt shall thereupon state the account between them and shall set one debt or demand against the other and what shall appear due on either side on the balance of such account and no more shall be allowed to be proved or claimed or paid on either side respectively Provided that the person claiming the benefit of such set off had not when such credit was given or when the cause of his debt accrued notice of the said bankruptcy and provided always that it shall and may be lawful for any Judge of the Supreme Court on application of any person interested who shall consider himself aggrieved by any such decision of any Inspector to review the same and to pronounce such judgment or to direct or allow such further proceedings as to the Judge shall appear just and proper.

No person eligible for election as Trustee unless present or assenting

20. No person shall be eligible to be elected as a trustee in any sequestrated estate unless he shall be present at the meeting of creditors whereat he shall be elected and signify his assent thereto or if he be absent therefrom unless he shall have signified in writing his consent to such election.

trustees elected to be reported to Court and confirmed

21. Whenever any trustee or trustees shall have been elected as aforesaid it shall be the duty of the Inspector to report the same to the Supreme Court or a Judge thereof whereupon the said Court or Judge may confirm the appointment of the said trustee or trustees or make such other order for the election of a fresh trustee or fresh trustees as may seem just And in case after due notice has been given to the creditors in manner aforesaid the said creditors shall neglect or fail to elect a trustee or trustees then it shall be lawful for the Inspector to appoint a person or persons to act as trustee or trustees and the appointment of such person or persons to act as trustee or trustees may be confirmed by the Supreme Court or a Judge thereof.

22. Every order made for confirming any trustee or trustees shall so soon as made have the effect to divest the Inspector of and to vest in such trustee or trustees for the uses and purposes of the sequestration all the estate rights and property to which the debtor was at the time of the sequestration of his estate or at any time during the continuance of the said sequestration shall become entitled whether in possession reversion remainder or expectancy and that without any necessity for any cession delivery conveyance or assignment being executed by the debtor or by the Registrar of the Supreme Court or by any other person on his behalf and all and singular the powers privileges rights duties and liabilities in all respects which by the said recited Acts now attach or belong to or devolve on or which may lawfully be enjoyed or exercised by the trustee or trustees for the time being of a debtor's estate shall after the passing of this Act in like manner and to the same extent attach and belong to and devolve upon and may be claimed enjoyed and exercised by the trustee or trustees of every debtor's estate sequestrated after the passing of this Act as effectually to all intents and purposes as if such cession delivery conveyance and assignment had been made or executed by the debtor or by the registrar on behalf of the debtor in the manner in and by the said recited Acts contained and provided. Effect of confirmation of trustees

23. The trustee or trustees of any debtor's estate shall so soon as may be and not later than six months after their appointment unless upon application to the Supreme Court or a Judge thereof upon sufficient cause to the satisfaction of the said Court or Judge further time be given for that purpose frame and lay before the Inspector acting in and for the Province or district wherein the estate shall have been sequestrated an exact account of the balance of the said estate containing the proceeds of all sales and debts collected and an account of all debts still outstanding and an inventory of all property and effects still unsold and also all debts due by the same estate and shall form a plan of distribution of the assets of the said estate specifying first such creditors as are entitled to any preference in the order of their legal preference and secondly the concurrent creditors and the balance remaining for division amongst them. Account and plan of distribution and when to be laid by trustees before the Inspector

24. As soon as the said Inspector shall receive from the trustee or trustees any such account of the estate and plan for distribution the same shall lie open in his office for the inspection of the creditors a reasonable time to be appointed by the said Inspector not being less than fourteen days from the advertisement thereof according to the distance of the residence of any creditor who has proved a debt against the said estate and the said trustee or trustees shall cause notice thereof to be given in the Government *Gazette* for the Province or district wherein the said estate shall have been sequestrated. As to inspection and notice thereof

25. It shall and may be lawful for the debtor or any party interested in the estate under sequestration and for any creditor who may conceive himself aggrieved by the said plan of distribution within the time aforesaid to enter his objection in writing with the said Inspector stating the grounds thereof and also it shall and may be lawful for the Supreme Court or any Judge thereof to permit such objection to be entered at any time before the final confirmation of the said plan upon sufficient cause to be shown to the satisfaction of the said Court or Judge and upon such terms as the said Court or Judge shall impose. As to objection of creditors thereon

