

Your Committee having thus stated the leading features of the Scottish Act on the points now under consideration, will next advert to a few of the details of that measure, for the purpose of placing an estate under the management of the creditors. This is necessary for the information of those who may not be acquainted with its provisions and machinery.

On presentation of a petition for sequestration, the Judge simply declares the estate bankrupt, and appoints a party to take charge of it till the creditors have time to meet and elect a trustee for that purpose; and he at the same time appoints a time and place for the creditors to meet. The appointment of a trustee must have the sanction of a majority of the creditors in number and value (and creditors may vote by proxy), and when a trustee is so elected his appointment is confirmed by the Court, and the estate at once vested in him as fully as it was in the bankrupt. The same meeting appoints three of the creditors to advise with and assist the trustee in winding up the estate, investigating claims, and deciding preferences.

At the same meeting, and subsequently, it is competent for the debtor to offer a composition on his debts; and if the creditors are satisfied with the offer, it is reported to the Court, and the sequestration is ended without further trouble or expense. Should the offer not be accepted, the trustee goes on to realize the estate and divide the proceeds, without any further interference of the Court.

The effect of a judgment sequestrating a debtor's estate is to prevent him doing any more business on his own account, and all transactions within 60 days of the bankruptcy having a tendency to defraud his creditors, or any of them, are illegal.

The trustee so elected is compelled by the Act to pay the dividends within fixed periods, and before paying these he must submit a scheme of division to the creditors. He must also keep his accounts in a prescribed form, and report at least once a year to an "accountant" appointed by Government to see if the requirements of the Act have been fully complied with. When anything is wrong with the trustee's accounts, the accountant reports the matter to the Court, and the trustee is dealt with as the circumstances of the case may demand. Should he have retained in his hands any funds beyond the stipulated time, or to a greater amount than the Act requires, he is liable to a penalty of 20 per cent. on all sums so retained by him.

In regard to the accountant alluded to, it may be necessary to explain that he, like the Judges there, is paid by the Government, and has no interest in prolonging the existence of a sequestration, or causing additional legal expenses. He attends to all the sequestrations in the country, and yet the expenses attending the proper discharge of the duties of his office amount to only £1500 a-year. The officer, however, does not interfere with the discretion of the trustee in managing an estate. He only sees the machinery erected by the statute kept in working order; and, when anything goes wrong, he reports it to the Court. His careful scrutiny of the accounts of trustees has been most beneficial for the creditors, and a similar appointment should be made here. From what has been said, there will be no chance of his duties being confounded with those of an official assignee.

When an estate is wound up, and dividends paid, the trustee gives in his final account to the accountant, who reports to the Court that all is according to law; and thereupon the trustee and debtor are discharged, and the latter may resume business again.

There are other details which need not be referred to here.

Now, in regard to the expenses of sequestrations under the Scottish Act, it is a well ascertained fact that these are much less than those in any other country.

In England, Earl Russell has stated that the expenses of winding up an estate amounts, on an average, to 42 per cent. of the assets divided. But in Scotland, where the estates are managed by the creditors, the expenses do not exceed $17\frac{1}{2}$ per cent., thus leaving $82\frac{1}{2}$ to be divided amongst the creditors. As a general rule, at least 75 per cent. of the assets is divided amongst the creditors; and in the composition contracts alluded to, the whole expenses seldom amount to 6 per cent. of the gross value of the estate.

The periods of endurance of sequestrations under the English and Scotch systems is also worthy of notice. In England, there is no proper means of finding out the average time of winding up an estate; but it is well known that the delay there is so great as to prevent creditors going into the Bankruptcy Court at all, and many of them prefer losing their debts to going there. One witness before the Committee of the House of Commons went as far as to call it a "sink of iniquity." In Scotland, on the other hand, a month or two is all that is necessary in the case of a settlement by composition; and in the general case, a year is considered a long period for a sequestration to continue in operation.

It will thus be seen that, under the Bankruptcy Act alluded to, estates of debtors are realized and divided amongst the creditors in the speediest and most inexpensive way; and this result is attributed to the fact that the creditors manage the estates of their debtors, and it is natural that it should be so. They are most deeply interested therein, and are therefore most likely to see the proceeds thereof realized in the fullest, cheapest, and speediest way. They will not allow any undue delay to take place, nor any unnecessary expenses to be incurred. In this respect, the provisions of the Scottish Act have wrought most beneficially for the commerce of that country; and they would operate equally well in this colony, and ought therefore, to be incorporated into the proposed new Act.

Your Committee may, in corroboration of these statements, state, that in the last examination of witnesses by the Committee of the House of Commons which sat on the Bankruptcy Law, every one examined stated that "the general mercantile community of Scotland were satisfied with the law as at present administered there." It is also stated that creditors in that country are not afraid to go into the Bankruptcy Court, because they know that every effort will be made to save everything for the Creditors.

Another witness before the same Committee was asked, in regard to the working of the English Act, "In what respect is the system objected to?" And his reply was, "On account of the enormous amount of expenses which it necessarily entails for the winding-up of estates, and because it fails to meet the case of fraud, or anything approaching to fraud—such as fraudulent preference, reckless trading, and the wilful making away with assets." And the same witness adds, "There seems to be only one way, by general consent, of evading the operation of the Act, and that is generally adopted. I had many such cases, but