

I deferred answering your letter until the business of the Session had been disposed of, believing that no inconvenience would result from the delay.

It appears to me that the greatest defect in the Act is the want of a vesting order, or some other simple and inexpensive mode of vesting the property of the Debtor in Trustees for the Creditors.

Most of the difficulties that occur in working the Act are traceable to the slow and cumbrous machinery provided for this purpose. It often happens that the assets are small and of so doubtful a character, that it is not worth while to assign them, in which case either much expense is incurred to no purpose, or no relief is afforded to the Debtor, whose embarrassments may have been caused by his misfortunes rather than misconduct.

In many of the cases that have been before me, there was so little to be gained by the sequestrator's taking possession, that the unavoidable expense consequent on his doing so would have exceeded any advantage to be gained thereby, and the order of sequestration has therefore proved inoperative. If there were some officer provided by the Act, in whom all the Insolvent Estates were at once vested, this difficulty would be removed, and questions that now arise between judgment Creditors claiming against, and other persons claiming under the order of sequestration (section 17) would be avoided.

The Act (section 18) provides for the protection from arrest of the Debtor, if he be at large at the time of making the order. But it seems to me at least doubtful, whether it enables the Court to extend protection to a Debtor from an arrest made before the order. It seems hardly consistent with the large discretionary powers given by the Act to the Court to withhold the power of protecting a Debtor who may be kept in custody by a Creditor from vindictive or other unjustifiable motives.

Again, no provision is made for Creditors residing at a distance, nor for enabling the Trustees to elect as to taking leaseholds, nor for allowing payment in full of wages due to servants, nor for allowance of any sum to Insolvent Debtor while before the Court, if it be expedient to sanction such allowance, nor for prosecuting to conviction a Debtor who may have committed a misdemeanour within the meaning of the 42nd Section.

The foregoing observations indicate some of the difficulties that have occurred to me in working the Act; others, doubtless, have escaped my memory, but the experience of my learned brethren will supply the omissions of this crude and incomplete sketch.

I have, &c.,

The Hon. the Attorney-General, &c., &c., &c.

H. B. GRESSON.

## No. 5.

The Hon. the ATTORNEY-GENERAL to Mr. JUSTICE GRESSON.

No. 86.

29th March, 1864.

SIR,—

Attorney-General's Office, Auckland, May 4th, 1864.

I have the honor to acknowledge the receipt of your letter of the date quoted in the margin, relative to the difficulties that have occurred in the working of the Debtors and Creditors Act 1862, and to return your Honor the thanks of the Government for your observations.

They will be taken into consideration along with those of the other Judges, when the Bills for the next Session of the General Assembly are being prepared.

I have, &c.,

His Honor Mr. Justice Gresson, Christchurch.

FREDK. WHITAKER.

## No. 6.

CIRCULAR.

No. 8.

SIR,—

Attorney General's Office, Auckland, 20th January, 1865.

The attention of the Government has been directed to the subject of the law relating to debtors and creditors, and in particular to the Debtors and Creditors Act 1862, in the working of which many defects have been found.

The Government will be prepared in the next session of the Assembly to propose a measure for amending the law.

With this object in view I have to request the favor of your opinion and suggestions on the following points:—

1. As to the present constitution of the Insolvency Court, whether it is expedient to constitute one Court for the whole Colony instead of District Courts, and in that case what provision should be made for enabling the jurisdiction of the Court to be exercised in the provinces.

2. Whether it is desirable to separate the jurisdiction from that of the Supreme Court.

3. Whether in cases below a certain value, the courts of Resident Magistrates should have summary jurisdiction, at all events to the extent of allowing them to discharge prisoners in custody for small debts and upon what terms.

4. As to the proceedings of the Court, how they can be simplified and rendered less expensive.

5. As to the vesting of the Debtor's Estate, whether a vesting order should be substituted for the present *ad interim* sequestration and assignment.

6. Whether the present mode of appointing trustees or assignees can be improved, and in particular whether official trustees or assignees should be appointed, and what should be their powers and duties.

7. How to ensure the speedy and just administration of the Debtor's Estate, and to diminish the cost attending it.