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INSOLVENCY LAW REVIEW COMMITTEE

THIRTIETH MEETING

Meeting to be held in the Conference Room, 2-14 Bunhill Row on Wednesday, 16 May 1979 at 10.00 am.

A G E N D A

1 Minutes of the meeting on 24 April.

2 Matters arising.

3 Secretary's report.

4 Bankruptcy (continued) (ILRC 94 para 33, etc).

* 5 Voluntary settlements (ILRC 87).

6 Any other business.

7 Agenda for next meeting (13 June).

* Attention of members is invited to the summary at para 28 of ILRC 87.

Bankruptcy Convention back in play

T H TRAYLOR
Secretary

29th Mtg
24.4.79

INSOLVENCY LAW REVIEW

Minutes of the Twentyninth Meeting of the Review Committee on 24 April 1979.

Present:	Sir Kenneth Cork	(Chairman)
	PGH Avis	
	J S Copp	
	AIF Goldman	
	J M Hunter	
	D McNab	
	P J Millett	
	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	

1 The Committee met at 10.00 am. The minutes of the twenty-eighth meeting held on 12 March 1979 were agreed and signed.

MATTERS ARISING

2 Referring to para 2 of the minutes of the twentyeighth meeting, the Secretary said that the Insolvency Practitioners' Association had forwarded about ten replies to the questionnaire which they had circulated, covering some thirty or so receiverships. Mr Taylor thought that this could be considered as a typical sample.

SECRETARY'S REPORT

3 The Secretary said that Mr Drain, Mr Muir Hunter, Mr Jack and Mr Weiss had sent apologies for absence.

4 Papers circulated since the last meeting had been ILRC 94 to 96.

5 Regarding meetings in April, the Legal Panel had met on 4 April and the Penny sub-committee on 6 April. The Weiss sub-committee were meeting on 25 April and meetings of the drafting sub-committee and the sub-committee on Acts of Insolvency would be held in the near future.

BANKRUPTCY

6 The Committee had before it ILRC 94, and decided to consider this section by section, referring these to existing sub-committees and panels as appropriate. It was agreed also that there should be a co-ordinating sub-committee, consisting of Mr Goldman, Mr John Hunter and the Secretary, to ensure that the proposals of the sub-committees and panels do not conflict, leave gaps or overlook major problems.

BANKRUPTCY - THE PETITION (paras 5-7 of ILRC 94)

7 The Secretary drew attention to the fact that there was a proposal being considered in the Weiss sub-committee to fill the gap between Debts Arrangement Orders and full Bankruptcy to cater for debtors who would not qualify for a DAO but did not merit the full rigours of bankruptcy, by a concept being called for the moment "Liquidation of Assets" (virtually full bankruptcy without the disabilities). It was agreed that the Weiss sub-committee should continue to develop the idea of "Liquidation of Assets".

8 The Secretary suggested that consideration of "the petition" fell within the ambit of the Muir Hunter sub-committee dealing with the grounds for the presentation of a petition. Mr Goldman said that it was important that that sub-committee should resolve the question of initiation quickly. The Secretary said that he had produced a working paper bringing the matter up to date and had sent this to Mr Muir Hunter and Mr Millett proposing an early meeting. The Chairman suggested that there should be a report on progress at the next meeting of the Committee.

9 It was agreed that the question of the petition should be referred to the Muir Hunter sub-committee.

10 Mr John Hunter said that he had written to Mr Muir Hunter on the question of being "subject to the jurisdiction". The Secretary said that his understanding was that Mr Muir Hunter would be dealing with this.

BANKRUPTCY DEPOSITS (paras 8-9 of ILRC 94)

11 The Secretary drew attention to the paper by Mr Goldman, ILRC 95. Mr Goldman said that the Rules Committee had made recommendations which had been rejected on fiscal grounds and had been told that this was a matter for the Cork Committee. The short term problem was that small creditors were being deprived of the process because of the expense.

ILRC 71 & my paper.

Legal Aid

12 The Chairman did not see why anyone without money should have to find £50 to go bankrupt and thought that a reasonable figure would be £10. Mr Taylor said that the attitude of the Treasury is to let the loss lie where it falls, that is, on the parties concerned and not the general taxpayer. Mr Millett pointed out that a creditor under the new system would have no means of knowing what procedure would follow from his initiating action and that we did not want to deter people from presenting petitions. Mr Graham said that there was an anomaly in that no deposits were required for company petitions; he could see no case to support deposits but if they were abolished the question of fees had to be considered. The Secretary suggested that consideration should be deferred until the Weiss sub-committee had produced a clearer picture of the effect of replacing a Receiving Order by a Protection Order.

