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INSOLVENCY LAW REVIEW COMMITTEE

FIFTH MEETING

Meeting to be held in the Conference Room, 2-14 Bunhill Row on Monday, 27 June 1977 at 10.00 am.

AGENDA

1 Minutes of the meeting on 18 May 1977.

2 Matters arising.

3 Secretary's report.

4 Sale of goods with reservation of title clauses ('Romalpa').

5 Receiverships - continued (ILRC 17)

(a) Item 19
(b) Item 20
(c) Item 26 (Annex II to ILRC 17).

6 Winding up by the court (ILRC's 12 and 20). (Time permitting.)

7 Any other business.

8 Confirm date of next meeting (Thursday, 28 July).

T H Traylor
Secretary
25 May 1977

5th Mtg
27.6.77

INSOLVENCY LAW REVIEW

Minutes of the Fifth Meeting of the Review Committee on 27 June 1977

Present:

K R Cork (Chairman)
P G H Avis
J S Copp
A I F Goldman
J M Hunter
M V S Hunter
D McNab
T R Penny
C A Taylor
E I Walker-Arnott
T H Traylor (Secretary)
E L Reeves (Assistant Secretary)

In Attendance:

J R Endersby
D Graham
R B Jack
G A Weiss

1 The Committee met at 10.00 am. The minutes of the fourth meeting held on 18 May 1977 were discussed. It was agreed that the second sentence of para 18 should read "in the case of disqualifying a director ....". With regard to para 39 it was pointed out that in compulsory winding-up the liquidator is appointed by the Court and it was agreed that the words "in a voluntary liquidation" should be inserted after "sole liquidator" in the last line. The minutes as amended were agreed and signed by the Chairman.

PANELS

2 The Chairman reported that both the Accountants' Panel and Legal Panel had been set up and had met. The Accountants' Panel had elected Mr Weiss as its chairman and the Legal Panel had elected Mr Goldman.

MATTERS ARISING

3 The Secretary stated that although the Law Commission were ready to meet the proposed sub-committee (para 3 of the minutes of the fourth meeting), it had not yet been possible to arrange a meeting. The extract from Hansard which was to be circulated (para 15(b)(ii) of the minutes of the fourth meeting) was not yet available as that Hansard had not yet been printed.

REPORT BY THE CHAIRMAN

4 The Chairman reported that he had had a meeting with the Inspector General to discuss the work and the secretariat of the Committee. He said that with the amount of work going to the panels the Secretary and the Assistant Secretary were not going to be able to do very much else and he felt that it was essential that, with the panels doing a lot of work, the Committee should have the same secretariat looking after the panels so that the panels did not embark on tasks other than those put to them and also, that the panels understood what the Committee were doing. If the Report is brought out quicker because the Committee has a larger support staff, it would not in the end be any more expensive. In these particular times a review of insolvency law is very important and a long drawn out enquiry would become out of date by the time it got to Parliament.

5 The Chairman continued that during the course of his meeting with the IG, it became apparent that the Department felt that if they knew the lines on which the Committee were thinking, they could provide help and information to assist on the matters in which they were involved; they had asked, therefore, whether they could see copies of the minutes. Following discussion, it was agreed that three numbered copies should go to Mr E G Harper (Inspector General), Mr A D Gwyther (DIG) and Mr W Armstrong (DIG) on the basis that these were confidential and the Committee would not like them to get into any different hands. The contents should not be disseminated but if there was a matter on which they wished to obtain further information from the Department in order to put the facts before the Committee they would be at liberty to do so.

6 The view had been expressed that the Committee had loitered too long on receivers. The Chairman said he hoped that if any member felt that the Committee were spending too long on a subject they would say so. It was agreed that different subjects would be discussed during the morning and afternoon sessions.