26. Any person as aforesaid objecting to the said account or plan of distribution shall apply to the Supreme Court calling upon the trustees and also upon the party whose interest might be affected thereby to show cause why the said plan should not be altered or amended as the case may be and thereupon it shall and may be lawful for the said Court upon hearing the said parties to make such order thereon as to the said Court shall seem fit Provided that whenever any alteration or amendment shall be ordered in the said plan whereby the interest of any party who has not made an appearance in the said Court shall be affected the same shall again lie open for inspection of the creditors and notice thereof shall be given as aforesaid. As to proceedings before the Court thereon

27. It shall and may be lawful for the trustee or trustees after the expiration of the time appointed for the inspection of the said account and plan of distribution and no objection being entered thereto or if any objection has been stated after the Court has made order thereon as aforesaid to apply to the Supreme Court praying that the said plan may be allowed and confirmed by the Court and thereupon it shall and may be lawful for the said Court to allow and confirm the same and such allowance and confirmation shall have the effect of a final judgment of the said Court as between the debtor and the creditors of such debtor respectively and as to the amount of any debt therein specified. As to confirmation by the Court and effect thereof

28. After confirmation and allowance of the said account and plan of distribution the trustee or trustees shall upon the demand of any or either of the said creditors distribute the said estate according thereto. As to distribution of estate

29. Whenever the accounts of the trustee or trustees and plan of distribution of any sequestrated estate shall have been confirmed as aforesaid the said Court or Judge shall direct a day to be named not later than one year from the date of the appointment of such trustee or trustees whereon the said trustee or trustees shall file with the Inspector in Bankruptcy as aforesaid a statement of his or their accounts showing the total amount of money received by him or them on account of the said estate the amount paid of the several per centages or pound rates payable under the said recited Acts the amount of costs charges and expenses paid by him or them in or about the administration of the said estate the amount of money paid by him or them on account of dividends and all other payments made on account of the said estate and the amount of dividends (if any) then remaining in his or their hands on account of the said estate undistributed together with a certificate in writing stating the names and addresses of the person or persons to whom the said dividends are due and also the amounts due to each of the said person or persons And the said Court or Judge shall at the same time also direct the said trustee or trustees to pay any moneys which may so remain undistributed as aforesaid into the Colonial Treasury or to the Colonial Sub-Treasurer in and for the Province or district as aforesaid to the credit of a fund to be called the "Unclaimed Dividends Fund" And upon the trustee or trustees filing the said account and certificate and paying the said moneys as aforesaid the said trustee or trustees shall be discharged from any future liability in respect of any matter or thing which may thereafter arise concerning the said estate And the remedy of any creditor or creditors thereafter claiming any dividend on account of the said estate shall be by application to the Supreme Court or to any Judge thereof in chambers whereupon the said Court or Judge upon being satisfied of the validity of such As to final account of Trustees and unclaimed dividends.

claim shall make an order for the payment of the same And the Colonial Treasurer or Sub-Treasurer for the time being shall upon receipt of the said order pay the amount ordered to be paid therein accordingly And it shall be lawful for the said Court or Judge before making any order thereon to require the said Inspector to report upon the said claim Provided always that nothing herein contained shall be construed to relieve the said trustee or trustees from any liability in respect of any act deed default matter or thing made done omitted committed or suffered by him or them in the administration of the said estate at any time before the filing of the said account and certificate.

As to failure to file final account.

