CRIMINAL PROSECUTIONS IN BANKRUPTCY MATTERS

It is now generally acknowledged that a very considerable improvement in the administration of estates in bankruptcy has been brought about by the amendments of 1932 to the Bankruptcy Act. Many of the abuses formerly complained of were immediately removed by the elimination from practice of the irresponsible type of trustee to whose maladministration the disrepute into which bankruptcy administration had fallen may be directly traced. Further progress towards improved administration has been achieved by the careful selection, licensing and bonding of capable and responsible trustees, and by the continuous and thorough-going supervision exercised since 1932 over the operations of all trustees. There are few serious complaints regarding the manner in which bankrupt estates are now being administered by the trustees. Much dissatisfaction, however, is expressed by creditors at the apparent ease with which the dishonest debtor can continue into successive bankruptcies to the detriment of his creditors and his trade competitors, and without much serious risk to his own liberty. At this time, when business stands on the threshold of a new period of prosperity and credit expansion, with a probable resulting increase in the number of commercial failures to be expected, a review of the situation and of the problems connected with bankruptcy prosecutions may be of interest and of some value.

The problems peculiar to the prosecution of bankruptcy offences have for some years been a source of concern not only to the creditors directly interested, but also to federal and provincial authorities alike, and several attempts have already been made by Parliament to provide legislation by means of which these offences might be dealt with both speedily and effectively. Unfortunately, for the reasons now to be mentioned, these legislative efforts have not had the success or the efficacity ordinarily expected from such measures, and it is not going too far to say that fraudulent bankruptcies continue to furnish problems of great economic importance which, urgently as they need a solution, still remain without a remedy.

Provision has been made, of course, by the Bankruptcy Act both for the examination and for the prosecution of dishonest debtors, and if it were possible and practicable in every case to enforce the present provisions of the law very few bankruptcy frauds would go unpunished. As it is, the offenders often escape because of the practical impossibility of enforcing the law in all

cases, due to the fact that the responsibility and costs of the initial investigation and proceedings have ordinarily to be borne by the already victimized creditors, who must themselves be willing to furnish the necessary funds for this purpose. It is commonly said, in fact, that it is safer for a dishonest debtor to leave no assets at all than to leave enough to provide for the expense of an investigation and possible criminal proceedings. Except in cases in which they have been outraged by the perpetration of systematic and flagrant frauds of more than ordinary dimensions, trade creditors are generally averse to the institution at their own expense of criminal proceedings from which they cannot hope to obtain any material advantage. The situation is briefly and correctly described in a statement recently made by the Secretary of one of our Chambers of Commerce. The continued repetition of these frauds, he said, is not due to weaknesses in the Act but largely to the fault of the creditors who at the first meeting become very indignant but subsequently throw up their hands, expecting to get very little, if anything, out of the estate and being loathe to risk any further expense or costs. There is no doubt, indeed, that the creditors are usually unanimous in their belief that all bankruptcy offences, like ordinary criminal matters, should be investigated and prosecuted by the authorities at the public expense.

Here, however, is encountered what is perhaps the most difficult problem in the prosecution of bankruptcy offences, owing to the alleged conflict of jurisdiction between the federal and the provincial authorities. The question of the responsibility and cost of the enforcement of bankruptcy legislation has always been troublesome as the Dominion authorities have maintained that the enforcement of all legislation is a provincial matter, whereas the provincial authorities, or at least some of them, seem to have felt that the enforcement of the penal provisions of the Bankruptcy Act and the prosecution of bankruptcy offences generally, are matters with which the Dominion authorities are more directly concerned. This is a point that frequently arises and it is hardly reasonable that the prosecution of a dishonest debtor should depend upon the outcome of so academic a discussion. Attorneys-General, of course, have their own problems, not the least of which is the large volume of ordinary criminal business with which they have to deal and for which the necessary funds must be provided from their yearly appropriations. They can scarcely be blamed for desiring to conserve their funds as much as possible to enable them to take care of their more immediate responsibilities, and to place on other

shoulders at least a share of the responsibilities and of the expense involved in proceedings that may, with some justification, be looked upon as being properly the subject of private prosecution.

