

PROPOSALS FOR A NEW INSOLVENT LAW.

There is no legislation which requires more careful consideration than that pertaining to bankruptcy, and it is to be regretted that the mercantile community has not taken the interest in the question which its importance demands. On looking over the Insolvent Act of 1875 and its amendments, we find that a creditor may place a debtor in insolvency if he be unable to meet his payments; that at the first meeting the creditors appoint the assignee and inspectors, under whose instructions he acts in winding up the estate. In fact the creditors have complete control, and if the assets be not equitably distributed they themselves are to blame.

One drawback to our present law is that the procedure is expensive; but as we are generally willing to allow the insolvency laws to be framed by lawyers, to be amended by lawyers, and now to be strangled by lawyers, it is only fair to suppose that they do not forget the legal fees in the various bills they introduce.

Under the present law a fee of \$33 is paid to the attorney for (in most cases) merely attaching his signature to the fiat; when the estate has been wound up another fee is paid to the lawyer for the assignee's discharge; and for making application to the court for a confirmation of discharge (for the insolvent) a fee of from \$40 to \$75 again goes to the lawyer. Add to this the petitions, contestations, &c., wherein the lawyer plays a willing part, and it will be understood that the interests of the cloth have been well cared for.

A charge of \$10 is made for stamps on a writ of attachment when the debt is from \$200 to \$500, after which we have the advertisements in the "Quebec Official Gazette" of the issue of writ, first meeting of creditors, meeting to approve of composition, and other notices, which run away with a pretty large amount of the creditors' money.

It will be remembered that Mr. Colby brought in a new bill last year, but to those practically acquainted with the working of the present Act it appeared a very poor substitute indeed; and as that gentleman has thrown it overboard and become stepfather to Mr. Bechard's ruinous bill, it is evident that he has come to the conclusion that he is not destined to shine as a "Bankruptcy Act tinker." That is not to be wondered at, and is no fault of his. A legal gentleman living in a country town has not, and cannot be expected to have, the necessary experience requisite in a man who undertakes the difficult task of framing a law upon which the prosperity of this Dominion so largely depends.

Mr. Colby proposed to pay the assignee "labourer's wages," and the deputy or guardian was to have had fifty cents a day. This would certainly be sufficient for a guardian for a small country store, but creditors would not care to entrust the stock of our extensive city establishments to the guardianship of a man who should accept such remuneration for his services. Owing to the fact of there being so many members of the legal profession in the Commons, and that by abolishing the Insolvent Act the number of suits, judgments, and executions will be greatly augmented, it may be looked upon as already repealed; but before this false step is taken, it may be well to remember, that instead of increasing confidence in our commercial affairs (as the supporters of repeal declare), it will have precisely the contrary effect.

Without a bankrupt law, a dishonest trader cannot be prevented from defrauding his creditors in allowing his stock to be sold out by a local bailiff, and bought, for a mere nominal price, by some accomplice whom he has allowed to get judgment for a pretended debt. At present a creditor only sues a debtor as a last resource, knowing that his action may have the effect of driving the debtor into bankruptcy; in which case he has to pay the *law costs* himself in full, which he may add to the debt already existing, and merely get a (perhaps) trifling dividend on the whole. It will thus be perceived why suits in law would be of more frequent occurrence were the Insolvent Act repealed.

Under the existing law, the foreign creditor is on the same footing as the one who resides in the district in which bankruptcy proceedings have been taken; but without the Act the creditor at a distance will occupy a very insecure position with reference to his prospects of being paid for his goods. It is only a short time since that a cry was raised in the United States to repeal the Bankrupt Law—a measure which was carried by a thoughtless majority—but, short as the time has been, a reaction has already set in, and there are few intelligent business men in the Union who do not see the ruinous mistake committed by totally repealing the Insolvent Act; and at present "A National Bankrupt Act" is being agitated for throughout the entire country.

There is no doubting the fact that several changes might be made in our present law which would appear at first sight to be a decided improvement.

Perfection is not to be looked for in the Bankrupt Act any more than in other laws. For instance, if any irresponsible man makes an affidavit that a respectable citizen is indebted to him in a sum of forty dollars or over, and that he is about to leave the Province or to secrete his goods in order to defraud his creditors, the respectable citizen would be thereon arrested, and in default of finding security, sent to gaol. In fact, the best laws, though of advantage to the honest man, may be taken advantage of by rogues.