30. If after the expiration of one calendar month next succeeding the day named as aforesaid for the filing of the said account and certificate with the said Inspector and payment of moneys as last aforesaid the trustee or trustees shall neglect or fail to file the said account and certificate and pay the said moneys and no just cause being shown for such neglect or failure the said trustee or trustees shall be charged and chargeable in addition to such moneys so remaining undistributed and unpaid as aforesaid with legal interest on such moneys from the day hereinbefore specified for the payment thereof until the filing of the said account and certificate and payment as aforesaid and such further sum by way of interest thereon not exceeding the sum of twenty pounds per cent. per annum as the said Inspector shall think fit And further if after the expiration of the said one calendar month the trustee or trustees shall upon being required thereto by the Inspector in writing still neglect or fail to file such account and certificate and pay the said moneys as aforesaid the said trustee or trustees shall be deemed to be a fraudulent trustee and shall be liable to be dealt with accordingly.

Inspector to report before final order granted.

31. Before the Supreme Court shall make its final order discharging any debtor and his estate from his debts liabilities and engagements the Inspector in Bankruptcy as aforesaid shall make his report touching the conduct of the said debtor during the period of his bankruptcy and also the gross amount realized out of the estate of the said debtor and the said Inspector shall also report to the said Court whether it appears that the said debtor has been bankrupt during any time within three years next preceding his said bankruptcy And upon taking the said report into consideration it shall be lawful for the said Court in its discretion to grant suspend or refuse the said final order.

False answers before Inspector to be perjury.

32. Every person lawfully summoned and examined upon oath before or by any Inspector in Bankruptcy who shall at such examination wilfully make any false answer to any lawful question put by or before the said Inspector such person shall be deemed guilty of perjury and on conviction thereof shall suffer any punishment provided by law for such crime.

As to offences of removing embezzling &c. any property under attachment.

33. If any person shall dispose of remove retain conceal embezzle or receive any moveable property moneys or securities for money belonging to any debtor's estate which has or have been attached by virtue of any order for the sequestration thereof knowing the same to have been so attached and with intent to defeat the said attachment or shall hinder or obstruct the messenger or other person authorized to make the same such person shall on conviction thereof suffer imprisonment with or without hard labour for any period not exceeding three years.

As to offence of knowingly receiving any fraudulent alienations &c. from debtor.

34. If any person shall receive or accept any alienation transfer gift surrender delivery mortgage or pledge made by any debtor of any part of his estate moneys or securities for money effects or credits with intent to defraud the creditors of the debtor knowing at the time the same to be fraudulently made such person shall on conviction thereof suffer imprisonment with or without hard labour for any period not exceeding three years.

This Act not to repeal former Acts.

35. Nothing in this Act contained shall be taken to repeal the said recited Acts or any part thereof save so far as the said Acts or either of them may be inconsistent with or repugnant to this Act.

No. 24.

Copy of a Letter from Mr. G. Brodie to the Hon. E. W. Stafford.

(No. 69.)

Office of Inspector in Bankruptcy, Otago,
Victoria Chambers, Manse Street, Dunedin, 6th June, 1866.

Sir,—

Referring to my letter accompanying the proposed Bill for amending the laws of Debtor and Creditor, of number and date as per margin, (No. 58, 28th May, 1866) I have the honor to enter more fully into the defects which appear to me to exist in the present law, and the provisions which I propose to adopt to remedy those defects.

I desire particularly to point out that in framing the proposed Bill, I have studiously endeavored to preserve the principle of the present law, namely, the management and winding up of insolvent estates under the direction of the creditors. And whilst doing so, I have endeavored to provide a simple and inexpensive mode by which the debtor and the trustees shall be subject to control.

Since writing my letter above referred to, Mr. Justice Richmond has, in his address to the Grand Jury on the 1st instant, expressed his opinions relative to this subject (see report *Otago Daily Times* of 2nd instant), and stated that "official assignees" being necessary, the Court had adopted the course of appointing to the administration of estates some other person than a creditor. Mr. Justice Richmond, in referring to the Scotch law, alluded to the necessity that has there been found to exist for the appointment of an "official interim factor" to take control until the administration, as ordered by the creditors, has been organized.

It is in precisely this direction that the provisions of the proposed Bill seek to amend the present law by empowering the Inspector to do all things necessary to the preservation of the estate, until the trustee or assignee shall have been elected by creditors and confirmed by the Court, and filling that hiatus in the management of estates which is left by the practical operation of the present law between the time of presenting the petition and the appointment of trustees.

