

I doubt the expediency of conferring the power on Resident Magistrates to discharge prisoners in custody for small debts.—(See my general remarks on imprisonment for debt.) But some provision should be made to enable Debtors who have lain in prison for a definite term to apply for a discharge in *forma pauperis*. Gaolers to forward applications of such prisoners to the Registrar of the Supreme Court, and the Court to be empowered to appoint a Solicitor, and direct payment of a stipulated fee out of public funds.

Query 4.—See subsequent answers.

Query 5.—Certainly a vesting order should be substituted for the present assignment. It should, I think, relate back, as regards the property of the Insolvent, to the Act of Bankruptcy, which, in the case of a Debtor's Petition, would be the presentation of the Petition.

Query 6.—At present the law does not regulate the mode in which Assignees are appointed. In this Judicial District, the usual practice is to convene a meeting of Creditors for the election of Assignees. Failing any recommendation from the Creditors (and in nine cases out of ten at least there is no recommendation) the Judge at the hearing next after the day of the meeting makes the best selection he can from Creditors named in the schedule to the Debtor's Petition. In special cases, Trustees have been named by the Judge without calling a meeting of Creditors.

As the present Act provides no official machinery of administration, and the Court itself is without such machinery and besides unfitted for the task, the duty has devolved, of necessity on the Creditors.

It is, I submit, the true principle that the Creditors should administer in every case where they are willing to do so.

The proceedings under the Act have in this District been, in a vast number of cases, merely formal, so far as regards giving the Creditors a dividend—the only substantial result being the discharge of the Debtor. Mercantile men in the Colony are generally too busy to make it worth their while to take any trouble where there is a small chance of a substantial dividend. Judging from the many schedules I have seen, and the many examinations I have taken, I should say that the greater number of the Insolvents discharged in this district began business in this Colony without capital, and possessed at the date of their Petitions no estate worth regarding. Many of them were indebted beyond their assets at the time they began business here. Not a few had already taken the benefit of the Insolvency laws in neighbouring Colonies. Substantial estates have always, so far as I know, been wound up under Deeds of Arrangement.

The distribution of the Bankrupt's Estate may rightly be regarded as the principal object of the law; were it the sole object which ought to be contemplated it might perhaps be safely left to the Creditors to come forward in all cases where there was any likelihood of their getting a substantial benefit; and there could be no great harm in such a state of things as I have described as prevailing in this District. But the detection and punishment of commercial fraud ought not to be wholly lost sight of. The ordinary machinery of the Criminal law is not sufficient for this purpose; and under existing arrangements the Supreme Court, in its Insolvency jurisdiction is quite helpless unless aided by the creditors. The administration of the law, in this respect, requires, in my opinion, some additional official machinery.

Looking only to the interests of the creditors, I conceive that some additional official machinery is required. For even where there is a substantial estate, the body of creditors is often too slow in its movements. There is a difficulty in getting any one to take interim sequestration, and the estate is dilapidated before it can be taken possession of.

On these grounds I have come to the conclusion that a body of official assignees ought to be appointed. Probably persons might be got to act in consideration of the receipt of a fixed percentage on the gross proceeds of the estates administered by them. And they should, of course, be bound to give security for the honest discharge of their functions.

Immediately upon adjudication being made a provisional assignee of the estate should be appointed, with full powers not only for its interim custody (as under the present law), but to collect debts, and sell perishable stock, and (by authority of a Judge) any other stock likely to deteriorate by keeping, or to cause great expense.

In general, this provisional assignee should be an official assignee. But a Judge should have power, on the application of a certain proportion of creditors, to appoint, at his discretion, any other person to be provisional assignee.

Whether the official assignee, if appointed provisionally, should be the permanent assignee of the estate, should be left to the decision of a meeting of creditors duly convened. But in the absence of any resolution of such a meeting, the official assignee should be named in the vesting orders as the permanent assignee.

Every assignee should be subject to removal by the Court.

Query 7.—The costs of administration will always be great, and will wholly swallow up many estates. Many estates will not even suffice to pay the expense of administration.

This is a result which must be faced if the law of Bankruptcy is to be administered for any other purpose than that of making a dividend in a few cases, and discharging debtors without investigation of their conduct.

The present mode of proof is by affidavit, and the assignees or creditors to the amount of £50 are empowered by the General Rules of 1863 to contest proof. But the affidavit of the claimant is *prima facie* sufficient proof. It would be better to adopt the Scottish plan, and require the assignees to judge for themselves, upon the affidavits and vouchers produced by the claimants, of the validity and amount of the debts, with power to take legal advice. The result should be embodied in a scheme of division, which, being submitted to the Court upon due notice, and not successfully objected to, should be acted upon.

It is desirable that every assignee should forward accounts of the estate to an officer (one might suffice for the whole colony) to be called an Accountant in Bankruptcy. Such an officer is needed as a check on assignees. He would have to be remunerated by salary. But, for a time, the office might perhaps be filled by some officer of the Colonial Treasury or Audit at less expense than would be occasioned by a distinct appointment.