SECRETARY'S REPORT

7 The Secretary reported that:

(a) Mr Harper, Mr Gwyther and Mr Armstrong had been invited to lunch with the Committee,

(b) Mr Drain and Mr Millett had sent apologies for absence,

(c) Papers circulated since the last meeting were:

(i) Annex II to ILRC 17
(ii) Memo from Consultative Committee of Accountancy Bodies
(iii) Various published papers about "Romalpa"

(iv) ILRC 22 A & B by Mr Millett, and
(v) ILRC 23 by Mr Penny.

(d) The following papers had been put before the Committee at the present meeting:

(i) ILRC 21 (remit to Accountants' Panel on receiverships)
(ii) ILRC 24 a short paper on receiverships by Mr Avis, and
(iii) A letter of 9 June 1977 from the Law Commission with an extract from Mr Justice Templeman's judgment,

(e) The Accountants' Panel and Legal Panel had decided to meet monthly with such half-day meetings as might be necessary between the monthly meetings,

(f) The British Insurance Association had nominated Mr D F Roper (Prudential) to act as consultant representing non-life offices. The Life Offices Association had nominated their Secretary-General (Mr T H M Oppe') and Mr E B O Sherlock (Equitable Life Assurance),

(g) The Home Office have an Advisory Council on the Penal System under the chairmanship of Mr Blom-Cooper QC, which have come to some firm views on criminal bankruptcy and had asked if the Committee had any views,

(h) Views from about 25 consultees had been received and these would soon be circulated.

8 It was agreed that the Secretary should seek further information from the Advisory Council on the Penal System regarding criminal bankruptcy and that it might be necessary to bring forward consideration of this subject.

ROMALPA

9 The Secretary drew attention to the two papers circulated (ILRC 18 and 19) and suggested that the Committee might like to consider the points in ILRC 18 but that this should be preceded by a general discussion.

10 The Chairman referred to the meeting of the Anglo German Jurists Society. It seemed to him that in German insolvency, practically everyone seemed to have fixed charges or priorities and unsecured creditors did not get anything. Because of the legal complexities, all receivers and liquidators were lawyers and it was said that only 2% had any commercial experience. Very few businesses came out at the other end as going concerns. There was no guarantee of the community or workers' interests and the result was a high degree of unemployment. Mr Weiss added that the idea of saving businesses there was a new one and they were admitting that the principles of retention of title had to be looked at again. When it occurred on a big scale, the liquidator had to lock the doors on everybody. Some interesting

statistics had emerged: Average losses of financial institutions were 21% of claims, suppliers of goods 36% of claims, revenue 89% and ordinary creditors 86%, indicating the extent to which suppliers had succeeded in retaining title. Mr Muir Hunter pointed out that the financial institutions did best because the secondary board of a company was largely staffed by the banks, so that they had a foothold unknown here, and that suppliers of services had no protection. Mr Graham said that a striking illustration given of Romalpa in action had been that of a wine merchant, who had bought bottles from one supplier and corks from another and there was a great dispute as to who owned the final product.

11 Mr Penny posed some questions. Was the remit of the Committee concerned only with insolvency and was insolvency inevitably bound up with finance? If it was, where did the Cork Committee end and the Wilson Committee begin? The Committee were discussing the question of security and security was for financial purposes. If the degree of security was to be reduced, where were companies to get their finance? Should the security be reduced? These days companies borrowed from banks on fixed or floating charges, machinery was leased, buildings were often leased, the supplies going into manufacture may not belong to the company (Romalpa) and even when the products were sold the proceeds of sale might not belong to the company. It seemed to him that the finance of industry was being run with inadequate risk capital which meant that if something went wrong there was an inevitable collapse. Perhaps the proportion of risk capital should be restored to what it used to be. The Chairman felt that the Committee's remit was to say to what extent Romalpa-type rules, which might be acceptable under normal trading conditions, should be void in an insolvent situation. Whether financial institutions should be allowed to take a floating charge for normal purposes of trade was a Wilson Committee problem. The Secretary added that he thought there could be no objection if the Committee felt it ought to say something in its Report about what had happened to risk capital.