I have to submit that the present method adopted by the Court of appointing official assignees to the administration of estates, in no way remedies the defects sought to be amended by the proposed Bill, for it is during the period which elapsed before the appointment of an assignee, whether he be a creditor or a person appointed by the Court, that the mischievous action of the present law is felt.

If, however, Mr. Justice Richmond proposes to alter the law altogether, and adopt the Act at present in force in Victoria, where official assignees have the uncontrolled management of insolvent estates, then I am of opinion that evils of quite as flagrant a character as those complained of under the Act of 1862, will be the result. The system pursued in Victoria leaves the official assignee practically beyond the reach of supervision or inspection, and the result is that for years past they have been found to be quite as great a nuisance as the trustees or sequestrators who were appointed under the Debtors and Creditors Act of 1862. When estates are placed in the hands of these assignees there is no practical control over the manner in which the assets in any estate may be realised. By way of illustration, I may mention that debts are compounded, whereby sums bearing no relation to the amount of the debt which the insolvent has placed in his schedule as good are accepted as payment in full by the official assignee. I have known in one instance, and it is one of many, wherein a debt of £673 was compounded for £20, although the debtor could have paid at least one half of the former amount, but, as he resided some 120 miles from Melbourne, the assignee would not take the trouble to ascertain his ability to pay.

No doubt it may be said that it is the duty of the creditors to ascertain what is the value of any insolvent estate; but this is never done, because the Act gives them no remedy except through the expensive machinery of the Supreme Court, and the official assignee, being comparatively secure, puts himself to as little trouble as possible.

If Mr. Justice Richmond in using the term "official assignee," refers to the system which is the law of Great Britain by which there is an official assignee joined with a trade assignee, the one being a Government officer and the other chosen by the creditors, then I am of opinion that he proposes to establish too elaborate a machinery and one not adapted to the wants and requirements of the Colony.

The proposed Bill embraces most of the subjects glanced at by Mr. Justice Richmond, and, in addition, provides an easy and effective machinery for the speedy and faithful winding up of insolvent estates. It contains no principle such as those advocated by Mr. Justice Richmond in the concluding portion of his address, and does not propose to alter the relations in which the insolvent debtor at present stands to society.

I may add that it has been observed, and it would appear that the Amendment Act of 1865 was the result of that observation, that it is not only the debtor who requires supervision and official direction, but that the trustee or assignee, being practically uncontrolled in their administration of a debtor's estate should also be subject to the same process. This has been, to a certain extent, provided for in the Amendment Act of 1865. Mr. Justice Richmond, however, has made no allusion to the subject whatever; yet it is in this particular that the public complain mostly of the operation of the Bankruptcy laws of New Zealand.

I have endeavored in the proposed Bill to provide a method, by which it will be obligatory on the creditors, in order to participate in an estate, to come forward within a limited period, and prove their claims, and take some interest in the administration of the estate by electing trustees, either from their own body or otherwise; and also the means by which it will be obligatory upon trustees, within a limited period, to publish an account to the creditors (by depositing the same with the Inspector for inspection by them) of the result of their administration and the method in which they purpose to deal with the balance of assets (if any) remaining after payment of the expenses of administration.

I have, &c.,

The Hon. the Colonial Secretary, (Judicial Branch) Wellington.

GEO. BRODIE, Inspector in Bankruptcy.

Enclosure in No. 24.

ANALYSIS of the proposed Bill for amending "The Debtors and Creditors Act, 1862," and the Amendment Act, 1865, showing those portions of the existing law which are sought to be amended.

Sections 1 to 8 of "The Debtors and Creditors Act, 1862," which enact who may petition for the sequestration of a debtor's estate, and the course to be adopted to effect this object, are not contemplated to be effected by the proposed Bill.

I.—As to procedure on acceptance of a petition.

Section 9 of "The Debtors and Creditors Act, 1862," provides: 1st, that the Judge may appoint a day for hearing; 2nd, the duties of the petitioners thereupon.

