The Monetary Times

AND TRADE REVIEW,

With which has been incorporated the "Intercolonial Journal of Commerce" of Montreal, the "Trade Review" of the same city (in 1870), and "The Toronto Journal of Commerce."

ISSUED EVERY FRIDAY MORNING.

SUBSCRIPTION—POSTAGE PREPAID.

Canadian Subscribers.....$2 a year.
British " .....10s. sterling a year.
American " .....$2.50 U.S. Currency

BOOK AND JOB PRINTING A SPECIALITY

Office—Nos. 64 & 66 Church St, Toronto, Ont.
EDWD. TROUT, MANAGER.

TORONTO, CAN. FRIDAY, JAN. 12, 1882

INSOLVENCY.

Nothing could have been more opportune than the communication of Mr. Evans on this subject published in our last issue Our co respondent's experience in the liquidation of estates entitles his suggestions to respectful consideration. Apart from this many of them are such as in our opinion should commend themselves to the business community as well as to the Legislature. Many of of the p i ts referred to have repeatedly been urged in these columns. They are however of sufficient importance to justify further reference.

Very suggestive indeed are Mr Evans' opening se tences. Daily are heard similar declarations of the ease with which a short and simple Insolvent Act sufficient for all practical purposes might be prepared. In this and on other subjects the less people know about them the more positive they are that there is nothing for them to learn. No one who has had really practical experience involving the personal burden of administration of estates under Insolvent law can fail to appreciate that the subject is one surrounded with many difficulties. The fact that so many conflicting interests have to be considered and dealt with is sufficient to make the subject always a difficult one.

The e can however be no doubt that the difficulties of the past have been very much increased by the coupling of the insolvent's discharge with the subject of the liquidation of his estate. It ought to be plain to every one that there is no necessary connection between these two things. Under the present law without an Insolvent Act a debtor unable to pay is deprived of all his assets and can get no discharge. Hence no injury could be don to him by having an efficient instead of a notoriously inefficient means of winding up his estate. We have long been persuaded that a majority of the difficulties and complications that hampered the administration of the late bankruptcy laws, arose from the provisions for compositions and for discharges by other means of the debtors.

Upon the reasonableness of the second of the questions submitted by Mr. Evans there can be no doubt. There is nothing unreasonable in "the assets of an Insolvent debtor being handed over to his creditors for rat able distribution without conditions being made for the debtor." The fact that in the absence of an insolvent law all the debtor's assets are unconditionally liable for his debts ought to be sufficient to establish this. The question of *ratable* distribution is not one that directly affects the debtor. It is a matter between the creditors. The question is whether the assets of an insolvent debtor shall become the prey of more fortunate or more favored creditors to the exclusion of others, or whether all shall share alike. The one other question involved on this point is whether we ought to have a simple and expensive mode of liquidation instead of the present ruinously expensive process.

Upon the other question propounded, viz: whether it is "right that the Legislature should interfere with the debtor's obligation for the payment in full of his debts" is no doubt one on which differences of opinions exist. We hear much now-a-days of the sacredness of contract obliga i ns, but there can be no doubt that modern legislation has gone a long way in over-riding for the benefit of the weak, contracts binding between the parties. Still it is a serious question whether treating the obligations of traders as liable to be set aside without satisfaction, is not a fundamental error. Such a rule was not during the late Act applied to any but traders Upon any one other than a trader incurring a debt, there was no means known to the law whereby he could procure a release except by either payment or making terms with his creditor. The precarious nature of trade has, we are aware, been made the excuse for applying a different rule to the obligations of those engaged in it. It is however a question whether that rule has not itself done much to render trade precarious. It can scarcely be doubted that the ease with which it has come to be understood that obligations incurred in business may be gotten rid of has done a very great deal to encourage disqualified persons to embark in business. Had it been always understood that any man who incurred obligations in trade was bound to settle for them with those to whom they were incurred, the result could scarcely have been otherwise than to deter ma y who started in business without experience and without capital from entering it at all. Nor can it be doubted that it would have had the effect of rendering those engaged in business more careful in incurring obligations.

But this question is one not calling for immediate legislative action, for our people through Parliament have condemned the old Insolvent law with its discharge system This fact can however afford no excuse for refusing to provide the necessary machinery for distributing the assets of those who are no longer ble to meet their engagements. Irrespective altogether of the extent to which fraudulent preferences are facilitated by the present law, there surely can be no valid reason why all creditors should not be placed on the same footing so far as liquidation is concerned. The difference in the law for the collection of debts in the different Provinces is, as pointed out by our correspondent, another reason for a satisfactory law being at once enacted applicable to the whole Dominion.

As to the mode of liquidation, we entirely concur in the suggestion that such an officer should be appointed as that suggested by Mr. Evans, under the name of the Registrar in Bankruptcy. The exte t of the districts over which such Registrars would have jurisdiction is a matter requiring the most serious consideration. The same is true with reference to the Courts to which such officer shall be attached. Few features in the administration of insolvent estates under the old law gave rise to more dissatisfaction than the jurisdiction conferred upon County Court Judges in this Province, and the manner in which that jurisdiction was exercised. Of those who have had large experience of of the working of bankruptcy laws, there are many who entertain the opinion that the interests of creditors would be better served by having a Court created expressly for insolvency work. If that were done, one or two, or at most three, Judges for a Province would be sufficient, inasmuch as many matters formerly relegated to the County Court Judges could be disposed of by the Registrars, who would act as their clerks and deputies.

There can be little doubt of the soundness of the proposal that these Registrars should be remunerated in the same manner as other officers of the Court. If indirectly, it was thought that the estates wound up should be made answerable for their charges, this should be done by creating a fund into which a certain commission or charge from the estates should be paid, and out of which salaries should come. The same rule might be applied to the payment of the salaries of the bankruptcy Judges. The proposal that such a Registrar should not be eligible to act as trustee or liquidator, would under the circumstances follow as a matter of course. Quite apart from this the consensus of business opinion appears to favor such an arrangement.

When, however, our correspondent comes to the proposal to appoint two officers, one a trustee, and the other a liquidator, we we find ourselves unable to follow him. Divided counsels are usually weak; and if the person who is to conduct the liquidation of the estate, by whatever name he is to be called, requires any assistance, perhaps it would be difficult to devise a better scheme than the old one, whereby the creditors might appoint inspectors who would act as a sort of advisory committee. Still more objectionable do we consider the proposal that the insolvent himself should be allowed to act as liquidator. The experience of England in reference to such an arrangement is not encouraging. It is found practically to leave open wide the door for feigned failures and is sure to be made use of to cover devices that are really intended for the protection of the debtor and not for the benefit of creditors.

One other suggestion sometimes made is worthy of consideration, viz., whether it would not be wise, instead of allowing the liquidator, upon realizing the estate, to distribute the proceeds and report the result to the Registrar; to require him after completing realization, or from time to time as thought advisable, to pay the proceeds over to the Registrar and allow the distribution to be made through him. This point and some other matters with reference to procedure touched upon in our correspondent's letter, we may have occasion to refer to hereafter.

—The Montreal City and District Savings' Bank has declared a dividend of four per cent. for the six months ending December 31st.