

No. 37.

The ATTORNEY-GENERAL to Mr. JUSTICE RICHMOND.

SIR,—

Attorney-General's Office, Wellington, 26th July, 1865.

I have the honor to acknowledge the receipt of your letter of the 14th inst., containing answers to queries on the law of debtors and creditors, and, in reply, to express the thanks of the Government to your Honor for the same.

I have, &c.,

His Honor Mr. Justice Richmond, Dunedin.

HENRY SEWELL.

No. 38.

SUGGESTIONS BY THE DUNEDIN CHAMBER OF COMMERCE IN REPLY TO THE HONORABLE THE ATTORNEY GENERAL'S CIRCULAR No. 8, ON THE SUBJECT OF THE LAW RELATING TO DEBTORS AND CREDITORS.

The Chamber has had under its serious consideration the subject referred to by the Honorable the Attorney-General.

From the past experience of its own members, and the universal feeling of the community, it has arrived at the conclusion that to do justice to both Debtors and Creditors that law requires very considerable alteration and amendment.

The Act of 1862 was, when it became law, justly deemed an invaluable boon, because it possessed at least the virtue of distributing among a body of Creditors generally, the assets of an Insolvent, instead of allowing him to dispose of his property in any way that caprice might suggest.

As the necessity arose from day to day for having recourse to the benefits of the Act, it became apparent that its machinery was cumbrous and expensive; that the expense of winding up an estate bore an alarming proportion to the value of the property realised; that sufficient protection was not given either to creditors or honest debtors, and that even with the numerous enactments of Great Britain and her colonies before it, our own Legislature omitted to provide for the many interests which have been cared for by them.

Referring to the Circular, the Chamber begs to make the following suggestions in reply to the Honorable the Attorney-General's queries.

THE CONSTITUTION OF THE COURT.

1. & 2. There can be no doubt, from the nature of the interests involved, that it would be far better to appoint an Insolvency Commissioner for each Province than to permit the organization of the Court to exist as at present. The Judges have numerous and onerous duties to perform. They have to preside at four Criminal and four Civil Sessions annually. They travel on circuit; and, when not engaged at Nisi Prius, hold repeated sittings for adjudicating upon pure questions of law. Then, again, days are set apart in each week for disposing of business in chambers. So much time is occupied in the performance of these duties that a month, and occasionally nearly two months, intervene between the days set apart for disposing of insolvency business.

The Chamber thinks that the Commissioner should be a gentleman of legal education and experience, and also that there should be a power of appeal from all decisions given by him.

The Chamber, while taking this opportunity of reiterating its views regarding the appointment of an assistant Resident Magistrate (under the extended jurisdiction) ventures to suggest that the gentleman appointed to that office might also perform the duties of the Commissioner.

The Commissioner should hold his Court either once or twice a week in the chief town of the Province to which he may be appointed, or even oftener, should circumstances render it necessary.

3. The Chamber is of opinion that Resident Magistrates, as such, should have no jurisdiction except in country districts, nor even in those districts would it be expedient to vest in such officers the powers of a Commissioner. Cases have occurred where judgment has been recovered in a country Resident Magistrate's Court with extended jurisdiction, for sums of considerable amount, and long before steps could be taken by the Debtor for protecting his estate under the Debtors and Creditors Act, a sale has been made under the execution, and everything thus sacrificed.

Such cases cannot so frequently occur in a town where a Judge resides, as he is invariably accessible for the purpose of obtaining a protection order. The Chamber therefore recommends that—

Resident Magistrates in country districts should have power to accept and deal with the petition of any person residing within a given circuit, and to grant interim protection of person and estate, and also to take possession of all effects until the first meeting, which should be held before the Commissioner of the province; from that time the estate should be wound up in the Commissioner's Court.

ACTS OF INSOLVENCY.

A trader in this town lately convened a meeting of his Creditors in consequence of an action having been commenced against him to recover the amount of a Bill of Exchange. He read a statement which purported to explain his position, shewing an apparent surplus of £120 over his liabilities. He had the assurance to give his creditors the option of accepting one or other of these alternatives, viz. :—That they should pay him a premium of £300, take over his stock and release him from all liability, or that they should accept a dividend of ten shillings in the pound, part in cash and part by deferred payment. These proposals having been declined, he was requested to assign his estate for the benefit of his creditors; but this, in turn, he also declined. The probabilities are, that a few executions (entailing a vast amount of expense, as they invariably do) will sweep off the entire assets, and the creditors, who are not now in a position to enforce their claims, will be thus placed in a most lamentable position. This case suggests that it would be well if creditors were allowed to petition for the sequestration of an estate upon other grounds than those mentioned in the Debtors and Creditors Act; for instance, the convention of a meeting of creditors, or judgment on dishonoured bills, or the levying of a writ of execution (no matter at whose instance) is more than *prima facie* proof of the virtual insolvency of the debtor. Then, should not any