Section 17 of "The Debtors and Creditors Act, 1862," provides that the Judge may, upon application of a debtor or creditor, appoint an interim sequestrator.

Section 8 of "The Debtors and Creditors Act Amendment Act, 1865," gives a discretion to the Judge to make the order for sequestration a vesting order, and describes the effect that such order shall have.

It will be seen, therefore, that upon the acceptance of a petition, the only duty the Judge is called upon to perform is "to appoint a day for hearing," and he may in his discretion appoint an interim sequestrator either upon the application of a person interested or of his own motion.

In practice it has been the custom of Judges not to appoint an interim sequestrator, unless application be made by some person interested.

The effect of this has been to leave the estate of the debtor absolutely unprotected from fraud or disposal until the order upon hearing.

No provision is made in the present law to stay actions or executions; a judgment creditor may therefore, if in possession, sweep the estate away, to the detriment of the general body of creditors.

The Amendment Act, 1865, by the appointment of Inspectors in Bankruptcy, has provided a machinery which might easily be adapted to remedy these defects, and by aid of which he would be enabled to exercise the very important functions with which he is invested with considerably more facility than at present exists for their exercise.

PROPOSED BILL.

Clause 2 therefore provides that upon the acceptance of a petition, the Judge, in addition to appointing a day for hearing, shall make an order for the sequestration of the estate in the hands of the Inspector.

Clause 8 describes the effect of such order upon the estate of the debtor, viz., vesting the same in the Inspector as fully as is described in section 8 of the Amendment Act, 1865, until the appointment of trustees.

Clauses 3, 4, and 5 provide what shall be the procedure upon the order for sequestration, viz., 1st. The order is to be lodged and registered with the Sheriff, and delivered to the Inspector, who shall notify the same in the *Gazette.* 2nd. The Inspector shall immediately, under warrant to his messenger, seize and attach the estate of the debtor; and the mode of attaching moveable property is described.

Clause 6 enjoins the Inspector to aid and assist in carrying the law into effect.

Clause 7 provides that the Sheriff and his deputies shall perform the duties of messenger.

Clause 9 provides that all judgments against debtor be stayed, and where any property may have been attached by Sheriff by virtue of any judgment and not sold, such property shall be placed under sequestration and the creditor left to prove his claim for debt and costs with general body of creditors.

Clause 10 stays all actions against debtor. Plaintiff to prove his debt and costs as above.

Clause 11 entitles debtor in custody to be discharged.

Clause 12 stays actions wherein debtor is plaintiff until trustees are appointed, whereupon trustees shall elect to prosecute or discontinue proceedings within a limited time, or be deemed to have abandoned the action.

Provisos to Clauses 10 and 12 limit the operation of these clauses with regard to certain actions.

Clause 13 provides that the Inspector shall appoint two public meetings of creditors for proof of debt and election of trustees.

Clause 15 that these meetings be held before Inspector.

Clause 16 that the meetings shall be conducted in accordance with rules of Supreme Court.

Clauses 18 and 19 provide how proofs of debt are to be made and admitted.

Clause 20 provides that no person shall be elected trustee without his previous consent.

Clause 21 provides that trustees so elected to be confirmed by Supreme Court. If no election, Inspector to nominate a trustee.

Clause 17 obliges the debtor to submit himself to such meetings for examination by creditors, to account for his insolvency, and to deliver an inventory of his property, and hand over all his books and papers.

Clause 13 provides in certain cases that Inspector may proceed summarily to the winding up of estate.

Clause 22 describes the effect of the confirmation of trustees.

II.—AS TO THE ACCOUNTS OF TRUSTEES AND DISTRIBUTION OF ASSETS.

No direction is given in the present law (Acts 1862, 1865) as to the rendering accounts.

PROPOSED BILL.

Clause 23 provides that within a limited period the trustees shall lodge with the Inspector a full account of the estate, and a plan of distribution.

Clause 24. Which shall lie open for inspection by creditors for a time, to be notified by advertisement.

Clause 25. During which any person aggrieved thereby may object.

Clause 26. Proceedings before Court on objections.