Without going into the matter at length, the following additions and changes would be advantageous to our trading community, viz. :—

1st. A debtor, unable to meet his liabilities, to be allowed to make a voluntary assignment to the official assignee of the district in which he carries on business; so that he will not be obliged to give or promise any advantage to the creditor taking the proceedings.

2nd. A creditor shall have the right to place a debtor in insolvency for a debt of \$200 or over if he has allowed two promissory notes to be protested and to remain unpaid for ten days from date of said protest, or if he has allowed two judgments to go against him without paying or appealing to a higher court within eight days, or allows an execution against his goods to remain for six days, closes his place of business for six days, or disposes of his entire stock without the written consent of four-fifths of his creditors residing in the Province.*

3rd. A landlord to be a privileged creditor for three months back and for the time his premises shall be occupied by the estate after the writ is issued.

4th. Should the insolvent be guilty of defrauding his creditors, he shall be punished as the Act now provides; and if his creditors have reason to believe, and it can be proven, that he through neglecting his affairs, failing to keep books, and not being in a position to account for the large deficiency so often exhibited by insolvent estates, the creditors shall petition the court, who shall order the insolvent not to carry on business in the Province for five years, neither in his own name, nor as a partner, nor as having any interest in any business whatsoever. And should it be found that after such judgment he still carried on business in his own or any other name, or held any interest in business, a fine of \$500 might be levied, and the stock of such place of business sold to defray it, or if there was not sufficient stock to pay said fine the judge should have the right to commit the debtor to jail for not less than six months.

5th. There shall be for the City and District of Montreal three official assignees who will take charge of all insolvent estates in their Division only. They shall have no interest whatever in the fees in insolvency which will go to the Government; they (the official assignees) receiving an annual salary. Each assignee will then be in a position in which he may perform his duty fairly, and uninfluenced by either the insolvent or creditor.

6th. The affidavit for compulsory proceedings shall be first submitted to the official assignee, whose practical experience will enable him to judge if the reasons set forth be sufficient to warrant the issuing of a writ, or if there be any collusion between the creditor and insolvent. If a writ is to be issued, he shall attach his signature to the affidavit, and the Court may issue the writ, as at present.

7th. After the writ is served, the assignee shall enter into possession, and if the business is to be continued, and the assets warrant the expense, a guardian or guardians may be placed in charge, and if not, the premises locked up and the keys retained by the assignee until the first meeting of creditors, which should be held within *ten* days from issue of writ.

8th. The official assignee shall watch proceedings at first meeting of creditors, and should he be under the impression that the estate was worth much more than the insolvent offered for it, might refuse, to allow a settlement or composition, unless four-fifths in number of all the creditors are either present or represented by attorney.

9th. Should a composition be arranged at first meeting, it may be carried out by the official assignee, who shall also draw up a deed of composition and discharge, the fees for which shall be paid by stamps affixed.

10th. Should the creditors resolve on winding up the estate, they shall appoint an accountant, or any one whom they may choose by a vote, as present Act requires, and he shall perform his duties under the direction of inspectors (whose services shall be gratuitous) and the official assignee, who shall have the right of supervising the work of the accountant or assignee.

11th. The official assignee shall have the right to object to any proceeding which he may consider illegal on the part of the creditors' assignee or accountant, and, if necessary, to bring him before a judge, who shall hear the case pleaded by the plaintiff and defendant personally, in order to save costs, and shall dismiss the accountant from the estate, if sufficient cause be shown by the official assignee.

12th. Any accusation brought against an official assignee shall be heard by a judge sitting in insolvency; but he shall only be dismissed from office by a judgment of the judges sitting in Court of Appeals. This would be a necessary clause, as the assignee might become the victim of a conspiracy, owing to the disagreeable duties he might be obliged to perform.

* The present Act is rather indefinite, and unless a debtor acknowledges his insolvency the taking of a writ of attachment may become a dangerous step to the creditor, who is liable to be victimised by endless litigation, for which (should the judgment go against him) he has to pay,—and if successful it is paid out of the estate, and is indirectly a loss to him.