It would be far from the truth to say that the attitude just described is by any means general in the provinces. On the contrary, the provincial authorities have done and are still doing very good work in many bankruptcy cases in which practically all the costs have been borne by the provinces. It will be recognized, however, that these are mainly cases in which the nature or circumstances of the offence are particularly aggravated or otherwise objectionable, as the Crown does not usually take up these matters until after the accused have been committed. There is no doubt whatever that the creditors as a whole fully appreciate the efforts that have been expended in this way on their behalf. Their only desire is to have the arm of the law extended still further to embrace every form of bankruptcy fraud and offence, big and little, in order that these too frequent practices may be more effectively checked and the offenders more adequately punished. The investigation of bankruptcy offences is a specialized and technical business comparable in its own way to the work being done under the securities commissioners of the provinces, and the investigation and prosecution of these matters should be under the control of an official having the specialized knowledge usually acquired only by an extensive experience of bankruptcy administration. It is for these reasons that these matters should not be left entirely to the haphazard decision and action of the creditors.

It was probably because of the known reluctance of creditors to prosecute in bankruptcy matters that Parliament, in the Bankruptcy Act of 1919, included the provisions of section 195, which authorized the court to order a prosecution when it was satisfied that an offence had been committed and there was a reasonable probability of conviction. Section 198 of the same enactment empowered the court to commit the accused for trial. Both of these provisions appear to have been adopted almost textually from the English Act of 1917, then in force, and it was probably believed at the time that they would provide a reasonable remedy for any abuses that might arise. It would seem, however, that few orders to prosecute have been made under section 195, and it is hardly to be expected that these rather exceptional provisions will be of general application. Very rarely, if ever, has advantage been taken by the bankruptcy court of the provisions of section 198 to commit an offender

for trial. This power is not likely to be used in ordinary cases or in other than the most exceptional circumstances.

It does not seem to have taken long to discover that the penal clauses of the Bankruptcy Act of 1919 were without any very effective sanctions, and bankruptcy frauds continued to exist. Moreover, administrative abuses appear to have grown with great rapidity until, in 1929, they had assumed proportions that invited the fullest inquiry and the application of suitable remedial measures. In that year an investigation into the abuses then existing in bankruptcy administration was initiated by the Council of the Bar of Montreal, continued and expanded by the Canadian Bar Association, and completed in 1932 by a Special Committee of the House of Commons. As a result of this inquiry the Bankruptcy Act was amended to provide for the appointment of a Superintendent of Bankruptcy clothed with very substantial supervisory and investigatory powers and for the licensing of trustees. Section 195, which empowers the court to order a prosecution when it is satisfied an offence has been committed, was enlarged to enable the court to receive representations from the Superintendent of Bankruptcy with regard to offences, and to make it the duty of official receivers, custodians and trustees to fully report to the court all the facts or circumstances regarding offences. Section 198, which empowers the court to commit for trial, thus doing away with the need for an inquiry before a magistrate was retained, although its counterpart in the English Act had been repealed in 1926.

The widening of section 195 in this way, together with the introduction of the supervisory and licensing provisions, was believed to furnish the remedy for the then existing administrative abuses, and as far as the actual administration of estates is concerned both the supervisory and licensing features have proved to be highly effective. It is more than probable that the very appreciable improvement in the administration of estates has emphasized the deficiencies of other parts of the law. Be that as it may, it is at least evident to the creditors that if the intelligent application of the right sort of legislation can remedy the diseases from which the administration of estates formerly suffered, similar legislation properly enforced will cure the bankruptcy sores that continue to irritate the commercial credit body. It is becoming increasingly manifest that, conditions being as they are, the present provisions are inadequate, and it is evident that if the creditors are to be given the protection they demand some major modifications must be made to the procedure