13 By a majority, the Committee decided that there should be no more than a low-figure deposit, subject to reconsideration when the question of the Receiving Order had been dealt with. | X

THE RECEIVING ORDER (paras 10-15 of ILRC 94)

14 It was agreed that the question of the Receiving Order should be referred to the Weiss sub-committee.

15 Mr Avis pointed out the need for certainty from the point of view of paying bank moneys and Mr Millett said that the relevant date would need to be established if adjudication followed.

16 Mr Taylor said that he thought all would agree that the IPCS view in para 13 was contrary to the Committee's thinking and Mr Graham said that the phraseology "Receiving Order" had to be removed, as this to most people meant bankruptcy.

BANKRUPTCY - FIRST MEETING OF CREDITORS (paras 16-17 of ILRC 94) ILRC 71 ... any paper work.

17 Mr Goldman and Mr Graham pointed out that the debtor is not normally allowed to attend the meeting although he must be present in the building in case the creditors required to question him. They thought that this was wrong, and that the debtor should be present to hear what was said about him and to present his views. Mr Avis, Mr McNab and Mr Taylor could not agree; it was a meeting of creditors and they should be allowed to discuss the matter without restraint in order to reach a collective decision. All that was necessary was that the debtor should be available in the building for questioning if required.

18 Mr Copp suggested that the debtor should be allowed to be at the meeting initially but should then be dismissed so that the creditors could discuss the matter. Some members thought this to be impractical. Some creditors might not know much about the case and the OR would be explaining what he had found out. Mr Taylor said that much of this could be from professional people and it would be wrong to disclose this to the debtor.

19 Mr Avis suggested a compromise; the OR could address the creditors first, the debtor could be called in, and he could then be dismissed while the creditors discussed the matter. Mr Taylor said that he could accept this.

20 Mr Walker-Arnott thought it unwise to give the debtor a right to attend. It was a meeting of creditors to get at their collective will, and it should be for them to decide whether or not they wished to see the debtor. The presence of the debtor could lead to all kinds of arguments about shortness of time, proper procedures, etc.

21 Mr Penny saw no need for the debtor to attend. He was already doubly protected. The OR, an officer of the Court, chaired the meeting; and nothing would happen as a result of the meeting except by reference to the Court, at which time the debtor could put his views.

22 The proposal that the debtor should have a limited right to address the meeting of creditors at some convenient time was put to members but the Committee was split equally, for and against.

23 It was noted that in a winding up directors are present but in a compulsory they had no right to speak. It was agreed that whatever final decision was reached on bankruptcy should apply to companies as well.

24 It was also noted that s.22(1) (BA 1914) said that the debtor "shall attend the first meeting of creditors", although Williams (page 121) noted that the normal practice was to have the debtor available in an adjacent room, but not to have him in the meeting except as and when the creditors desire his presence. The wording of the section was considered unsatisfactory.

25 It was agreed that the question of the first meeting of creditors should be referred to the Weiss sub-committee, together with all other matters up to adjudication unless any were specifically referred elsewhere.

BANKRUPTCY - THE TRUSTEE (paras 18-19 of ILRC 94)

26 The Committee agreed with Blagden that a creditor ought not to be capable of being appointed trustee.

27 On the question of qualifications, Mr Taylor pointed out that different cases required different skills. The Committee accepted the formula being proposed for receivers, ie. members of specified professional bodies which have a code of ethics and some disciplinary control and are from time to time recognised by the Department.

28 It was noted that while in a compulsory winding-up the Court appointed the liquidator, in a bankruptcy the Department appointed the trustee. It was agreed that the procedures should be examined with a view to harmonisation.

BANKRUPTCY - COMMITTEE OF INSPECTION

29 It was noted that this was already being considered by the Accountants' Panel.

PUBLIC EXAMINATION

30 It was noted that company directors do not have a public examination and this might have to be looked at.

Not directors? only executive directors

31 The general view of the Committee was that there should be a public examination after adjudication, but there should be power to dispense with this in appropriate cases. It was suggested for instance that creditors might feel that there was no point in having one and if there was no power to dispense with it, the debtor might not be adjudicated.

