

CORRESPONDENCE.

pears to be new matter ; and which was introduced into the Act of 1875 (there can be no doubt), for the benefit of the insolvent, to enable him to regain his former estate, as speedily as possible, after all parties in any way interested have had an opportunity of pronouncing upon the deed without the delay, trouble and expense that would be unnecessarily incurred in awaiting the confirmation by the Court.

Lindsay.

Yours, &c,

B.

Composition and Discharge.

To the Editor of THE LAW JOURNAL.

SIR,—I agree with you that the point raised by the letter of "Barrister" in your last issue is one of practical importance. "Barrister" takes exception to the ruling of the County Court Judge at Halifax, that transfer of his estate to an insolvent, under a deed of composition and discharge should not be made until the confirmation of the deed by the Court. The language of Chief Justice Moss, in *Re McLaren and Chambers*, 1 Ap. Rep. 68, has been often understood as applying to confirmation by the creditors, but if that is his Lordship's meaning, the language is unfortunate, as the Act nowhere refers to "confirmation" by creditors. The meeting is directed to be called for the "confirmation" of the deed, and the creditors present may "express their approval thereof, or dissent therefrom."

Section 66 of the Act of 1875, provides "in no case shall a discharge have any effect unless, and until it is confirmed by the Court or a Judge." The insolvent's property is by the writ of attachment or deed of assignment vested in his assignee. Clearly it cannot be re-vested in the insolvent by a discharge, while that discharge is of no "effect." And why should the insolvent be entitled to the possession of effects not vested in him—not yet his? If the right of possession before confirmation exists at all, it is by virtue of section 60, which enacts that "so soon as a deed of composition and discharge shall have been executed as aforesaid, it shall be the duty of the assignee to re-convey the estate to the insolvent." What is meant by "executed as

It deciding this point it is material to observe that the sections of the Act which deal with confirmation precede sec. 60. I think a deed is "executed as aforesaid," when it is completed, i. e., signed by the requisite proportions in number and value of creditors, approved of by creditors at a meeting called for its consideration and confirmed by the Court.

If this is not the correct interpretation of the law, will "Barrister," or some one else explain what the position of an assignee would be in case of the Court refusing confirmation of a deed under which the assets had been handed over to the insolvent? Suppose the insolvent to have in the meantime bought and sold, incurred new liabilities, changed the character of assets, or to have sold the whole estate and pocketed the proceeds. What would be the position of the assignee? Surely he would be held strictly to account for effects which the law had vested in him as trustee for creditors, and of which he had never been divested.

Again, there is no means provided by the Act whereby dissenting creditors can compel an insolvent to bring his deed before the Court for confirmation. If as a matter of law he is entitled to have his assets back that he may deal with them as owner, before making his application to the Court, why make that application at all?

The Act of 1869 contained a provision permitting creditors to direct what disposition should be made of assets pending confirmation of the deed. The Act of 1875 contains no such provision, and though the form of composition deed ordinarily in use directs the assignee to transfer the estate upon execution of the deed by the required proportions of creditors, it is quite clear that such a provision is entirely ineffectual and owes its origin to the former statute.

This omission in the Act of 1875 furnishes, I think, a strong additional argument, if any were needed, of the intention of the Legislature, that the estate should remain in the custody and control of the assignee, until after confirmation of the deed.

Yours, &c.,

D. E. T.