

## THE TRADER.

TORONTO, ONTARIO, APRIL, 1880.

Distributed free to every Jeweler and Hardware Merchant in Canada.

## Advertising Rates.

Full Page, . . . . .	\$20 00	each issue.
Half Page, . . . . .	12 00	"
Quarter Page, . . . . .	8 00	"
Small Advertisements, 8 cents per line.		

A Discount of 25 per cent. will be allowed from the above rates for yearly contracts. All advertisements payable monthly.

All business and other communications should be addressed to

"THE TRADER PUBLISHING CO.,  
Box 1325, Toronto, Ont.

## THE INSOLVENT ACT.

The Insolvent Act as was generally anticipated has been repealed, and the Governor-General has given his gracious assent to the action of Parliament to make the repeal become legal. Its effect ought to be to make merchants more careful whom they credit, to shorten the time of credits as much as possible, and to endeavour to put their business as nearly on a cash basis as they possibly can. If it has this tendency in any marked degree its repeal will not have been an unmixed evil. We believe the sense of the mercantile community will demand another Insolvent Act at no distant day, probably next session of parliament, but it is to be hoped that if another Act is passed it will be found more in accordance with the wishes of the mercantile community than the Act of 1875 and amending Acts. Our Boards of Trade would do a good work in thoroughly ventilating the subject by letting the government know exactly what our leading merchants think about it.

## THE CREDITORS' RELIEF ACT OF ONTARIO.

This Act of Mr. Mowat's, which has been brought into existence by the contemplated repeal of the Insolvent Act, has lately been the subject of much discussion and criticism. On the whole, however, the opinions of mercantile men are favorable towards it; their only fault being that it does not go far enough. The object of the bill is to abolish priority amongst execution creditors, so as to enable all those who have natural claims against any debtor to share alike in the distribution of such debtor's assets.

Under this statute, whenever a sheriff levies money on an execution against the property of a debtor he is required to enter in a book in his office, which is open to public inspection without charge, a notice of such levy and its amount, and to distribute ratably the sum levied amongst all creditors whose writs or certificates are placed in his hands within one calendar month after the entry of the notice; and if before the month an additional levy is made on the property of the debtor, this amount is to be dealt with as if it had been collected before the entry was made, while money levied after the month has expired requires a new entry to be made.

In order that a creditor may be entitled to share in the distribution of money levied out of the property of a debtor he must place in the sheriff's hands either (1) a writ of execution, or (2) a certificate obtained against the debtor in the following way:—

If a debtor permits an execution issued against him under which any of his goods or chattels are seized by a sheriff to remain unsatisfied in the sheriff's hands till within two days of the time fixed by the sheriff for the sale thereof, or for twenty days after such seizure, or allows an execution against his lands to remain unsatisfied for nine months after it is placed in the sheriff's hands, the following proceedings may be taken by other creditors in respect of debts which are over-due, in lieu of their obtaining judgments and executions against the debtor in the ordinary way:

"(1) An affidavit of the debt and the particulars thereof may be made in duplicate by the creditor, or by one of the creditors in case of a joint debt, or by his or their clerk or some other person on behalf of the creditor or creditors, and cognizant of the facts: prior to or simultaneously with the first filing with the Clerk of the County Court of an affidavit made under this sub-section, there shall be filed with the said Clerk the certificate of the sheriff, or an affidavit showing that such proceedings have been had against the debtor as entitle the creditor to proceed under this Act.

"(2) The claimant is to serve on the debtor one of the said duplicates, and a notice stating that the claimant intends to file the other duplicate affidavit with the Clerk of the County Court by reason of there being in the sheriff's hands a writ of execution against the goods and chattels (or lands) of the debtor, and that the claimant intends to call on the sheriff to levy the said debt of the property of the said debtor under the authority of this Act; the said notice may be either attached to the affidavit served, or endorsed thereon; where the affidavit is to be served out of Ontario the judge shall limit the time at which the next step may be taken by the claimant as hereinafter provided."

The claimant is required to file the other duplicate with the clerk of the County Court, accompanied by an affidavit of service on the debtor or his legal representative. If the claim is not disputed, then after ten days from the time of service the Clerk is bound to give the claimant a certificate to that effect, and stating that he is entitled to the amount of his claim.

This certificate is to be delivered to the sheriff, and from the time of such delivery the claimant shall be deemed an execution creditor, and be entitled to share with creditors who have in the sheriff's hands executions against either lands or goods whatever money is made under such executions if he had himself delivered to the sheriff an execution.

Provision is made for establishing a creditor's claim, or for suing out writs in another county, and for holding a decision in one county as binding in others. All certificates issued by the County Court clerk are to be registered by him, and the judge may, under certain restrictions, extend the time for payment by the debtor.

The act also provides that when a sheriff does not find enough of leviable property to pay the claims in full, he can seize goods which have already been seized by a bailiff under a Division Court execution, the bailiff being compelled to surrender them under a heavy penalty, and the Division Court creditors being placed, without further proof of claim, on the same footing as the other execution creditors.

When the amount is still insufficient it is to be distributed ratably amongst the creditors after the sheriff's fees have been paid, his poundage being charged, not on the separate claims or writs, but on the net proceeds of the estate he administers, as if there had been but one writ. After making specific provisions for the distribution of the amounts levied amongst the creditors, the Act authorizes the sheriff, or any person entitled to participate in the distribution, to attach debts owing to the debtor or money garnisheed and paid into the sheriff's hands. In cases involving amounts over \$100, an appeal is allowed to the Court of Appeal against any final order of a County or Superior Court Judge.

As we said before the principal objection to the Bill arises from the fact that those having natural claims are really preferential creditors over those whose claims are in the form of notes which are not overdue. It is said that Mr. Mowat could not legislate so as to make his Act include Creditors in this position, but we cannot see that if he had the power to make a sheriff suspend the first execution for one calendar month, and then distribute the creditor's assets ratably amongst all creditors whose claims were placed in his hands during that time, why he could not as easily