

8. Your committee think that the person to be appointed official assignee should be of that social status and business ability as to command the confidence of the mercantile community, and that he should give security by bonds to a large amount, say not less than two thousand pounds (£2000). They suggest that the funds realized should be deposited in a Bank to the credit of each insolvent's estate, to be operated upon by the official assignee for the time being, so as to prevent the accounts being looked upon in any way as private. They think, also, that care should be taken that the official assignee be made amenable to criminal proceedings for malversation of office.

9. The Committee recommend that the certificates of discharge should be of two classes, to meet the cases of those who have been unfortunate, but to whom little or no moral blame attaches, and those who have brought themselves into that position by recklessness. In cases where fraud or culpable negligence appears, the Commissioner should have power to withhold a certificate or to commit to the Supreme Court for trial, and such persons should be liable to severe punishment.

10. The Committee think it desirable that there should be legislation regulating private assignments for the benefit of creditors, and rendering binding on the creditors the acts of two-thirds in number or amount of such creditors over twenty pounds (£20); and they recommend that it be by separate enactment.

11. Your Committee suggest that very great improvement would appear by making the Act as comprehensive as possible, and by rendering clear the modes of operation, and thus leaving as little as possible to the discretion of the Commissioners.

Under the present Act not only have the learned Judges been perplexed, but creditors have been unable to obtain any satisfaction, and have been compelled to allow rogues to escape unpunished.

Your Committee also place great stress on the character of the person to be appointed assignee: they think that he should be a man of respectability, of thorough business habits, and, as far as practicable, of good general business knowledge; and the Committee further recommend that some provision should be made by law to prevent any delay in the declaration and payment of dividends when the funds accumulated in the hands of the assignee shall justify the same.

ROBERT LIMINGTON,
Chairman.

Christchurch, 17th March, 1865.

No. 28.

Mr. JUSTICE CHAPMAN to the ATTORNEY-GENERAL.

SIR,—

Dunedin, 24th April, 1865.

I have the honor to enclose answers to the eleven questions contained in your Circular, No. 8, dated 20th January, 1865, relative to the working of the Debtors and Creditors Act, and to the amendments necessary for the effectual administration of the Estates of Insolvent Debtors.

I need scarcely say that these answers embrace only a few leading principles, as matters of detail must necessarily be left to the person who may be entrusted with the preparation of the Bill.

I am, Sir,

Your Obedient Servant,

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

H. S. CHAPMAN.

REPLIES TO QUESTIONS COMPRISED IN CIRCULAR NO. 8, DATED 20TH JANUARY, 1865.

First Question.—As to the present Constitution of the Insolvency Court?

I submit that the most effectual mode of exercising jurisdiction over the estates and persons of Insolvents is by means of Commissioners sitting continually for that purpose, with an appeal in all necessary cases to the Supreme Court.

This is the law in Victoria, with the addition of a double appeal. The Commissioner in Melbourne sits perpetually. In Geelong the Judge of the County Court is the Commissioner, and he sits at short intervals, but sufficiently long to exhaust the business. Appeals from the Commissioners are heard by the Judge in Equity, who sits every Thursday to hear such appeals, with other business. From the decisions of this Judge there is a further appeal to the full Court.

The Act should give to the Governor in Council power to appoint any fit and proper person to be a Commissioner of Insolvent Estates, and this would enable the Government to cast the duty on existing officers of the Government where the Insolvency business is insufficient to require a Commissioner with no other duties. Thus the Judges of the District Courts might be appointed Commissioners in some places, and even the Resident Magistrates in others. That will be a mere departmental arrangement, and the jurisdiction will still be exercised by a Commissioner *ex nomine* under the Act. This economising expedient is extensively adopted in Victoria, not only in the Insolvency jurisdiction of the Supreme Court, but in other cases. Under District Acts the Governor in Council is empowered to appoint Judges of the Courts of Mines, Judges of the County Courts, Commissioners of Insolvency, and Chairmen of General Sessions.

Practically, the same individual holds the four commissions. There is no confounding of jurisdictions. Thus, if in any contemplated Act, the Governor be empowered as I suggest, the duties may be cast on the District Court Judge, the Registrar of the Supreme Court, or the Resident Magistrate, or any other competent person.

In such case, the Act should give to the Governor in Council power to define districts. There should also be a provision that where no such appointments of Commissioners shall have been made, the Jurisdiction under the Act shall be expressed by a Judge of the Supreme Court. This will, I submit, give to the Government a very ample and at the same time reasonable latitude, suitable to the fluctuating circumstances of a gold-mining population.

Second Question.—Whether it will be desirable to separate the jurisdiction from that of the Supreme Court?