32 The proposal was also made that at any time during the proceedings (either in a liquidation of assets or a potential bankruptcy) application could be made to the Court at least for a private examination in chambers. It was tentatively suggested that

application might also be made for a public examination, it being suggested that this could bring matters to light which otherwise might remain hidden. There was however a problem in a case where adjudication followed; would a further public examination be necessary?

33 It was agreed that Private and Public Examinations should be referred to the Weiss sub-committee.

ADJUDICATION (paras 24 to 25 of ILRC 94)

Advertisement?

34 Mr McNab thought that adjudication might follow if the debtor could not be served with papers. Mr Graham pointed out that it was frequently difficult to get a Receiving Order upon a petition because the petition could not be served. It was agreed that the question of substituted service would need to be discussed. Mr Millett thought that the original reasons requiring personal service were now obsolete and Mr Penny, referring to the waste of time, suggested that the answer would be to make it easier to get an order for substituted service provided the order could be set aside easily. The Chairman asked Mr Penny and Mr John Hunter to set out their views as to what the right answer should be.

35 The Committee agreed that the question of adjudication should be referred to the Weiss sub-committee.

PROPERTY WHICH DOES NOT PASS TO THE TRUSTEE (paras 26-49 of ILRC 94)

36 The Secretary drew attention to the paper from Mr John Hunter, ILRC 96, and added that this was a matter which he felt should be referred to the Penny sub-committee.

37 So far as household effects, wearing apparel and tools of trade were concerned, the Chairman suggested that the debtor ought to be allowed to retain these up to a total of £x. Mr Taylor agreed with an overall monetary limit, but thought that there should be flexibility between the categories, with the onus being on the trustee to decide what was kept. Other members felt that it would be unwise to leave the decision to the bankrupt. Attention was then drawn to the "Justice" suggestion (para 30 of ILRC 94); ie (a) a limit of £500 on necessary wearing apparel, bedding and furniture of the bankrupt and his family, (b) a limit of £200 for tools of trade and (c) the Court having discretion to increase these limits. This found more favour with the provisos that in (a) "necessary" should read "essential", and the limits being raised to a more currently appropriate figure. It was however pointed out that having no monetary limit in (a) would save the expense of an inventory and retention of valuable possessions would be caught by the word "essential". By a majority, the Committee agreed with (a) but without a monetary limit. The Committee also agreed with (b) with a monetary limit, and with the discretion in (c). As to definitions, the best of the Northern Ireland and Australian provisions might be taken. Mr McNab was concerned that there would be one law for the rich and another for the poor, and Mr Taylor felt that there would be injustice between bankrupts and that in a large number of cases there would be no assets for the trustee. With regard to the suggestion in para 31 of ILRC 94, it was noted that while things could be of value to the debtor, they might be worthless to the creditors.

But cf. S.51 Insolvency

38 With regard to trust property, the problem so far as solicitors were concerned had disappeared. Mr Graham suggested that it would be necessary to be more specific as to what was meant by trust property. Further discussion was deferred.

ANY OTHER BUSINESS

39 The Committee congratulated Mr John Hunter on his appointment as Master by the Lord Chancellor.

40 The Secretary said that in order to complete the Committee's programme working papers were required on a number of subjects, for example:-

(i) Special Insolvency Courts - Mr Penny had sent some proposals to Mr Muir Hunter and the Secretary had asked the other lawyers to send their comments to Mr Muir Hunter;

(ii) The OR Service - a further paper was awaited from Mr Taylor;

(iii) Partnership Bankruptcy - the Secretary invited any member to provide a paper on this subject; and

(iv) Criminal Bankruptcy - the Secretary undertook to provide a paper himself.

41 Mr Goldman raised the question of taking oral evidence from the Chancery Judges, the Law Society, the CCAB, the CLCB and the Revenue Departments. It was suggested that the Committee should get through their programme first and it was noted that it had been agreed that no-one should be seen before they had submitted written evidence. The Secretary agreed to write to those bodies from whom written evidence was still expected asking when it would be forthcoming.

42 Mr Penny said that he would like his sub-committee to take some oral evidence, from Mr Sechiari of United Dominions Trust and possibly the Registrars. No objection was seen to this and the Accountants' Panel had in fact taken some oral evidence. Mr Penny said that he would take the matter up with the Registrars.

NEXT MEETING

43 It was agreed that the Committee would meet at 10.00 am on Wednesday 16 May 1979. The agenda would include bankruptcy (ILRC 94 and 96) and Antecedent Transactions (ILRC 87-92). Consideration of the remainder of ILRC 73 (Receiverships) was deferred until a later meeting.