CORRESPONDENCE.

Insolvent Acts—Assignees.

BELLEVILLE, 31st March 1868.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—"A communication under the caption, *Assignees in Bankruptcy matters—The operation of the Act*, appears in the *Local Courts and Municipal Gazette* of March, 1868; wherein the "Scarboro" correspondent asserts that, "The working of the Act since 1864 clearly proves it to be a bungled, defective affair," and he proposes, "to point out a few of its defects and in addition to refer to the conduct of *official assignees*."

"Scarboro" points out what he thinks are defects in the Act, and refers to the conduct of official assignees, but omits (except by his own assertion, that the working of the Act clearly proves it to be a bungled affair) to give instances where there has ever been any failure in the working of the Act. Many insolvents have been refused, and many more have obtained discharges; and it must be assumed, that these insolvents, who have been refused discharges ought not to have obtained them; and, if they deemed the judges decision erroneous, the Superior Court, on appeal, might have rectified the error or confirmed the decision; and any one creditor has the right of appeal against the decision granting the discharge. Therefore, it follows, that, if any insolvent has been wrongfully refused or has improperly obtained a discharge—it is not the fault of the Act, but of the insolvent or his creditors as the case may be. It is denied that because the assignee is corrupt, and deceives the creditors—that the Act is a bungle, or defective. The official assignee is bound to give security "*for the due performance of his duties*," and the creditors assignee is bound to "give such security and in such manner as shall be ordered, by a resolution of the creditors; and shall conform himself to such directions, in respect thereof and in respect of any change or modification thereof or addition thereto, as are subsequently conveyed to him by similar resolutions"—which bond is to be taken in favor of the creditors and deposited in the proper Court. The assignee is likewise under the summary jurisdiction of the Court and the performance of his duties may "be enforced by the judge on petition in vacation or by the Court on a rule in term under penalty of imprisonment, as for contempt of Court whether the duties are imposed on him by deed of assignment, by instructions of creditors communicated to him or by the terms of the Act."

His duties are well defined and performance can be enforced which proves there is no bungle or defect in the Act in that respect. If "Scarboro" knows that "the working of the Act since 1864 *clearly* proves it to be a bungled, defective affair," because the insolvent "selected the official assignee *to get him through for a certain fee generally* $50," he impliedly admits that his creditors allowed a public officer to deceive and injure them whilst the Act affords a most severe and certain remedy. If creditors neglect to secure professional assistance and permit assignees to deceive them, "Scarboro" ought to blame the bungling, careless creditors, not the Act.

No doubt many men have obtained discharges who have not made a full disclosure of their estate, some owing to perjury—others through the neglect of the creditors. But this does not prove the Act a bungled or defective affair. "Scarboro" reminds me of Lord Palmerston's reply to the Scotch Clerical petition to the Government to set apart a day of prayer to our Lord, to remove pestilence, which was that the pestilence was caused by filth and to remove the cause instead of praying, and the pestilence would abate, so I say, if creditors will employ good counsel and remove the corrupt assignees, "Scarboro" will fail to see the bungled, defective Act.

For instance, if an assignee gives a certificate that the insolvent "has complied with all the provisoes of the Act, has attended all meetings, has filed a statement of his affairs on oath, fairly showing how he has disposed of his property," &c., and it can be proved that the certificate is untrue, there can be no difficulty in applying a remedy. If it cannot be shown or is neglected, it is presumed true, and creditors have no cause of complaint; at all events it is not the fault of the Act. It is admitted that legislation is not always perfect but it is denied that it is always imperfect. In ninety-nine cases out of one hundred, Statutes are declared defective by persons too lazy to study them or too ignorant to understand or properly construe them, or too negligent to take advantage of their provisions.

It is a remarkable suggestion, "that if a man has once gone through the insolvent court," he should not again go through without paying 10*s.* on the pound." That is, if a