12 Mr Muir Hunter said that the last hundred years had seen a large number of interferences, in the interests of the public, in the case of an insolvent debtor, with the freedom of contract. The Committee was entitled to say that, although the supplier could make what bargain he liked with his customer, in an insolvent situation this might be taken away. Whatever the Committee said about the effects in an insolvency would affect the commercial community. The Chairman remarked that Romalpa would effect the commercial community; it was likely that the clearers would say that if you bought goods under retention of title, you would not get a bank overdraft.

13 Mr Taylor did not feel that Romalpa was as big a problem as at present thought; It might be increasingly used for trading within the EEC. He felt that traders were largely ignorant of Romalpa and if they did adopt it, it would be up to the banks to monitor their lending and to check to what extent their security had been eroded. Mr Avis commented that Romalpa was becoming increasingly known, perhaps as a result of the banks seeking information from customers about the existence

Romalpa clauses; the customer then found out more about Romalpa and decided that he should adopt it. All bank lending was not necessarily secured; many advances are done on a 100p break-up balance sheet or on-going concern basis. Every aspect of the balance sheet, cash, stock, debtors, work in progress, was changed in some way by Romalpa. The banks might have to look at unsecured advances in a different way and ask for a fixed or floating charge. It was going to be a big problem for the borrower to find his money and for the lender to lend as he did before.

14 The Chairman instanced Brentford Nylons as an example where Romalpa had not worked as intended. If it had worked, the business would have had to shut on the first day - 2,000 people would have been out of work, the banks (owed £8m) would have got about £2m, the preferential creditors would have got practically nothing and the unsecured creditors nothing at all. The only reason it did not work was because the supplier had a factory in Northern Ireland of which a third of the products went to Brentford Nylons and they would have had to shut too.

15 The Chairman said that the Institute of Credit Management looked on Romalpa with favour and were advising their members as to how to introduce it. Mr Muir Hunter added that his experience was that the impact was becoming extensive.

16 The Secretary informed the Committee that there was a Committee chaired by the Department, with representatives of the banks, CBI, etc, looking into Romalpa. So far as he knew, they had found no evidence as yet that Romalpa was a problem requiring immediate attention. The Chairman pointed out that in normal trading it had no adverse effect; it only had an adverse effect in insolvency so there would as yet be very little evidence.

17 The Chairman suggested that Romalpa clauses should be treated like a debenture; all such clauses should be registered by the company using them and unregistered clauses would be void; secondly, any Romalpa clause registered within six months of a liquidation should also be void. This would kill the bigger part of the dangers. Mr Avis suggested that the existence of Romalpa clauses should also be noted on the balance sheet. The Chairman said that this would come automatically if the clauses were registered.

18 The Chairman added that, in due course, he was going to ask the Committee to consider whether all preferential claims should be registered and thus appear on the balance sheet.

19 Mr Muir Hunter did not feel that once for all registration would be of much use to the community, but registration of every transaction would so foul up the works that it would destroy registration of title altogether.

20 The Chairman explained that what he had in mind was not the registration of each invoice. When a bank lends money (say £1m) on a floating charge they have to register that the floating charge they have is for £1m; what he was suggesting was that you register that there is a Romalpa charge in respect of a supplier for, say, a £1m and if the supplier allowed unpaid goods to exceed £1m, his Romalpa claim would be restricted to £1m. The total would appear on the balance sheet like the total of a bank overdraft.

21 Mr McNab suggested, alternatively, that Romalpa might be allowed to operate, without registration, for all goods supplied within a limited period, say, three months. He felt also that perhaps Romalpa could not be discussed without looking at the whole question of preferential creditors. There might be a case for saying that there should be no preferential creditors, no Romalpa, and that all goods at the date of insolvency should go into the pool. The Chairman commented that if everyone was given reservation of title, every business which became insolvent would shut the next day. Mr Goldman did not think that Romalpa should be looked at in isolation; he felt that the position of creditors as a whole should be looked at.

