

Another very important feature in bankruptcy, upon which there appears to be a great diversity of opinion, is that of the discharge of a bankrupt; and we venture to say that the suspension of the discharge has been found in most cases a farce. It is true that in one or two cases it has called forth assistance from a kind friend of a bankrupt in an offer to pay a composition, and therefore the power to suspend should be maintained; but, unless something more is added, it will, as we have said, in a large number of cases, prove a farce, and we have therefore made a recommendation especially bearing on this point.

Looking, therefore, as a whole, on the various proceedings, Acts of Parliament, Judges' opinions, &c., to which we have referred, and at the unsatisfactory and contradictory character of the views and opinions of many persons of great experience in administering the bankruptcy laws, it will not be surprising to find that the Committee have arrived at the conclusion that it is an almost impossible task to prepare a Bill that will meet the wishes and views of creditors generally, but that much may be done towards facilitating the protection of the assets of an insolvent person, and procuring a speedy realization and distribution of them at as little cost and within as short a period of time as possible, and also to a certain extent to prevent fraudulent transactions.

Your Committee, with that view, therefore, beg to present the following recommendations:—

1. As substantial alterations are called for in the policy of the existing bankruptcy laws, especially as to the appointment of official assignees and one or two other cardinal points, we recommend very strongly that the Government should at once instruct their draftsman to prepare a consolidation of the Acts now in force, and so altered as to accord with and include the amendments which we now suggest—namely, that section 8 of the Act of 1876 should be repealed, and a new clause inserted to be founded on section 72 of the English Bankruptcy Act of 1869, vesting full powers in a Judge sitting in bankruptcy to try all cases (*vide* section 12 of the English Bankruptcy Consolidation Act of 1849); and it should be made perfectly clear and distinct and beyond argument that the Judge of the Court shall have all the same powers as the Supreme Court in all matters arising out of the bankruptcy, whether for setting aside of alleged fraudulent deeds or other transfers of property or in any matter whatever in which the official assignee claims any property from third parties; and that such proceedings shall be taken on simple procedure without pleadings, with the usual right of appeal, when amount exceeds £300, to the Court of Appeal, whose decision shall be final.

2. Section 9 of the New Zealand Act of 1876 is useless in practice.

3. We would suggest that there should be official assignees appointed as officers of the Court, who should give security to the extent of £5,000 at least, and the creditors should have power to also appoint one or two of their number to advise with the official assignee in the dealing with and realization of the estate,—such creditor or creditors for the purposes of the Act should be called supervisors; that official assignees shall, under liability of a penalty for omission, file a statement of the accounts of a bankrupt and pay a dividend once at least every three months, unless such period shall be enlarged by consent of a meeting of creditors; that any creditor may at any time apply to the Court upon good cause shown, to order an official assignee to pay any money into Court, or to proceed with the distribution of the estate forthwith, or to make any such order in the matter as the Court may consider the exigencies of the case require; and that the Court, if satisfied such application is frivolous, may order the persons applying to pay such costs as the Court may fix.

4. That section 22 of "The Bankruptcy Amendment Act, 1879," English, be embodied in the new Act, and be altered so as to give a Judge power to order the discharge of a bankrupt on the condition that he shall pay such sum in the pound as the Court may fix; and also giving the Court further power to rescind or alter such order, but so as not to increase the amount to be paid.

5. That a Judge sitting in bankruptcy should have full power to hear and try all cases of fraudulent bankruptcy under the Act, providing the trial take place in open Court, and that witnesses may be examined and cross-examined in the usual manner; and if, upon such trial, the Court shall be satisfied that the persons charged with any fraudulent act under the bankruptcy laws have been guilty of such act, or if they shall have been guilty, in the opinion of the Court, of gross misconduct in their business, the Court may sentence such persons to imprisonment for a period not exceeding twelve calendar months, and with or without hard labour.

6. Section 29 of New Zealand Act, 1876: Possession being taken under writ and execution should be an act of bankruptcy, and the debtor's estate should immediately vest in the official assignee. The expenses incurred by the creditor who shall have issued execution shall be a first charge on the estate, unless the Judge shall order otherwise.

7. As to the costs of counsel and solicitors, the Committee strongly recommend that the costs should be fixed by a scale similar to that in force in the District Court, arranged, as a matter of course, according to amount of estate; and particularly that, under no circumstances, should there be costs as between solicitor and client.

8. That no solicitor or counsel should be allowed to take from the debtor any sum of money on account of costs, excepting such amounts as are actually payable for fees of Court, advertising, &c.; that, if any dispute shall arise between any official assignee or supervisor and a solicitor as to the amount of any costs claimed, the matter shall be referred to the Judge, and he shall thereupon fix the amount which shall be paid according to the scale; that a scale of charges to be allowed to counsel and solicitors for opposing creditors should also be fixed, and for counsel and solicitors of debtors; and that the Judge should also have the power to fix such charges in case of disagreement with the supervisor or official assignee.

9. That the official assignee should be compelled to pay all moneys in his hands in each estate at once to a separate account, to be kept at such bank as, on application by the official assignee, the Judge may appoint, in the joint names of himself and the supervisors, if any, or in his own name when there is no supervisor.

10. Section 29 should be altered so as to make the acts therein mentioned *actual acts* of bankruptcy, and not conditional, as is the effect of the above section.