

CORRESPONDENCE.

60, which contains the clause "executed as aforesaid."

But for the sake of argument admit that the words "executed as aforesaid" embrace within their meaning approval by the creditors, the mischief is not removed. In the case supposed, where the majority is obtained by the signatures of creditors who have not proved and others who have obtained a preference, the Assignee has no power to interfere, or strike off any signature, his duties being merely ministerial, to convene the meeting and record the proceedings and the vote. Is there no remedy, and is the Judge a mere cypher?

By section 52, after the assent of the creditors to the deed has been obtained, the Assignee is to annex to the deed a certificate of the number and who have given their assent to it and to transmit such certificate without delay to the Clerk of the Court—for what purpose? To enable the Insolvent to procure his discharge? Not alone, for his application for confirmation of discharge is optional and not compulsory. And by section 52 the Insolvent is the party to file the deed and certificate previous to giving notice and presenting his petition. Why then is the Assignee required to transmit *without delay* his certificate to the Clerk? With all deference we reply to enable the Judge to ascertain whether the deed is properly executed, and whether as a consequence the Insolvent is entitled to a reconveyance. If the Insolvent wishes to obtain his estate he must apply to have the deed confirmed, and by the Judge confirming the deed it is authoritatively determined that it is "executed as aforesaid." This argument obtains force from a reference to section 60, where it is declared that the reconveyance is only effectual when made in conformity with the terms of a *valid* deed. What if the Judge should determine the deed not to be valid? Then the Insolvent has no right to the reconveyance and the estate ought to be returned to the Assignee. But the Act makes no provision for the Assignee resuming possession except in case of the nonfulfilment of the *terms* of the deed.

Further section 60 assumes that the deed

may be contested and provides for the suspension of any payment or instalment during such contestation, but makes no provision for the Assignee resuming possession should the contestation succeed.

From all this we arrive at the conclusion that the words "executed as aforesaid" intend that three things should concur.

1st. That the requisite number give their assent by signing the deed.

2nd. That the creditors approve of the same at a meeting called for the purpose.

3rd. That the deed be confirmed by the Judge.

By accepting this construction no hardship will accrue to the Insolvent as during the delay necessary to procure a confirmation of the deed he can work the estate through the Assignee and inspectors, and in the event of the deed not being confirmed should he become repossessed of his estate which the law intended should be held in trust for the creditors he might dissipate or transfer the assets so as to have nothing available for them. Thanking you for so much space we are,

Yours, &c.,

MOLTON, MCSWEENEY & FIELDING.
Halifax, Jan. 6th, 1880.

To the Editor of THE LAW JOURNAL.

SIR,—Much difference of opinion has arisen as to the time when a creditors' assignee is justified in reconveying the estate of an Insolvent to him or his appointee, as is directed by section 60 of the Insolvent Act. As yet there is but one judicial opinion upon this question, that I am aware of in this Province, which is to the effect that such reconveyance cannot properly be made until the discharge is confirmed. As I, in my capacity of creditors' assignee, have never refused to reconvey the estate after the deed was filed in the office of the Court, I propose to give my reasons for the course which I have adopted while I disregarded the decision above referred to.

The authority for reconveying is found in section 60, in these words:—"So soon as a deed of composition and discharge shall have been executed as aforesaid, it shall be