that is now available. It is of interest to note that a similar agitation is on foot in Great Britain where these problems have been receiving the consideration of the National Chamber of Trade and the Federation of British Industries. At the last annual meeting of the National Chamber of Trade a resolution was adopted recording the view that the provisions relating to the prosecution of fraudulent debtors are very frequently unenforceable in practice by reason of the risk attendant on private prosecutions, the burden of costs of preliminary proceedings and in the inadequate punishment meted out on conviction, and it was urged that an immediate inquiry is necessary "to devise measures to prevent the grave abuses now prevalent." In its representations to the Board of Trade the Federation of British Industries urged that prosecutions should be ordered much more freely in cases where there is evidence in the Official Receiver's report of any offence in connection with the Bankruptcy Act having been committed, its being strongly felt that "unless more drastic action in the form of prosecution is taken the victimization of traders by reason of fraudulent bankruptcies will continue to increase."

In Canada, as in England, the trade associations are definitely of one mind with regard to the remedies to be applied. These are, briefly, (1) an exhaustive and public examination of each debtor by an independent authority; (2) a complete investigation of his affairs when there are reasonable grounds to believe that an offence has been committed; (3) the provision of machinery for the prosecution of all dishonest debtors; (4) the imposition of more adequate penalties upon conviction, and (5) that greater regard be given to the circumstances of the bankruptcy and to the conduct of debtors when applications for discharge are being considered. Each of these points are of sufficient importance to warrant separate consideration.

(1) *The examination of debtors.* If the term "examination" means anything at all it means a serious and sufficient inquiry into the affairs and the conduct of debtors and the causes of their failures. No such system of examination, however, exists in Canada at the present time outside of a very small number of bankruptcy divisions in which the Official Receivers fully understand and appreciate the importance of these matters and have, or take, the necessary time to conduct a proper examination. In practically all of the bankruptcy divisions the Official Receivers simply read over the questions listed in bankruptcy form No. 50 which the debtors are required to answer under oath. Generally

speaking, no serious effort is made to ascertain the real cause of the individual failure, the questions are necessarily of a general character and the debtor's replies are usually non-committal. Seldom is the debtor required to furnish proof of his statements other than his oath. Rarely, indeed, is there any examination of his books. The very perfunctory way in which the so-called examination of debtors is made appears to be chiefly attributable to the fact that the Official Receivers, generally, are not specialists in bankruptcy matters. Of the fifty Official Receivers functioning as such in the various bankruptcy divisions of Canada not more than half a dozen have sufficient bankruptcy work to take up the greater part of their time. The remainder cumulate the position with more important duties (from the point of view of the amount of time devoted to them) as Registrars and Prothonotaries of the Supreme and Superior Courts, and as Clerks of the Crown and of the Peace. The average number of bankruptcy cases with which these officials have to deal is not usually very large, certainly not large enough to enable them to acquire a specialized knowledge of the subject. Consequently, they are not usually disposed to probe very deeply into the conduct and affairs of the debtors, they feel that these are matters that can best be dealt with by the trustee and the creditors. In very few divisions, and in none outside of the small number already referred to, has an Official Receiver ever been known to recommend that his examination be supplemented by special examinations along particular lines.

While this situation is not very satisfactory from the administrative point of view, it is difficult, for the reasons just mentioned, to suggest an immediate remedy. It is a practical impossibility in a vast country like Canada to maintain a bankruptcy specialist in every centre in which an Official Receiver must be available. It would seem to be possible, however, to improve the present system by encouraging the Official Receivers to take a greater interest in their duties and to view them in a more scientific light. Some progress has already been made in this direction since 1932, but much more still remains to be done. As already intimated, it has been suggested that the Official Receiver's examination of debtors be open to the public. It is felt in some quarters that fear of a public examination would prove a sufficient deterrent to many who might otherwise be tempted to tread the paths of dishonesty.