Clause 27. Confirmation of accounts and plan of distribution, and effect thereof.

Clause 28. Whereupon trustees to distribute dividends.

III.—AS TO FINAL ACCOUNTS OF TRUSTEES AND DISPOSAL OF UNCLAIMED DIVIDENDS.

Clause 29. The Court to limit time for filing a final account. Dividends then unclaimed to be paid into Treasury, to be thereafter paid by order of Court.

Clause 30. Penalty for non-compliance.

IV.—AS TO FINAL DISCHARGE OF DEBTOR.

Clause 31. Inspector to report to Supreme Court as to debtor's conduct before final order of discharge.

V.—PENAL CLAUSES.

Clauses 32, 33, and 34.

No. 25.

Copy of a Letter from Mr. G. BRODIE to the Hon. E. W. STAFFORD.

Office of the Inspector in Bankruptcy, Otago,
Victoria Chambers, Manse Street, Dunedin, 11th June, 1866.

SIR,—

Referring to my letter addressed to you of the number and date quoted in the margin, (No. 69, 6th June, 1866) and containing an analysis of the proposed Bill to amend "The Debtors and Creditors Act, 1862," and "Amendment Act, 1865," I find that I have omitted to make a provision for the finding of unclaimed dividends, the interest derivable therefrom being applied in payment of the expenses of the working of the Act.

I have therefore to suggest that a clause embodying this principle be inserted.

I have, &c.,
GEO. BRODIE,
Inspector in Bankruptcy.

The Hon. the Colonial Secretary,
(Judicial Branch,) Wellington.

No. 26.

Copy of a Letter from Mr. F. Nutter to the Hon. E. W. Stafford.

Sir,— Invercargill, 19th June, 1866.

I have the honor to lay before you the following case for instructions thereon.

The trustees of the assigned estate of Messrs. Henderson, Bonar and Co., are Messrs. McPherson, Buchanan, and Bonar, sen., the latter father-in-law and father of the insolvents. The two former report to me their inability to proceed with the business of winding up the estate by the action taken by the other trustee, Mr. Bonar, who frustrates all attempts made in obtaining a settlement of the affairs of the estate or inquiry into the conduct of the insolvents. I have had Mr. Bonar before me, and I stated to him the nature of the complaint against him; he denies that the trustees have any cause for the report they have made to me. It is evident there is a degree of ill feeling existing between them which, I think, altogether precludes the possibility of the estate being wound up under existing circumstances, and the interests of the creditors will consequently suffer. I have already received complaint from the creditors on the subject of the delay on the part of the trustees. I am aware that by the 15th clause of the Debtors and Creditors Amendment Act, the Inspector is required to report to the Supreme Court, or a Judge thereof, the conduct of such trustees who do not faithfully perform their duties; but, as I am of opinion that immediate action in this matter should take place, and the Judge will not be at Invercargill till the next session of the Supreme Court, in July next, and it may be August, I thought it advisable to write you at once on the subject.

I experience great difficulty in collecting the fees payable, as the trustees, with few exceptions at present, repudiate altogether their liability either for the payment of fees, or to my supervision of their estates, asserting that they do not come under the meaning of the Acts; but I shall be able, I have very little doubt, to lead them to take a different view of the matter, and to convince them that the appointment of an Inspector, especially at Invercargill, will be of great benefit, where the need of inquiry into the manner in which some of the assigned estates have been worked is very evident.

I have, &c.,

The Hon. Colonial Secretary, Wellington. F. Nutter.

No. 27.

Copy of a Letter from Mr. R. G. Fountain to the Inspector in Bankruptcy, Southland.

(No. 286 G.) Colonial Secretary's Office, (Judicial Branch,)

Sir,— Wellington, 11th July, 1866.

I am directed to inform you, in reply to your letter of the 19th ultimo, that proceedings ought to be taken by the creditors, but if they will not do so the course to be pursued by you under the circumstances is to prepare a report for the Judge, and instruct a solicitor to take out summonses, calling upon trustees to show cause why they should not be removed. As your object is simply to see that the fees are properly paid, it will be advisable to hesitate before taking extreme measures.

