

Replies to queries in answer to a circular letter from the Honorable the Attorney-General on the subject of the Debtors and Creditors Act.

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?

I consider that one Court for the whole Colony would entail great inconvenience and hardship; I would suggest that a Court should be held in every Province where a sitting of the Supreme Court takes place.

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

I am in favor of continuing, for the present, the jurisdiction of the Supreme Court; I think the expenses of a separate Court would more than counterbalance its utility.

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?

I consider in cases in which the amount of debts do not exceed, say, five hundred pounds (£500), Resident Magistrates' Courts should have jurisdiction. One Resident Magistrate's Court in each province would be sufficient. No Resident Magistrate, unless he be a Solicitor or Barrister, should exercise such powers unless he have performed the duties of Resident Magistrate for not less than five years.

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

By the alterations suggested in these replies, I think the expenses and proceedings might be considerably shortened.

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?

I would prefer a vesting order; the ad interim sequestration seems open to the objection that the insolvent's property is not secure unless the assignee has taken actual possession of the property. This, in a country where property often consists of horses and cattle running at large, is a matter of time and difficulty. As soon as a vesting order is obtained it should be published in a *Gazette* and in one newspaper having circulation within the Province.

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

I think an official assignee should be appointed, to whom the vesting order should be given: in the case of the Supreme Court the chief clerk should be appointed. Trustees should be appointed at a meeting of creditors, whose duties should be to realize the bankrupt's estate in manner most conducive to the interests of the creditors: should the creditors fail to appoint trustees, the official assignee to wind up the estate.

7. How to ensure the speedy and just administration of the debtor's estate, and to diminish the cost attending it?

The official assignee should exercise a supervision over the trustees appointed by the creditors; and, in the event of their neglect of duty, as not using proper despatch in realising the estate; upon proof to the Court of such fault, the Court should order the official assignee to realize.

8. As to the custody of the estate, and particularly of money arising from the proceeds thereof, whether provision ought not to be made for lodging all such monies in a public account in some Bank, to be under the direction of the Court?

The custody of the estate should vest in the official assignee, and all money arising from the proceeds thereof should be lodged in a Bank in the name of the official assignee, such assignee to give security to the satisfaction of the Court.

9. Whether more stringent provision should be made for the punishment of debtors in cases of im-providence or fraud, and for preventing the relief of insolvent debtors from being turned to abuse, and what should be the nature of such provision?

For offences under the 41st section of the Debtors and Creditors Act 1862, I would suggest that the period of imprisonment be extended to a period not exceeding two years; and with regard to offences under section 42 of the said Act, that the Court should have the power of Justices of the Peace under Jervis Acts to commit for trial. This power is given to Judges in bankruptcy under section 222 of the Bankrupt Act 1861 of the Imperial Parliament.

10. Whether any alteration should be made in the law as regards composition or trust deeds, and whether greater facilities should be given for winding up estates under private arrangements?

In cases where an actual majority of creditors, representing  $\frac{3}{4}$ ths of the amount of the debts of the bankrupt, give their consent in writing, a deed of arrangement might be entered into, and such instrument should be binding upon the rest of the creditors; such deed to protect the person of the debtor.

11. Generally, what improvements in the law relating to Debtors and Creditors you would suggest?

In the event of a debtor absconding, on petition of a creditor, a visiting order should be given to the official assignee, who should call upon all creditors to come, within a limited time, and prove their debts. Salaries and wages of clerks and servants, for a period not exceeding three months, should be paid in full; beyond three months, they should share as other creditors.

S. L. MULLER,  
Resident Magistrate, Blenheim.

# No. 16.

SIR,— Attorney-General's Office, Wellington, 16th March, 1865.  
I have the honor to acknowledge the receipt of your letter of the date quoted in the margin 9th March, 1865, and am directed in reply to thank you for the same. I have, &c.,

The Resident Magistrate, Blenheim. R. G. FOUNTAIN,  
For the Assist. Law Officer.