It has been suggested that an amendment to the Canadian Act to incorporate therein the provisions of section 157(1) (c)

of the English Bankruptcy Act would add considerably to the importance of the examination of debtors and at the same time facilitate the prosecution of bankruptcy offences. By this section of the English Act a bankrupt who, being required by the Official Receiver at any time, or in the course of his public examination by the court, to account for the loss of any substantial part of his estate incurred within a period of a year before the bankruptcy, fails to give a satisfactory explanation of the manner in which such loss was incurred, is guilty of a misdemeanour.

(2) *Investigation of the debtor's affairs.* There is no doubt that proper investigation and the public exposure of fraudulent debtors would do much to discourage certain forms of dishonesty in business. The Official Receiver's preliminary examination of a debtor, if properly conducted, should in almost every case indicate whether or not further investigation should be made. If any doubt remains it can readily be cleared up at the first meeting of creditors at which the debtor is required to attend. His good faith, or lack of it, should then be sufficiently apparent to determine whether or not a special investigation would be warranted. Further, section 134 enables a complete investigation to be made by examining the debtor or any other person reasonably thought to have knowledge of his affairs, but the usefulness of this section may be entirely nullified by the fact that there are no funds in the estate to pay the cost of such an investigation. The more experienced creditors and officials are of the opinion that the actual investigation should be taken out of the hands of the creditors and undertaken by an independent official properly equipped to bring out the facts. There is much to be said for this view. Individually, the creditors are often neither able nor willing to investigate for themselves, owing to the many factors — questions of policy, as to costs, sympathy with the debtor and other considerations — which usually intervene, none of which, however, is likely to influence to any extent the impartial inquiry of an official investigator.

(3) *Provision of the machinery of prosecution.* Generally speaking, the factors preventing creditors from investigating the affairs and conduct of their debtors are identical with those that make them reluctant to prosecute. How often, for example, when a decision to prosecute is reached, is an attempt made to create an impression that the debtor is being persecuted. In such cases reluctance to prosecute is due to the natural dislike of the average business man to allow his name to be used in proceedings thus misrepresented, be his cause ever so just. Again, there is a certain amount of risk that cannot be entirely

divorced from criminal prosecutions. Thus, it may happen in the event of an acquittal that the prosecutor may be ordered to pay the defendant's costs in addition, of course, to his own. Even where private proceedings are instituted and are successful, the creditors usually have to pay the costs and in all such cases the proceedings involve a number of important preliminaries which must be financed by the creditors from the estate or from their private funds. It may be said in favour of the creditors that where there are funds in the estate they are usually prepared to authorize that they be used for these purposes, but when there are no funds whatever in the estate there is a not unnatural reluctance on the part of the creditors to institute criminal proceedings. The cost of the preliminary investigation and of preparing a case is often substantial. Many offences arise from concealed fraud, hidden and secret transactions of some form or other, and an intensive and expensive investigation must in most cases be made before grounds can be found on which to base criminal proceedings. The cost of conducting the prosecution is often heavy also, and its outcome is often problematical. Even if the prosecution results in restitution being made the funds thus obtained or the larger part of them may well have been absorbed in costs that, when looked at from this point of view, are entirely out of proportion to the benefit or satisfaction obtained by any one group of creditors. This, indeed, is the whole point of the contention of the creditors. They feel that it is unreasonable to expect them to do something that the State should do in the public interest, and that in cases involving fraud there should be official intervention and action.

(4) *Adequate penalties for bankruptcy offences.* It is not at all unusual in bankruptcy matters for creditors, already defrauded of their goods, to contribute individually and proportionately to the amount of their claims to the investigation of their debtor's affairs and to the costs of the ensuing prosecution. It is well known how difficult it is to obtain convictions in such matters, how exceedingly hard it is at times to bring the offence home to the accused. It is small wonder, therefore, that the creditors who have provided the means of obtaining a conviction from their own private funds become quite discouraged by the uncertain outcome of these prosecutions and the inadequacy of the penalties imposed upon conviction. Fines are more common than prison sentences, and the fine itself may represent merely a portion of the proceeds of the fraud. Here, indeed, is the comment of a learned judge of an appellate court in the case of a very recent bankruptcy fraud :

> I cannot part with this case without expressing my feeling that the punishment meted out by the trial judge is inadequate. He ought to have awarded, in my opinion, a term of imprisonment. It seems to me that an attempt to secure a very large financial advantage is not adequately punished by a fine much smaller than the profit sought to be made. However, there is no appeal as to sentence and this matter is not before us.

