

be empowered to elect the Official Assignees, and the Creditors of such estate to elect a Trade Assignee, and the Court be required to take ample security, I do not think the Government is called upon to go further, the more especially as all proceedings will be under the control of the Commissioner, and a plan of distribution will be submitted as soon as funds are collected to pay a dividend. Moreover, the watchful eyes of the Creditors are always upon the Official and Trade Assignee, and they or any one of them can apply to the Commissioner, or, if need be, to the Court in case of unusual delay. In the case of Administrators, on the other hand, the recipients of the fund are often unknown, or if known, are at a distance, and so the fund may be for a long period in the custody of the law. I think, however, there should be provision for the payment of unpaid dividends into the Treasury, and also the surplus of any Insolvent Estate, subject to a Judge's order, and after six years all unclaimed moneys should become the property of the Crown. This is the case under the Audits Act of Victoria.

Ninth Question.—As to provisions for the punishment of Insolvent Debtors?

This is a feature in which the Debtors and Creditors Act is very defective. The Court has only power to discharge the Insolvent on such terms and conditions as to the Court shall seem fit: it has not specific powers to grant, refuse, or suspend anything in the nature of a Certificate, and no power to imprison for any specified offences. To amend this, I would suggest the introduction of the Certificate of discharge as in England with power to suspend or refuse the same for certain specified offences, *e.g.*

1. Neglecting to make a full and complete disclosure of his estate.
 2. Contracting debts without intending to pay the same, or without having reasonable or probable expectation of being able to pay the same.
 3. Unjustifiably dissipating his means.
 4. Disposing of his estate or any part thereof, either by sale, mortgage, or pledge, otherwise than for *bona fide* value.
 5. Appropriating to his use any trust funds.
 6. Giving to any Creditor any fraudulent or unjust preference after he shall have become indebted and incapable of satisfying his Creditors.
 7. If he shall already have become Insolvent or shall have compounded with his Creditors within years.
 8. Omitting to keep proper books of account of a trade.
 9. Having against him any unsatisfied judgment for seduction, *crim. con.*, breach of promise of marriage, libel, slander, assault, or any malicious torts.
 10. Putting any Creditor to any unjustifiable expense by any frivolous or unjustifiable defence of any action.
 11. Reckless or improvident conduct or expenditure, including gambling.
 12. Neglecting to afford his Assignees reasonable assistance in collecting and realizing his estate.
- I do not give this list of offences as exhaustive, but merely as examples of the most common which come before the notice of the Court. The list might be greatly extended.

The Commissioner, in refusing a certificate, should have power to report the cause of his refusal to the Court, and the Court should have power to imprison the Insolvent, in certain cases for a period of two years.

Tenth question.—As to alterations necessary in composition deeds?

Some alterations will be necessary as regards composition deeds and voluntary assignments, but I am not at present prepared to specify them. The clauses in the Debtors and Creditors Act are taken from the English Bankrupt Act. Several cases have come before the Court here, and we have been guided by several recent decisions of the Courts at Westminster. These decisions have placed very strict limits upon the clauses in question, and have no doubt interfered with the general intention of the Legislature in favor of voluntary arrangements; but the Courts will not permit their jurisdiction to be ousted by any but very unambiguous provisions. The course which it will be necessary for the draftsmen to pursue is this: the several decisions must be carefully examined, and, where they raise doubts, or point out ambiguities in the existing clauses, such doubts and ambiguities should be cured by making the clauses clear and specific. In some respects the Act in force in Victoria, 5 Vic. No. 19, Secs. 33 to 37, and 7 Vic. No. 19, Secs. 8 to 11, are more specific than the English Act, and I see no great difficulty in constructing clauses based on those now in force, but amended to meet difficulties disclosed by recent judicial decisions, so as to give ample effect to voluntary arrangements. If this be effectually done, it will afford great relief to the ordinary Insolvent jurisdiction of the Court.

Eleventh question.—As to improvements generally?

I would observe generally, that in any future Act there should be no distinction between Bankruptcy and Insolvency (or consequently) between trades and other insolvents. In contemplation of compulsory sequestration, the acts, or dealings, or even negligencies of the debtor, which should be deemed acts of insolvency, should be very specifically enumerated, and one of a comprehensive character should be introduced by neglecting to satisfy a judgment debt after a certain specified time, say one month; the Court should still (chiefly on economical grounds) be the Supreme Court, aided by Commissioners, as I have suggested, which Commissioners may be the Judges of the District Courts, the Registrars of the Supreme Court, where the business is small, or the Resident Magistrates with a limitation in value in the latter case.

The machinery of the Official Assignees should be introduced with the check of Trade Assignees. The Judge's order in the case of voluntary sequestration, in the rule absolute, in the case of compulsory sequestration, should operate at once to vest the estate in the official assignee; and when the trade assignee is elected he should be jointly possessed with the official assignee. I am well aware that it is not very easy to render any general observations of great practical use; but, when any bill is drawn and printed I shall be ready to make such suggestions thereon as my experience in the working of the insolvent law of Victoria may enable me to do. I beg also to suggest that any bill which may be drawn should be sub-