

of these grounds be deemed sufficient to support a petition by a creditor for the sequestration of his debtor's estate. It will be borne in mind, too, that any creditor petitioning from malicious motives, and without reasonable grounds for believing in the truth of the statements which he may make, and upon which he may ask the Court to act, is liable to be mulcted in damages. It is suggested that the process at present in force to prevent the departure of a debtor from colony to colony should be made applicable to the provinces of New Zealand, so that a creditor shewing the intention of a debtor to leave a province, for the purpose of evading his debts, should be stopped. A writ of arrest is at present only available where defendants intend to leave the colony. But, if the defendant proceeds (say) from Dunedin to (say) Nelson, he cannot be stopped from doing so, though he can leave the colony at Nelson, and thus evade his creditors. Jones and L—— Sampson are cases in point. The defect could in a great measure be remedied by authority of a Judge of one province, on *prima facie* evidence that a debtor was going to another province with the ultimate intention of leaving the colony, to issue a writ of arrest to prevent him from leaving the province.

#### PETITIONING BY A DEBTOR.

It appears, according to the law as it stands at present, that a debtor not in custody cannot petition for the sequestration of his estate unless he obtains the concurrence of some creditor representing a claim of £50 or upwards. This seems objectionable; cases can easily be conceived where a small tradesman is indebted to a large number of creditors whose claims are under £50, and to a few whose debts exceed that sum. The debtor (not being in custody, and not being able to obtain the concurrence of the creditors above £50) has his estate, to the detriment of what may be the body of his creditors, left at the mercy of a few dissentients who only exercise the power given to them by the law. It is true that the debtor may execute a deed of arrangement and obtain the assent of the requisite majority, and thus render nugatory the opposition of the creditors above £50, but the objections to deeds of arrangement will be more pointedly referred to hereafter.

#### GENERAL PROCEEDINGS.

Upon a petition for sequestration by a debtor being presented to the Commissioner or to a Resident Magistrate, if he is satisfied with the validity of the grounds upon which the petitioner asks his interposition, an order should be made protecting the estate, or the estate and person of the petitioner, as he may think proper; and such estate should thereupon absolutely vest in an officer of the Court to be appointed. This order should remain in force until altered or rescinded by the Commissioner. It should also be a part of the order that the petitioner should attend a meeting of his creditors, to be held before the Commissioner within seven days after the date of the order, to undergo an examination. At this meeting a trustee or trustees should be appointed by the creditors, and if the creditors decline to act, the Commissioner should have power to appoint any person he might think fit as trustee to wind up the estate; and the order making the appointment should have the effect of vesting in such trustee or trustees the assets of which the petitioner was possessed at the time of presentation of his petition. This would dispense with the necessity and expense of a deed of assignment.

The trustee or trustees should receive a commission of 5 per cent. on the gross amount realized, subject to augmentation or deduction in case the peculiar circumstances connected with any individual estate in the opinion of the Commissioner warrants the variation. The trustees should be required to file a report on the first day of each month shewing the action they have taken in realizing the assets, and at the same time to lodge a duplicate receipt for all monies received by the Bank into which the trust funds have been paid. From time to time the Commissioner should direct that a dividend be declared upon the claims proved, and that a sum should be preserved in hand sufficient to pay similar dividends upon claims made. Creditors should be allowed to represent their claim without the intervention of a solicitor.

#### IN THE CASE OF A PETITION BY CREDITORS.

It would no doubt be equitable to permit the debtor, at the first meeting, to adduce evidence to rebut the grounds relied upon by the petitioner when applying for and obtaining the preliminary order from the Commissioner or Resident Magistrate. Should the Commissioner think that these grounds have been destroyed, and that no act of insolvency has been committed, then the preliminary order should be rescinded. If there is no reason for questioning the justice of that order, then the proceedings should be similar to those suggested in regard to petitioning debtors.

At the first meeting the Commissioner should appoint some future day for the further examination of the insolvent and any other persons, as may be deemed proper; and so on, from time to time, as he may consider the circumstances of the case warrant.

At the conclusion of the final examination certificates of discharge should be awarded by the Commissioner after the following manner:—

A first-class certificate to men who have become unable to meet their engagements from misfortune or unforeseen circumstances. Such a certificate should operate as an immediate discharge, with the concurrence of two-thirds of a meeting of creditors.

A second-class certificate to those who have become insolvent through reckless trading. Such a certificate should have the effect of suspending the protection of the insolvent for the space of one year, or for a longer period, dependent upon the nature of the case from the date of the certificate; but at the expiration of that time the insolvent should be deemed released from his liabilities. Insolvents not balancing their books annually should have their certificates refused.

To men who, in the opinion of the Commissioner, have acted fraudulently, no certificate at all should be granted; and should such Commissioner be of opinion that even this punishment does not meet the justice of the case, then he should have power to commit the insolvent to gaol to take his trial for the particular offence charged. In any case insolvents should be gazetted, and the Chamber would suggest