This case came before the appellate court on the appeal of an officer of a debtor corporation against his conviction on a charge of fraud. Had this man been acquitted in the lower court, or had he submitted to the judgment of the lower court, few outside the circle of those immediately interested in the bankruptcy would ever have heard of the case. It is only when the unusual happens that any attention is paid to such matters. On the other hand, very little notice is ordinarily taken of an acquittal in police court as these are matters of everyday occurrence and the Crown, on a point of law, alone has the right to appeal against an acquittal. It would therefore seem to be all the more important that these prosecutions be conducted by official prosecutors.

There is indeed a real need for a revision of the attitude that has been adopted in some quarters towards bankruptcy offences. It is true that in some cases criminal proceedings may be threatened or even instituted in the hope that the debtor may be induced thereby to make restitution. Such cases, while not uncommon, are not general, and it should be possible to deal with them on their individual merits, reserving for those cases in which there is evidence of deliberate fraud the most serious consideration. The point that should always be kept in mind but which, unfortunately, is often overlooked, is that bankruptcy frauds and offences are not civil but criminal matters, that they are not merely private prosecutions but prosecutions in themselves as important from the point of view of public order and commercial economy as any that may be instituted under the Criminal Code with the sole exception possibly of crimes of violence. Some idea of the importance of the subject to the economic life of the country is gained when it is realized that the actual loss occasioned to the trade and industry of Canada from bankruptcies, in times of normal business activity, stated merely in terms of dollars, averages more than forty million dollars a year. What percentage of this huge annual loss can be attributed to dishonest and fraudulent practices it would be difficult to determine, but no matter how large or how small the percentage may be it is essential in the interests of commercial morality

that the offenders be prosecuted vigorously in each case in which such action is necessary.

(5) *The discharge of the debtor.* Modern bankruptcy legislation is based upon two main principles — that which provides for the distribution of the goods of the insolvent debtor among his creditors proportionately to their claims, and that which provides for the release of the unfortunate but honest debtor from the burden of debt that he cannot possibly pay and enables him to make a new start in life. A reading of the various sections of the Bankruptcy Act that deal with the discharge of the debtor reveals the extent and character of the restrictions and safeguards that hedge and surround the exercise of this very important power. It is at once evident that these restrictions and safeguards have not been enacted to prevent the honest but unfortunate debtor from obtaining his discharge. Their purpose cannot be other than to prevent the debtor whose honesty is not clearly apparent from continuing openly to exercise his predatory methods to the detriment of all honest men. They are undoubtedly wise and necessary restrictions, based upon the accumulated legal knowledge and experience of centuries of bankruptcy administration.

The application of a debtor for his discharge from bankruptcy cannot consequently be considered to be anything but a matter that is rightfully entitled to the exercise of the highest qualities of judicial discretion, which is precisely what has been contemplated, and provided for, by Parliament. In no circumstances whatever should the application of a debtor for his discharge from bankruptcy be considered a matter of merely routine importance. Any other interpretation of the provisions of the Act must inevitably react to the detriment of honest traders generally, and to the lowering of the high standard of commercial morality that is at once the characteristic as well as the basis upon which, and upon which only, modern business relationships and dealings can be maintained. We are fortunate in this country in having courts and judges who take these duties seriously.