22 Mr Graham pointed out that there were a number of problems to be discussed; the Committee had to ask itself when an enterprise became insolvent, to what extent a Romalpa clause should be void against the general body of creditors, and whether Romalpa clauses should extend only to the specific goods or to book debts resulting from the sale of those goods. There were underlying policy decisions to consider; first of all, to what extent a supplier ought to have protection at all against the general body of creditors if he thought that he had contracted for it in advance. There was a House of Lords case (British Eagle) which indicated that the English Courts might be prepared to strike down certain elements of a contract which they found repugnant to insolvency law. The Committee had to consider to what extent suppliers, who believe that they have contracted for something which will help them in an insolvency situation, should lose it at the very moment they need it. Secondly, the Committee had to consider third parties; on the one hand title is reserved but the law may say, vis-a-vis third parties who buy, that they are to get perfectly good title as against the supplier - complete title is not reserved because, in certain circumstances, the purchaser does have a right to confer title to third parties and that is one reason why the book debt has to be given to replace the ownership which has been given up. If you say Romalpa is void in certain circumstances, a bank has the same sort of charge over book debts and it may be that bank floating charges should be struck down in the same way. There would have to be some general notification of reservation of title because you could not register each item. Do we think that in a trading community which rarely looks at the register, that registration is adequate protection for other creditors? To what extent are we concerned with the obtaining of false credit? Is the answer to that merely that

the supplier with a registration of title has registered?

23 Mr Avis thought that registration would be helpful for the banks because they answer large numbers of status enquiries.

24 Mr Copp questioned whether registration might not lead to an increase in the size of the registry, but the Chairman felt that if the existence of Romalpa clauses with a supplier had only to be registered once and the amount kept up to date, it would not be a vast job.

25 Mr Taylor said that the supplier could argue that the goods were his until they had been paid for. However, the supplier should be diligent in collecting his debts and should normally recover them within, say, 6 months. From that it could be suggested that, if the supplier had not been so diligent and had not taken all reasonable steps to collect the debt within that period, then he should lose his claim for retention of title.

26 Mr Copp suggested that although Romalpa clauses had certain disadvantages for suppliers they would continue to be used so long as suppliers felt that they were not getting a fair deal in an insolvency situation, and were being swept away by what they thought were undeserving preferences. The situation should be looked at as a whole and it might be possible to provide a basis in which Romalpa would naturally die. He would like to see all preferences abolished.

27 Mr Muir Hunter pointed out that the EEC was devoted to abolishing preferences.

28 The Chairman suggested that there were two points of view; on the one hand, those who felt that there should be no Romalpa or any other preferences and those who thought that Romalpa was a good protection for an unsecured creditor. These might be dealt with separately. He asked the Committee to consider first whether, if there was to be Romalpa, the fact should be registered for other people to see.

29 There followed a general discussion about the treatment of different classes of creditor. Mr Avis pointed out that someone had to finance the running of a business and, except in the case of unsecured advances to first class concerns, the lender would want some kind of charge. Because of this everyone else would wish to be covered. The Chairman felt that people should be able to find out to what extent a company's assets were subjected to charges and preferences.

30 Mr Walker-Arnott favoured some form of registration. He said that the trend in company law had been not to interfere in contractual rights but to require disclosure. The Committee had already accepted security in principle and Romalpa clauses, were, in commercial terms, a form of security. In principle, retention of title clauses should therefore be alright, but equally, we wanted to see the assets in insolvency distributed

pari passu and if the assets appeared to be much greater than in fact they were, then those who had extended credit to the company would have been mislead. It would be of assistance if there was public disclosure of retention of title. He wondered, however, precisely how a registration device would operate. The Chairman said that the person demanding the charge would have the duty to see it was registered. He would do it only for reasonable sums of money; it was inconceivable that endless little items would be registered.

