

another. As to the expense, any proceedings, which must be by practitioners of the Court, whose time is valuable, must be expensive, and officers of Court must be learned, or they are most mischievous; nor can any laws compel learned men to act as practitioners gratis.

In the Magistrates Courts proceedings are perhaps simple; but the expense of witnesses, and the fees to practitioners, who are barristers or solicitors of Supreme Court (under penalty, &c.) I believe to be *not* less than in Supreme Court, and *not* taxed.

I have suggested what would, I believe, simplify proceedings and lessen expense by revision of the rules, or superseding them by enactments.

Five or six Judges scattered over the whole of the Colony may do wonders, and deserve our utmost respect; but the time approaches when they must all want to consult with brother Judges, where there is hardly an *amicus curæ* not to the cause.

A Court should be three Judges at least, which makes orders of imprisonment at least until hearing of honest men, however destitute of property. No delegate Judge, even with mercantile assessors, could make new rules.

The Act will not work itself.

I venture most respectfully to suggest the repeal of the Debtors and Creditors Act 1862. Re-enactment of *some such* acts for relief of persons imprisoned for debt as that Act repealed by this.

I cannot pretend to solve at once the problems as to Debtors' and Creditors' conflicting rights, which, I believe, have exasperated the Legislature of England up to the present time.

In a system of English laws sequestrators are ridiculous, except as mere temporary receivers.

Official Assignees are persons fit to be Judges, or useless; they must be advised by *lawyers*, and ought to have been merchants for a merchant's estate, and so on. They must have competent clerks, and all the machinery of books, offices, and fire-proof safes, as required by a large class of traders, machines here costly beyond our means, even where obtainable at all. There are plenty of men who trade, few are at all competent, still fewer to get in a debt without having to go to law.

Such is the best opinion I have time to form, and some suggestions which may evince a desire to be of use.

I have, &c.,

CHRISTOPHER ALDERSON CALVERT.

The Hon. the Attorney-General.

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## No. 47.

The RESIDENT MAGISTRATE, Invercargill, to the ATTORNEY-GENERAL.

SIR,—

Invercargill, 1st March, 1865.

I have the honor to append my replies on some of the points submitted in your circular of 20th January, 1865, and at the same time to state, that as I have had little or no experience in Insolvency Law, and but a brief opportunity of observing the operation of the Debtors and Creditors Act 1862, it is with great diffidence I advance any opinion at all on a question so important.

1. I do not see why the Insolvency jurisdiction should not continue to be exercised as at present by the Judges of the Supreme Court being appointed for a district of two or more Provinces, and visiting them in circuit. The constitution of a district insolvency court, with a resident commissioner, or a commissioner holding courts in circuit, would of course be much more satisfactory if not too costly.

3. Resident magistrates might have power to grant interim protection where no fraud is shewn. In this Province the great inconvenience has been that arising from the want of a proper local officer to whom the powers exercisable under the Act might be entrusted. In times of depression like that the Province is now passing through, persons embarrassed by debts of small amount, and that perhaps only temporarily, who, if they could be protected from arrest by some local authority, would remain, and, in many instances, retrieve their affairs, or, at any rate, would render great assistance to their creditors in realizing their assets, are compelled, by the fear of imprisonment, to abscond; and this want of local means to give effect to the provisions of the Act makes creditors anxious to use their powers of arrest, and leads to the waste and destruction of the debtor's estate; and this has in this Province been brought repeatedly under the notice of the Judges by the grand juries in their presentments. This inconvenience might be remedied by giving resident magistrates power to grant interim protection on terms to be clearly specified by the Statute; and rules of procedure in insolvency cases in Resident Magistrates courts should also be embodied in the Act.

5. A vesting order, by which the estate would pass at once into the hands of the official assignee, would be far preferable to the present *ad interim* sequestration and assignment.

6. At present there is great delay before the final appointment of the trustees, and, consequently, great waste of the estate; there should be an official assignee appointed for each district, to whom the property of the insolvent might pass immediately on his filing his petition.

7. By making it over to the official assignee, by whose hands it would be administered much more carefully and expeditiously than by the trustees as at present—the process at present being so tardy that, by the time the trustees are appointed, there is little of the estate left to divide.