What of the individual, however, who, having become bankrupt, does not make application for a discharge or who having made application is refused a discharge? Every retail merchant is familiar with the unscrupulous trader who, suddenly appearing from parts unknown, takes premises in the main shopping district and by sharp practices and by representations that he can offer goods below usual prices disturbs the regular

channels of trade with disastrous results to the local retailers. For a time he goes on, but eventually becomes bankrupt. Then, having had his flutter at the expense of his creditors and the local traders, he disappears only to turn up again elsewhere under some other name or names and repeat the process. Such cases are becoming more noticeable than formerly, owing to the increasing intensity of competition in certain lines of trade and the facility with which credit can apparently be obtained. Another factor which seems to facilitate the operations of such individuals is the ease with which they can obtain the incorporation of the mushroom companies that have become so prominent in the retail trade of today. This is a problem that is worthy of the attention of legislators and business men, if only to find the means of eliminating from business the worst forms of such illegitimate competition and its inevitable fraud and dishonesty.

No attempt has been made in this brief account of the difficulties involved in prosecutions in bankruptcy matters to deal exhaustively with any of the subjects that have been discussed. A fair-sized volume would be needed to deal at all adequately with all of the subjects that might be considered. The object has been merely to touch, as it were, on the outstanding difficulties and problems as described by the creditors and as viewed by a spectator, and if in these pages a coherent account of these difficulties has been given, this objective has been reasonably well attained. But even this summary would not be complete without some reference being made to the suggestions that have been advanced with a view to providing a solution to these difficulties and, incidentally, to make the administration of the Bankruptcy Act still more effective. Happily, none of these suggestions calls for any drastic amendment to the Act, which is now having its first practical opportunity to prove that it can be really beneficial, under a system of limited supervision, to the commercial and trading interests of the country, and to fulfill, to the satisfaction of creditor and debtor alike, the purpose for which it was originally enacted. Three different suggestions have been made, all of which contain some practical ideas, and each of which is worthy of consideration.

First of all, it has been suggested that a special fund be provided by the creditors through their respective trade associations, to provide for the cost of investigating the affairs of dishonest debtors and to defray the costs of the preliminary court proceedings, when necessary. This idea has already been

adopted (to some small extent only, it is believed) in England, where a part of the subscription of each of the members of a local Chamber of Trade has for some years been set aside as a contribution to a special fund for the prosecution of fraudulent debtors. It is, of course, based on the theory that, until such time as the law is sufficiently strengthened or more rigorously enforced, it is for the creditor organizations themselves to do all they can to protect and assist their members. The advantage of such a plan is to give the creditors themselves complete control of the fund and of the manner in which it is to be expended. They would appoint their own investigator and prosecutor who would, of course, be required to proceed in accordance with the wishes of the trade association or group of associations, or of the management committee in control. It would also be an advantage to have investigations and prosecutions conducted by a national executive who would be free from the various influences to which the local creditors are subject. The principal disadvantage would seem to be that a comparatively large number of unorganized creditors would receive the same benefits as the contributing creditors, without being subject to assessment for their share of the costs. A further disadvantage would likely be found in the expense of maintaining a central organization and staff, unless some arrangement could be made to have the work carried on as an adjunct to that of the already established headquarters of one of the trade or credit associations. On the whole, the plan raises a variety of problems not the least of which is that of providing the necessary funds each year to carry on the work.

The second suggestion is to the effect that the investigation of fraudulent bankruptcies and the resulting prosecutions be placed in charge of the proposed Director of Public Prosecutions to be appointed under the Dominion Trade and Industry Commission Act, 1935. Whether or not such a plan would be feasible remains to be seen, but it is noted that the list of "laws prohibiting unfair trade practices" as defined by Section 2 (h) of that Act, and with the violation of which the Director of Public Prosecutions will be particularly concerned, does not include the Bankruptcy Act, although the offences prohibited by the Bankruptcy Act are necessarily very closely related to "unfair trade practices." The list does include, however, sections 404, 405, 406 and 415 A of the Criminal Code, which between them cover a variety of offences commonly encountered in bankruptcy matters, notably those involved in obtaining goods or credit by false pretences or representations or by other fraudulent means,

the publication of false advertisements, the making of false entries in, and the alteration and mutilation of books of record and other documents. It would not appear, from a study of the Act, to be the intention to burden the Director of Public Prosecutions with duties of the continuous or specialized character that would be the principal feature of the work of investigating and prosecuting bankruptcy offences. Nevertheless, as many offences arise out of the conditions which the Act proposes to remove it would seem to be almost a corollary thereto that bankruptcy offences generally also be brought within its provisions.