31 The question was raised as to how people supplying goods could satisfy themselves that they were likely to get paid. Mr Avis replied that it would be done the same way as now - they would make an enquiry to the Trade Protection Society and to the bank, who would say that Romalpa clauses existed.

32 Mr Graham suggested that if cumbersome registration procedures were introduced merely to discourage the use of Romalpa clauses, it would be better to say that the clauses did not prevail against a liquidator.

33 Mr Penny suggested that, rather than have central registration, there should be registration at the company; ie each company keeping its own register of charges with penalties for not keeping it up to date. Suppliers would have the right to search and if the clause was not on the register it would be void. The auditors would have to show it in the balance sheet. The Secretary pointed out that under Clause 35 of the 1973 Companies Bill, a company would have been obliged to keep a register of debentures; this was not a requirement at present.

34 Mr Muir Hunter suggested that the Committee should first decide whether or not a company should register Romalpa type transactions. The Chairman said that it would meet his point if the fact was registered that a company entered into Romalpa type transactions without any amount shown; this would provide the required warning note. The Committee then accepted, in principle, for the moment, that there should be a warning note somewhere, the question to be reconsidered later.

35 The Chairman then asked the Committee to consider whether they wanted Romalpa at all. Mr Walker-Arnott could see no difference between a supplier retaining title for protection and the bank taking a charge in respect of a loan. Mr Muir Hunter suggested that consideration should be given to the question of the extended clause, where the supplier laid claim to the goods even if paid for because the company had not paid for other goods.

36 The Chairman asked whether the Committee would say that Romalpa in insolvency should apply only where the goods remained in their original state. After discussion, the Committee agreed with this proposal.

37 The question of book debts was then discussed. The Chairman pointed out that the book debts could have been sold to someone else. Mr Taylor suggested that possibly, changing

goods into money was changing the form. Mr Walker-Arnott's view was that if the goods belonged to the supplier, then so should the proceeds of sale in an unmixed form. Mr Muir Hunter pointed out that the Court of Appeal had said in the Romalpa case that the rolls of material were the property of the Dutch company and were held in trust and therefore, the proceeds of their sale were trust property. The Committee could possibly overrule the Court of Appeal but this would be a formidable hurdle.

38 The discussion was broken off at this stage and resumed later. (see para 40).

INSPECTOR GENERAL AND THE DIG's

39 The Chairman welcomed Mr Harper, Mr Gwyther and Mr Armstrong. Referring back to his meeting with them, he said that the Committee had agreed that three numbered copies of the minutes should be sent to the IG and the two DIG's. the Committee would not want these to go down the line below the deputies because they only contained parts of the Committee's agreements. There would be no objection to information being passed down (but not the actual minutes) that a particular proposal was being considered by the Committee and obtaining comments. Thus, the Department would have the facility to get information to provide to the Committee.

ROMALPA (continued)

40 The Chairman summed up the results of the first session by saying that the Committee had agreed that if there was to be retention of title, some form of registration should be provided, possibly disclosure in the company's register and shown in the balance sheet, and secondly, that Romalpa in liquidation or receivership should extend only to goods in their original form. If and when the Committee had decided that there was to be registration of such title, it would be for the Legal Panel to try and work out how registration should be done. It was still for discussion if there was to be retention of title in respect of book debts.

41 The Chairman said that there were serious practical problems with book debts both in receivership and liquidation in establishing whether Romalpa clauses applied, and if such clauses were void in respect of book debts there would be more assets for the other creditors. Mr Muir Hunter did not think that the unpaid bill for the goods could be distinguished from the goods themselves. The question was put to each member individually and the Committee agreed that book debts on clearly identifiable goods should be in.