I am also to inform you that you are not to accept this as a general authority to employ a solicitor whenever you may deem his services to be necessary.

I have, &c.,

The Inspector in Bankruptcy, Southland. R. G. Fountain, (for the Assistant Law Officer.)

No. 28.

Copy of a Letter from Mr. F. Nutter to the Hon. E. W. Stafford.

Sir,— Invercargill, 2nd July, 1866.

I have the honor to intimate to you, in explanation of the small amount of fees paid by me this day to the Sub-Treasurer, viz., £13 13s. 11d., that the trustees of the assigned estates which are liable for payment of the heaviest amounts in fees, have not yet paid those fees, alleging their non-liability. I had reason for hoping that they would long ere this have come to the conclusion to pay the amounts without further trouble. I have received from them no definite refusal to pay; they generally request further time, as they are unable to come to an unanimous opinion on the matter among themselves, and trustees can only act with unanimity. I am afraid extreme measures will have to be adopted in order to compel payment.

I have the honor to apply for information on the following two points, viz.:—

First, does non-compliance on the part of the debtor and his creditors with any one particular condition in clause 23 of the Act of 1862 interfere with the liability of the estate in payment of the fees due under the Act? In illustration of my meaning I will instance a case:—In the largest assigned estate in Invercargill it appears that three-fourths in value of the creditors have not assented in writing to the deed of assignment, and on that ground the trustees refuse payment of the fees.

The second point is, the amount on which the fees are payable. The trustees assert the meaning of the Act to be that the fees are payable on the amount divisible among the creditors after payment of all expenses incurred in realizing such amounts, but it appears to me the fees should be levied on the gross amount received, irrespective of all expenses of collection.

I have, &c.,

The Hon. the Colonial Secretary, Wellington. F. Nutter.

No. 29.

Copy of a Letter from Mr. R. G. Fountain to the Inspector in Bankruptcy, Southland.

(No. 294 G.) Colonial Secretary's Office, (Judicial Branch,)

Sir,— Wellington, 13th July, 1866.

I have the honor to acknowledge the receipt of your letter, of the date quoted in the margin

(2nd July, 1866) and in reply am directed to inform you, as regards your first question, that the Attorney-General is of opinion that the debtor and creditors, not having complied with the provisions of the Act, are not entitled to the privileges and advantages conferred by it, and consequently are not bound by its duties.

In answer to your second question, I am to state that the Attorney-General is disposed to think that the actual cost of realization ought to be first deducted, not including law expenses, but that you should obtain a judicial decision thereon.

I have, &c.,
R. G. FOUNTAIN,
(for the Assistant Law Officer.)

The Inspector in Bankruptcy,
Southland.

No. 30.

Copy of a Letter from Mr. J. E. GRAHAM to the Hon. E. W. STAFFORD.

Office of Inspector in Bankruptcy,
Christchurch, N.Z., 19th June, 1866.

SIR,—

I have the honor to acknowledge the receipt of the letters quoted in the margin, from the Assistant Law Officer informing me that a sum, not exceeding the rate of £800 per annum, may be drawn for my department to be paid as the funds set apart for that purpose admit of it. In admitting the justice of this arrangement, may I be permitted to ask how I am to be informed from time to time the state of this fund, as there are expenses going on in my office, such as rent and clerk's salary, which must be met periodically.

Directing me to take official cognizance of any trustees or sequestrators who do not account for the fees payable under the Act of 1865.

It should be my duty to see this order strictly adhered to, but at the same time, I may be permitted to remark that it will be no easy task at first to obtain returns from trustees or sequestrators of moneys received by them.

I fear, in common with the other Provinces, that there are a great many estates which I have been called upon to supervise that will hardly pay costs. Creditors have been indolent, and receivers and trustees having had no check on their actions, have wasted all the funds realized, and are now unable to pay any little that might have accrued to creditors by a careful management of their trusts.

I have at present forty estates to look into since the passing of the new Act, twenty-four here and sixteen in Westland, besides many valuable estates not accounted for under the old Act.