Finally, it has been suggested that the investigatory powers conferred by the Bankruptcy Act on the Superintendent of Bankruptcy be extended to empower the Superintendent to make investigations into matters that, although pertaining directly to the bankruptcy, have taken place prior to the date of the assignment, or of the presentation of the petition; also, that the Superintendent be authorized to undertake the prosecution of fraudulent debtors when the circumstances of the case are in his opinion such as to make such action necessary or desirable in the public interest. It has been suggested that the rate of the levy now made on all payments to the creditors of bankrupt estates to defray the cost of the present supervisory activities be increased to provide the funds necessary to cover the cost of these additional activities.

A number of reasons have been advanced in favour of the adoption of this idea. First of all, there is already under the Superintendent of Bankruptcy an organization that deals exclusively with bankruptcy matters, and has a complete record of the administration of every bankruptcy in the Dominion. The Superintendent is already empowered to make such inspection of and investigation into the administration of estates as he may deem expedient, and is in charge of a staff that has had considerable training and experience in the investigation of these matters. The costs of the present supervisory activities of the Superintendent are being defrayed by means of a small levy on the payments to the creditors; the amount of the increase that would be necessary to cover the cost of the additional activities would scarcely be noticeable to the average creditor. In this way, also, each creditor in each bankrupt estate would be assessed for his contribution in proportion to his interest. The adoption of this plan would, of course, necessitate an amendment being made to the Act to empower the Superintendent to undertake these additional duties. He is already authorized to engage

accountants and such other persons as he may need to conduct inspections or investigations or to take any other necessary action outside of his office, but he is perhaps restricted to the investigation of matters arising at the time of or subsequent to the bankruptcy and connected with the administration of the assets.

The whole question is one that would seem to be worthy of further serious consideration, but it can scarcely be denied that there is a real need for an organization of some kind to deal with these matters. During the past three years the writer has had occasion to examine the records of several thousand bankruptcies of all descriptions, a relatively large number of which were of the negative or "no asset" type, or in which the comparative value of assets to liabilities was relatively small. Although many of these cases could, it is believed, have been profitably investigated, it has been found practically without exception that the role of the trustee and the creditors has been very largely circumscribed, if not rendered entirely passive, by reason of the lack of funds. In none of these "no asset" cases does there appear to have been a proper investigation of any kind. A study has also been made of approximately one hundred cases of estates in which at least sufficient funds were available to permit of some inquiry being made, in each of which there were reasonable grounds to believe that one or more offences had been committed, and in each of which a preliminary investigation of some sort had been made by the creditors. While there is good reason to believe that the material examined was not all-inclusive, it had some value as an indication of the opportunities for fraud that exist, of the frequency of the occurrences of bankruptcy offences, and of the relatively small number of investigations and still smaller number of prosecutions. It also revealed the many difficulties encountered in the investigation and prosecution of these offences, and would appear to confirm the view that the effective enforcement of the penal provisions of the Act can best be obtained by means of the establishment of an organization specially equipped to deal with these matters.

Some of the cases reviewed have cost the creditors and the provincial authorities many thousands of dollars, but the creditors invariably feel that their money is well spent in this way. It should be repeated that when the estates have funds available for purposes of investigation and prosecution the creditors almost without exception are willing to have them spent for these

purposes, when such action seems necessary. Unfortunately for the creditors and for the proper enforcement of the penal clauses of the Act, the funds are not always available and in many cases the penal sections cannot be brought into service. Until this problem is solved the impartial and certain enforcement of the law will be something to be hoped for, rather than a reality.

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