42 It was further agreed that the onus should be on the claimant to prove that the goods were his.

43 Mr John Hunter pointed out that if Article 39 of the draft EEC Bankruptcy Convention was accepted, the uniform law would prevail. To require registration would be something quite

different. Mr Muir Hunter explained that Article 39 provides for the recognition of reservation of title clauses which need be no more than a piece of paper or printing which comes into existence before the delivery of the goods and the only defence that the creditors have is that the liquidator is allowed to prove the falsity of the document as to its contents or its date. Paragraph 231 of the Cork I Report said that there was no reason for the inclusion of Article 39 in the uniform law. If HMG does not follow this advice, in his view this was not a reason for this Committee not to say what is right.

44 The Chairman said that the next meeting would start with Romalpa (ILRC 18) and asked the Committee to consider the matter further in the intervening period.

RECEIVERSHIPS

45 The Committee had before them with Mr Avis' paper ILRC 24.

46 On item 1 it was suggested that there was a theoretical legal loophole in that the debenture holder with a floating charge may take possession himself and subvert the rules which apply to receivers; with a change in the law with respect to receivers there might be a temptation to do this. Mr Muir Hunter pointed out that there was a precedent under the Act, dealing with appointments under floating charges; this extended both to the appointment of a receiver and to the debenture holder going into possession himself. It was agreed that item 1 should be included.

47 On item 2, it was pointed out that the Committee had already agreed (para 27, third meeting) that receivers should be able to contract out on an individual basis but not on an omnibus basis. The receiver could sell property with the proviso that he would have no personal liability under the contract except insofar as the assets of the estate realised.

48 The Committee then turned to items 19, 20 and 26 of Annex I to ILRC 17 which had not yet been discussed.

49 On item 19, it was suggested that the Act should be amended to permit interested parties to be able to petition the Court to appoint a "judicial trustee". It was agreed that the principle was acceptable that all interested parties (directors, creditors, shareholders and the State), should have the right of this remedy instead of winding-up and that the practicability of this should be a matter for the panels to consider.

50 During discussion on item 20 the following points were made:

(a) While it was true that most receiverships led to winding-up, the aim was to save the "business" often under different ownership,

(b) The way to rehabilitate companies was to force creditors to keep the company on the road; this was widely done in the USA and what had to be discussed at

some stage was how it could be done in this country,

(c) We had a variety of ways of dealing with insolvent companies under various labels and the Committee should try to find the most economical way of dealing with insolvent enterprises,

(d) It would not necessarily be right to introduce a system in operation elsewhere in the world because some other countries were becoming dissatisfied with their own methods.

It was agreed that if the proposal in item 19 was introduced we should have a holding up clause and what was wanted was a more simple and practical way of getting a scheme going.

51 The Secretary stated that item 26 had been expanded and circulated as Annex II to ILRC 17. This had eight items which were then discussed by the Committee.

52 It was felt that items 1 and 2 were not a matter for the Committee.

53 On item 3, it was pointed out that s.95 (CA1948) did not apply to charges over shares. In discussion, the following points were made:

(a) s.95 should possibly say that any charge on the property of a company should be registered - this would link up with what was discussed under Romalpa,

(b) Liens on shares which were one of the company's assets were a problem,

(c) There is a long standing common law rule that certain classes of people enjoy a lien at common law which is not a registrable incident,

(d) s.95 might be amended to provide that the term charge includes a lien as it does under the Bankruptcy Act,

(e) The Jenkins Report (para 301) supported the earlier Greene Committee view that all charges on shares should not be registered, but took the line that s.95 should be extended to cover charges created by the company over shares held by it in a subsidiary,

(f) In a liquidation of a stockbrokers' firm there are a lot of people who are unfairly unsecured creditors and this would need to be looked at in due course.

It was agreed that charges on shares held by a company in a subsidiary company should be registrable.

54 It was agreed that item 4 was not a matter for the Committee.

55 On item 5, it was pointed out that the Act did not provide that a company must keep a register of charges. If the Committee came to the conclusion that registration of Romalpa was necessary and registration at Companies House proved to be impracticable, then surely the Committee would wish to support item 5 which provided that a company should be required to keep a register. It was decided, however, that this was not a matter for the Committee.

