

## DEBTOR AND CREDITOR.—QUIETING TITLES.

often stated our opinion that some such enactment as that contained in what is popularly known as the "91st clause" is absolutely necessary for the proper and legitimate protection of the creditor, and when referring to the proposed alteration of the bankrupt laws in England, we noticed the apparent want of any sufficient means of punishing fraudulent and obstinate debtors.

Several of the leading English periodicals have taken the same view of the matter, and argue strongly in favor of the beneficial effect of some provision analogous to that which forms a part of our Division Court system. We publish in another place an article taken from a leading paper in England on this subject. It has the advantage of containing none of that clap-trap sentimentalism which has been too much the fashion of late years, and whilst it puts the case very strongly—much more so than we ever did—it cannot be denied that there are many truths contained in it, well worthy of consideration.

A certain class, or rather two classes of people in this country—one composed of honest and humane, but as we think one-ided and wrong-headed men, and the other of persons likely to be affected by the stringent provisions of the "91st clause"—by dint of much writing and talking, disproportioned to their actual numbers or intelligence, some years ago brought a considerable pressure to bear, by means of which an alteration was made in the then existing law. This was, as it appeared to us, an absurd alteration, and has been so far as we have been able to ascertain, a failure—and it would seem necessarily so, for it simply had the effect of throwing a stumbling-block in the way of the creditor (who surely has a right to recover his debt, if it can be recovered), without affecting materially the position of the willing but insolvent debtor, who is, we are willing to admit, *next to the creditor*, entitled to protection; whilst, at the same time, the alteration admits the justice and propriety of the former enactment. The principle was in fact admitted, but the machinery for carrying it into effect was made more cumbrous and less effective.

A bill has been introduced this session, which has a bearing on this subject, and which it may be useful to notice. It is proposed to repeal section 172 of the Division Courts Act, which provides that no protection

of any insolvent act shall be available to discharge any defendant from any order of commitment under the sections already referred to. At first sight this might seem a reasonable amendment, in view of the changes effected by the Insolvent Act; but upon further consideration may it not be said that it is in effect doing away with the beneficial operation of the clauses of the act which we are upholding. We venture to say that not in one case out of a thousand has an honest, *bona fide* insolvent debtor been imprisoned under these clauses, whilst as a means of punishing recklessly-dishonest or fraudulent debtors, the powers given by them are most useful. To use a simile brought to our minds by these warlike times—will not the repeal of section 172 take, as it were, the ball from the cartridge and leave it *blank*.

## ACT FOR QUIETING TITLES.

In furnishing the necessary documents in order to obtain certificates of title under this Act, amongst other requisites, is an affidavit that the land is not charged with any debt to the Crown, and in order to save trouble and loss of time as well to the applicants as to the referee, in reporting to the judges that a certificate may be granted, it should be understood that this affidavit must be punctiliously correct as shewing that the land is free from such debt under the provisions of the statute chapter 5 Consolidated Statutes of Upper Canada.

To prevent future difficulty to the profession and applicants we have procured the following form from the referee as one that will be accepted:

## IN CHANCERY.

In the matter of Lot No. —, &c.

I, A. B., of —, &c., make oath and say that I have carefully searched the register in the office of the clerk of the Court of Queen's Bench in Toronto, and that there has not been registered therein any deed, bond, contract or other instrument whereby any debt, obligation or duty was incurred or created to Her Majesty on the part of \* —, his (or their, or any or either of their, as the case may be) heirs, executors or administrators.

Sworn, &c. (with the usual Chancery Jurat).

It will be noticed, however, in reference to this, that an act (of which we give a copy in

\* Name here all the persons who at any time since 1857 had any estate in the land liable to a crown debt.