man, whether trader or non-trader, is twice unfortunate, and on the first failure obtains a discharge—he must on the second pay 10*s.* in the pound although he discloses and assigns all he has for the benefit of his creditors. The tendency of legislation of late both in England and Canada seems to point more towards mercy to insolvents than otherwise. With that view the Statutes have been construed in both countries with more consideration for the honest insolvent than the grasping creditor. As to notice of discharge although not required to be personal, it is given after the creditors have received personal notice of the examination before the assignee, and if the creditors attend the meeting they can judge for themselves whether there is any fraudulent retentention or concealment of the insolvent's estate, or whether there is any evasion, prevarication, &c., or whether he has not subsequent to the act kept an account book showing his receipts and disbursements, and they can then, or soon afterwards, decide whether they will oppose his discharge or not; and if they do so decide, it cannot be believed that publicity of application for discharge in the Gazette and local paper could escape them unless by neglect. As to an assignee acting as agent, it is apprehended there is ample remedy already for such misconduct; and if such conduct is difficult of proof now, it would not be less so if it should be distinctly stated that such assignee should act as the agent of the insolvent under a penalty.

If the assignee refuses to perform, or improperly performs his duties, or if his appointment is not contemplated by the act, he may be removed: *Small ex parte, in re Day*, 7 L. T. N. S. 376, or if he refuses to perform his duties or misconducts himself in that behalf, he may be punished, or creditors may resort to his bond: sec. 6 & 16, Act 1854; *Singlehurst ex parte, in re Tristam*, 3 DeG. & J. 451: *Maddegan, in re Stiff*, 10 L. T. N. S. 914. Under the same sections and ample authorities, there is now power not only to impose on or withhold costs from assignees, creditors or insolvents, or to impose terms for contempts or delays. If "Scarboro" will consult the tariff of fees promulgated by the Superior Courts of Common Law, it will enlighten him at least in that respect.

The insolvent must wait, if he makes a voluntary assignment, twelve months, before he can apply for a discharge, and after two examinations and such ample time, if a creditor possesses ordinary firmness, he ought to decide in that time whether he will appeal or not.

"Notice of application for an allowance of appeal, must be served in eight days from the day judgment appealed from is pronounced, *but the application itself may be made after the eight days*:" *Re Owens*, 3 U. C. L. J. N.S. 22. And even if the notice is irregular it may be amended. *Ib.*

It seems absurd to expect an insolvent to pay a certain rate in the pound, except under the sections for composition and discharge, if he assigns his estate. The tending of modern legislation is that the insolvent and his estate shall not be more embarrassed and diminished by costs, and that his creditors shall take his whole estate. If they obtain this they ought to be satisfied to allow the unfortunate to try his luck again and benefit by experience which may ultimately be an advantage to himself, to his creditors and to the public generally. The rules under which the Judge exercises his direction of granting the discharge absolutely, conditionally, or suspensively, or refuses it absolutely, are laid down by Westbury (Lord Chancellor) in *Re Mew* v. *Thorne*, 31 L. J. N. S. (Bankruptcy) 87, to which "Scarboro" is referred, which if he reads carefully, the writer ventures an opinion, he will arrive at the conclusion that the Act of 1864 is neither a bungle nor so defective as he imagines.

Again "Scarboro" thinks it should be enacted distinctly, that the insolvent "shall be discharged only from the debts or liabilities mentioned in his Schedule of debts." Upon this point "Scarboro" puts the question to you in the 3 U. C. L. J. N.S. 193, and you drily ask him "to look it up." He is now referred to *Philips* v. *Pickford*, 14 Jurist, 272, where it was decided that a final order granted under the English Acts, similar to our then bankrupt and Insolvent Acts, could be set up as a defence to any debt not included in the Schedule. See also *Stephen* v. *Green*, 11 U. C. Q. B. 457; *Greenwood* v. *Farrie*, 17 U. C. Q. B. 490; *Romillio* v. *Holahan*, 8 Jurist, N. S. 11; *Franklin* v. *Busby*, Ell. & Ell. 425; *Booth* v. *Caldman*, 1 Ell. & Ell. 414. None of the Acts under which these decisions were had, contained any such special provision as stated; yet the courts have always held that no creditor is bound whose name and debt is not mentioned in the Schedule.

QUINTE.