56 On item 6 there was some feeling that the balance sheet should clearly state on which particular assets a security rested. It was decided, however, that the requirements in respect of disclosure would be met by registration at Companies House.

57 Item 7 was discussed at length as it was felt that the proposal would make balance sheets more honest. The balance sheet had concealed traps for creditors in that the bank balance might contain preferential charges. It was decided that the question of whether or not creditors who might be preferential should be shown in a separate category on the balance sheet should be referred to the Accountants' Panel to see whether they could produce acceptable proposals.

58 Item 8 was felt to contain a very valid point and during discussion, the following points were made:

(a) Cross guarantees produce anomalies and hinge on the administration of insolvency; the Committee should recommend the introduction of some formulae for dealing with proofs of debt in cross guarantees, and

(b) In Switzerland, the parent company is liable for the debts of its subsidiaries.

It was agreed that associated companies should be included with subsidiaries; it might be dealt with in the same way as Romalpa and have it noted that the company was one of the kind which guarantees its subsidiaries; it was difficult to quantify.

ASSIMILATION OF BANKRUPTCY AND COMPANY WINDING-UP INITIATORY PROCEDURES

59 The Committee had before it ILRC 20, prepared by Mr Muir Hunter who explained that the purpose of the paper was to draw attention to anomalies between the two systems and point out the inadequacies of the system in relation to the rehabilitation point. A company could be destroyed by the presentation of a petition against it, even if solvent, with all its creditors present and voting. In a bankruptcy there is a one-to-one relationship and the Court has no power to make a general arrangement between the debtor and all his creditors. Perhaps the two systems should be amalgamated. Absence of publication of a bankruptcy petition is designed to ensure that the debtor is not destroyed straight away - in the old days publication

could destroy the debtor both socially and commercially. The debtor's name is never used (except when he is an absconder) until a receiving order has been made and advertised. The biggest social problem the Committee had to face was whether they would be prepared to disseminate the existence of a bankruptcy petition against an individual or firm before the hearing. The bankruptcy aspect had been crystallised in paragraph 20; the debtor would be exposed to a collectivised creditor situation, it would become publically known that the debtor was subject to bankrupty procedings and it would compel the single petitioning creditor to have his claim collectivised so that he could not do debt collecting any more.

60 The following points were made during discussion:

(a) A bankruptcy notice can be searched but it does not say where the debtor lives or carries on his business,

(b) The Registrar has the right to refuse inspection if he is not satisfied as to the propriety or logic for which the search was required,

(c) Historically, the company was considered to be the property of its creditors who were assembled to decide what should be done, whereas after 1869 this was no longer true of individuals - prior to this there was a public hearing against an individual,

(d) It had been asked whether it was feasible for the relation-back period for companies to be the same as for individuals - until 1856 all companies were deemed to commit acts of bankruptcy in the same way as individuals - Mr Muir Hunter and Mr Graham would look into this further,

(e) Before the Committee made up its mind as to whether there should be publicity in bankruptcy, it would need to decide whether there should be a similar situation as in companies (instead of a one-to-one arrangement).

61 Mr McNab suggested that Mr Goldman and Mr Muir Hunter should put forward their specific ideas in a statement for the Committee to consider further.

See bottom of page at 13

62 The Chairman summed up by saying that the first stumbling block of having similar arrangements was the publicity of the presentation of a petition. It was hoped that there would be a kind of voluntary liquidation for the individual to avoid the stigma of bankruptcy. He invited members to think about these matters for discussion at the next meeting.

ANY OTHER BUSINESS

63 The Chairman suggested that panel members could attend meetings of the Committee when they thought something was being discussed in which they were interested, provided they did not participate. The Committee agreed generally.

NEXT MEETING

64 It was agreed that the next meeting would be held on Thursday, 28 July 1977.