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The Journal of Commerce

FINANCE AND INSURANCE REVIEW.

MONTREAL, OCTOBER 15, 1880.

INSOLVENT ESTATES.

An article which recently appeared in the *Glasgow News* on the Bankruptcy question in Canada has been reprinted in several Canadian newspapers, and has been noticed at some length by the *Montreal Gazette*. The *Glasgow News*, while admitting the many imperfections of the bankruptcy laws in the United Kingdom, entertains no doubt that even a defective law is better than none, and such is the opinion of many among our own commercial men. The writer in the *Glasgow News* has evidently taken some pains to make himself acquainted with the laws in

our various Provinces, and his opinion is that no provision exists in the Dominion of Canada for the equitable distribution of bankrupt estates. There has been a general impression that the state of the law in the Province of Quebec, which is governed by the Civil Code of Lower Canada, is more satisfactory than it is in the other Provinces. Such is not the opinion of the writer in the *Glasgow News*, who affirms that, when a debtor is insolvent, a bailiff's sale at 7 o'clock in the morning, an occurrence neither unusual nor illegal, has the effect of transferring all his property to another. It is said to be useless to complain of the price, as it is not the bailiff's business to find an audience. Such a sale takes place without notice to creditors, beyond what a single announcement in an obscure newspaper may convey, and in a majority of cases it is believed that it is only known to the judgment creditor, who of course in cases of fraud is selected by the debtor. It is said that in practice the costs attendant on the filing of the claims of all the creditors are so large that, when added to the Court fees, the whole amount realized is frequently absorbed without yielding any return whatever to the creditors. No provision exists for the examination of a debtor as to his estate and effects, or as to the disposition that he has made of his assets. The law in Ontario is said to be very little better for the creditor, as priority of execution still prevails there, and it is not difficult for a fraudulent debtor to give preferences. In the other Provinces creditors are equally at the mercy of debtors, and in conclusion the writer expresses a hope that public opinion will be brought to bear on the administration, so as to compel it to undo the injury that has been done, although the writer acknowledges that "the general character of Canadian home and foreign commercial policy is hardly favorable to that hope."

Our contemporary has criticized the article in the *Glasgow paper* with great fairness. He commences by vindicating the lawyers from the charge of having suggested the repeal of the insolvency law from interested motives, and he states with perfect truth that there was a strong public sentiment in favor of the measure adopted by Parliament. We think that the *Gazette* is inclined to attribute the great losses that have been sustained too much to the reckless action of the wholesale merchants, and to their indifference to the proper administration of the law. It ought to be constantly borne in mind that, as a rule, the retail traders in Canada are not possessed

of large capitals, and great allowance should be made for the adverse circumstances which during the last few years brought ruin to many an honest and prudent man. It is a well established fact that, owing to causes over which the people of Canada had no control, there was a great inflation in the value of goods of every description a few years ago, which continued for at least three or four years, during which the stocks of all the retail merchants in the country were replenished at the current inflated prices. Then followed a reaction and a material fall in prices, the effect of which was to reduce the value of the assets of our merchants to such an extent as in many cases to force them into insolvency. We do not think that sufficient allowance has been made for a depression in prices, which could not have been foreseen or guarded against by the retail merchants. It is, therefore, in our humble judgment an exaggeration to state that "men went into business with the insolvency law as their chief capital. They bought largely and sold recklessly, and when the day of reckoning came they simply went to their creditors, and in about eight cases out of ten they obtained a composition at from 25 to 50 cents on the dollar; the creditors actually selling them another bill of goods on the same day that they signed the composition." We believe that, if such cases really occurred, the creditors were convinced, from a knowledge of circumstances, that the debtors were more unfortunate than criminal, and that the composition was entered into from a conviction that they would realize more out of the insolvent estate by the mode adopted than by placing it in the hands of an assignee. Sufficient allowance has not been made in considering this question for uncontrollable circumstances. The difficulty that presents itself is to frame a law that will guard against cases of fraud, without pressing too harshly on the honest but unfortunate debtor.

It is suggested by the *Gazette* that a law for the equitable distribution of estates is all that is at present required, and that the debtors may be left to their fate. Now it must be borne in mind that if the body of creditors choose at any time to enter into a composition with an insolvent to accept 50 or 25 cents in the dollar, and to give him a discharge, there is nothing in the law to prevent their doing so. It almost invariably happens, however, that some one or two creditors will refuse to concur with the majority in accepting a composition no matter how reasonable it may be, and hence it has been necessary to dispose of the insolvent's estate through