

No. 31.

SECRETARY, WELLINGTON CHAMBER OF COMMERCE, to the ATTORNEY-GENERAL.

Chamber of Commerce, Wellington, 23rd June, 1865.

SIR,—

I have the honor, by direction of the Chairman of this Chamber, to enclose herewith the reply to your letter of the 20th of January last.

I have, &c.,

HERBERT K. LILLICRAP,
Secretary.

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

No. 32.

MR. JUSTICE JOHNSTON to the ATTORNEY-GENERAL.

Judge's Chambers, Wellington, 21st June, 1865.

SIR,—

I am sorry I have not had leisure enough to send you long before this time, answers to yours and the late Attorney-General's circulars respecting the law of Debtors and Creditors, and yours of 1st March respecting funds under the control of the Supreme Court.

I have at last been able to prepare observations on both subjects, which I have to offer you with the conviction that they are but crude and ill digested, and by no means so satisfactory or complete as they might have been if I had had more time for their consideration.

I send you to-day my observations on the law of Debtors and Creditors. Those which refer to the financial business of the Court are in course of transcription.

I have, &c.,

ALEXANDER JOHNSTON.

The Hon. the Attorney-General.

OBSERVATIONS AND SUGGESTIONS RESPECTING THE LAW FOR THE RELIEF OF DEBTORS AND THE SECURITY OF CREDITORS.

1.—GENERAL OBSERVATIONS.

1. I must preface my observations by stating that the amount of experience which I have had of the operation of the Debtors and Creditors Act 1862, within my Judicial District, has been by no means great; has indeed been probably quite inconsiderable when compared with that acquired in the other Judicial Districts of the Colony; and my suggestions therefore will deserve but little attention when they are at variance with the practical experience of the other Judges.

2. Their inconveniences and imperfections, which I have discovered in the practical working of the present system, relate chiefly to the unnecessary number of proceedings in Court, the absence of a Judge from places where estates must be administered, the necessity for the execution of trust deeds, and the want of an Official Sequestrator and Trustee (especially in cases where the creditors are apathetic.) To those various topics I shall presently advert in detail.

3. The great objects which I understand it to be the intention of the Legislature to attain by an Insolvency or Bankruptcy Law, are to make the Estates of persons who cannot pay their Creditors in full as available as possible for rateable distribution, and to protect honest and unfortunate Debtors from being harassed by legal proceedings, and deprived of the means of supporting themselves.

4. That system, therefore, will be the best which will, in the simplest, amplest, speediest, and cheapest manner, ensure the attainment of those objects.

5. But the system must be one which will be equally applicable to all sections of the community and all parts of the Colony.

2.—SPECIAL OBJECTIONS TO EXISTING SYSTEM.

1. Serious delay and expense are caused, in cases where the petitioner resides on an Estate situated at a distance from the place of residence of the Judge, in the transmission of petitions and otherwise.

2. The provision for *ad interim* sequestration is liable to be inoperative because there is no Official Sequestrator, and I have often found it impossible to get the condition of taking possession of the property, which is necessary to make the sequestration available, carried out.

3. As to the order of *ad interim* protection, I have found it necessary to make the form special, by inserting a condition that it should cease to operate under circumstances under which a writ of arrest might issue. Doubt has also arisen respecting its operation, whether such an order entitles a debtor in custody to be discharged from confinement or not. I have held, by a liberal construction of the Act, that it does; but the matter is by no means free from doubt. Moreover, the effect of such discharge upon the rights of the creditors may be questionable.

4. As to the *appointment of Trustees*—I have found, especially in cases of small or poor Estates, that Creditors will not take the trouble to attend the Creditors' meetings, and recommend Trustees; and I have been obliged on many occasions to ask the Registrar of the Court to accept the Trust rather than allow the proceedings to be defeated; but this is a course which seems to me very objectionable. (See my suggestions respecting *Official Trustees*.)

5. The necessity for drawing and executing a trust deed seems to entail delay, expense, and hazard, which might be obviated by making the order of the Court operate as a statutory assignment of all estate and rights of a Debtor in certain usual Trusts, or in special Trusts to be stated in the order.

6. With regard to maintenance money of debtors in prison, the question has arisen, whether the Court is not bound to discharge a prisoner on his own motion if maintenance money be not paid. I have held that it is not the right of the prisoner to enforce this provision, and that a discharge for that reason which would operate as a satisfaction of the detaining Creditor's debts would be a great hardship on the Creditor, unless a demand for the money had been made on him, and the payment of it had been refused by him.