Under the circumstances, I beg respectfully that some little time is given to me to make up my reports.

I have, &c.,
J. E. GRAHAM,
Inspector.

The Hon. E. W. Stafford, Colonial Secretary,
Wellington.

No. 31.

Copy of a Letter from Mr. R. G. FOUNTAIN to the INSPECTOR IN BANKRUPTCY, Canterbury.

Colonial Secretary's Office (Judicial Branch,)
Wellington, 30th July, 1866.

SIR,—

I have the honor to acknowledge the receipt of your letter of the number and date quoted in the margin, and in reply am directed to inform you that the information sought for can be obtained at the Sub-Treasury at Christchurch.

I have, &c.,
R. G. FOUNTAIN,
For the Assistant Law Officer.

The Inspector in Bankruptcy, Canterbury.

No. 32.

Copy of a Letter from Mr. J. E. GRAHAM to the Hon. E. W. STAFFORD.

Office of Inspector in Bankruptcy,
Christchurch, 13th July, 1866.

SIR,—

For the information of the Government I have the honor to lay before you my first report, which, with your permission, I will follow up periodically.

I was appointed Inspector in Bankruptcy on the 7th May last, consequently I have been only two months in office. I found, on entering into my duties, that my predecessor had not taken charge of any of the sequestered estates, consequently I have considerable arrears of work.

Having called upon sequestrators and trustees to report to me upon the various estates under their charge, I have, up to the 30th June last, received reports on twenty-three estates in or about this city, and on nineteen estates in Westland. These, with one exception, are estates sequestered since the passing of the Amendment Act of 1865.

With the estates placed into Court previous to that date I shall have considerable trouble, sequestrators and trustees in charge, not having had sufficient check on their actions, and no one in particular to account to, have either wasted or done away with all available assets, and I shall not, I fear, show any large sums realized from estates not wound up previous to the passing of the last Act.

The amount of assets realized to 30th June on estates under supervision, as by returns forwarded to the Sub-Treasurer is £5,063 18s. 8d.

The fees payable under the two Acts to same period are—

Under Insolvent Act, 1862	£253 3 10
„ Amendment Act, 1865	190 17 8

All these have been paid by trustees and others, the Westland portion to the Court and Sub-Treasurer; the Christchurch fees have for the most part appeared through my books. The proportion due under the Amendment Act of 1865 I paid into the Bank of New Zew Zealand, to the credit of the Colonial Treasurer, the new Sub-Treasurer, Mr. Hamilton, not having made arrangements to receive them. The fees due to the Court under the Act of 1862, amounting to £197 12s. 8d., I sent to the Registrar, but he would not receive them at my hands, stating it was irregular, and they must be paid in by trustees, or else by a solicitor upon affidavit.

As both these modes entail expense, I have placed the amount into the Bank of New Zealand, and now respectfully seek your instructions as to the disposal of the same.

These fees will of necessity often pass through the hands of Inspectors, who can hardly refuse them, more especially as they have to keep a register of all amounts paid. I respectfully suggest, therefore, that instructions should be given to Registrars of the Supreme Court to receive any fees tendered them by Inspectors free of cost, and upon a plain form, setting forth the estate they belong to, and gross amount on which the same are calculated.

In conclusion, I beg to say that I have received every assistance from His Honor Judge Gresson.

I have, &c.,
JAS. E. GRAHAM,
Inspector for Canterbury.

The Hon. E. W. Stafford,
Colonial Secretary, Wellington.

No. 33.

Copy of a Letter from Mr. R. G. FOUNTAIN to the INSPECTOR IN BANKRUPTCY, Canterbury.

Colonial Secretary's Office (Judicial Branch,)
Wellington, 30th July, 1866.

SIR,—

I have the honor to acknowledge the receipt of your letter of the number and date quoted in the margin, and in reply am directed to inform you that the questions referred to therein are under the consideration of Government.

I have, &c.,
R. G. FOUNTAIN,
(For the Assistant Law Officer.)

The Inspector in Bankruptcy, Canterbury.