REPORT BY THE COMMITTEE OF THE AUCKLAND CHAMBER OF COMMERCE, APPOINTED TO CONSIDER THE LETTER OF THE ATTORNEY-GENERAL REGARDING THE DEBTORS AND CREDITORS ACT 1862.

The fact that the author of the present Bankruptcy Act has, so shortly after its enactment, confessed that many defects have been found out in the working of it, and has invited suggestions to enable him to amend that law, or to form a new one, may be taken as conclusive evidence of at least two things—1. That the Act referred to has not given satisfaction to the commercial community; and, 2. That he is willing to give effect to suggestions for its alteration or improvement.

The Attorney-General's candid acknowledgment of the failure of his measure ought to be appreciated, and advantage taken of the opportunity afforded to give him such suggestions as may enable him to form a measure that will meet the requirements of commerce, and provide a guarantee that the estates of Bankrupt Debtors will be realised and divided amongst the Creditors in the shortest time and least expensive way.

Your Committee have carefully considered the matter committed to them, and are clearly and decidedly of opinion that the present Debtors and Creditors Act should be repealed as soon as possible. The great obstacle to the alteration or amendment of the English bankruptcy law is the number of officials who are directly interested in its maintenance, and who must in some shape or other be provided for ere any change can be effected. If the present law shall be allowed to exist for some time, the same obstacles will rapidly increase in number and strength, and effectually prevent improvement. The present time, therefore, seems favourable for securing to the Colony a good bankruptcy law. The provisions of the existing Act are inherently bad, and the mode in which its machinery has been worked by its officials has not tended to mitigate or conceal its defects; and Mr. Sewell, in soliciting the aid of the commercial community, has taken a most judicious step, and one which ought to secure him every necessary assistance.

It is with this view that your Committee venture to offer the following remarks and suggestions.

It may be advisable, at the outset, to state the general principles which it is thought should form the basis of a well-constructed Bankruptcy Act. These may be summed up thus:—

1. The realisation and division among the Creditors of the estate of a bankrupt with the least possible delay and expense.

2. The placing in the hands of Creditors the estate of their Debtor, with power to wind up that estate in the way most advantageous to themselves.

3. The interposition of the sanction of judicial authority to the acts of the Creditors, so as to legalise their proceedings and give a valid discharge to the bankrupt.

4. The prevention, as far as practicable, of fraudulent bankruptcy, by giving publicity to the acts of the Creditors, and inflicting punishment on fraudulent Debtors.

The speedy application of the assets of a bankrupt to the liquidation of his debts is the first object to be arrived at. Delay here is generally most ruinous. The value of an estate is seldom increased by putting off a settlement. Loss of interest and increasing expenses are steadily lessening its amounts; while the annoyance, trouble, and loss of valuable time, are as steadily increasing. A dividend of five shillings per pound to-day is better than a prospect of ten shillings a year hence. Indeed, it would often be wiser to lose a debt at once than have the trouble of running after Official Assignees, and fruitlessly urging them to do their duty. It is, therefore, of importance to have the machinery of a Bankruptcy Act as simple as possible, and its officials as few as may be. And these should have no interest either in increasing expenses or prolonging a settlement. Any change that would secure these desirable ends would meet the requirements of trade, and ought to be adopted.

With this view your Committee would call the attention of the Chamber to the provisions of 19 and 20 Vic., c. 79 (vide Law Journal, No. 34), which meet these requirements in a way at once simple, inexpensive, and satisfactory, and would suggest their adoption into the proposed new Act.

In Scotland, where that Act has been in operation for many years, there are no judicial establishments separate from the ordinary legal tribunals in which cases in Bankruptcy are tried. These matters are disposed of along with the usual business of the Court. The Judges there are all paid out of the Consolidated Fund; derive no benefit from Bankruptcy or other cases, and have no interest in an increase of causes. Nor is there a staff of officials, separate from the usual officers of Court, to attend to Bankruptcy cases.

All that the Judges have to do with Bankruptcy cases is to initiate proceedings, and give power and authority to the party named by the creditors to realize estates and to divide the proceeds among the creditors. Should any legal question arise, either between the Bankrupt and the Creditors, or amongst the creditors themselves, and either party should resort to the Court to decide the point, that question becomes an ordinary law-suit; but a preference in time is allowed to bankruptcy cases.

When the debtor's estate is wound up, and the party named by the creditors as trustee, as well as the debtor, requires a discharge, a formal report is made to the Court, and, if all is right, a judicial discharge is granted. In all other respects the judicial and administrative functions are kept apart—the Judges discharging the one, the creditors the other.

By that Act, too, provision is made for carrying through sequestrations in the County as well as in the Supreme Courts. And it is important to know that at least 80 per cent. of the bankruptcy cases are carried through in the Court of the County where the debtor and most of his creditors usually reside. This shows clearly how well creditors attend to their own interests by adopting the least expensive and most expeditious way of recovering the estate of their debtors. Even where sequestration is applied for through the Supreme Court, all the meetings of creditors are held in the county town nearest to the debtor's residence, thereby securing local and personal administration of the debtor's estate. In England, also, the County Courts have been resorted to, and as far as gone, with satisfactory results.

The provisions of this Act could easily be adapted to the local requirements of this Colony.