

New Bankruptcy Act A Stringent Measure

Very Little Chance for Evade-
tion Under the New Legis-
lation — The Principal
Conditions.

By F. G. T. Lucas, Barrister-at-Law.

On July 1st there came into force in Canada the new Bankruptcy Act. Bankruptcy is a proceeding by which the assets of a debtor are liquidated and the proceeds distributed among his creditors. The new Act is a very radical change in the relationship of debtors and creditors in Canada. Heretofore and now, the only legislation pertaining to insolvent debtors has been and is the Bankruptcy Act, commonly known as the Bankruptcy Act. The new Act, however, is a very radical change in the relationship of debtors and creditors in Canada. Heretofore and now, the only legislation pertaining to insolvent debtors has been and is the Bankruptcy Act, commonly known as the Bankruptcy Act.

As insolvency is one of the matters which, under the British North America Act, comes within the exclusive jurisdiction of the Dominion Parliament, the provincial legislatures in drafting their Creditors' Trust Deed Acts have carefully avoided this feature. Any person, insolvent or not, can make an assignment of his assets for the benefit of his creditors under the Creditors' Trust Deeds Act. In practice, however, it has worked out that no one makes such assignments except an insolvent.

No one can be forced to make an assignment for the benefit of his creditors, and an insolvent gets no permanent relief in making an assignment for the benefit of his creditors, because he is not thereby at any time ever absolved from his liability to his creditors, but must pay them in full if he has the means at any time in his lifetime to do so (subject only to such defenses as he might at a later time raise by way of the statutes of limitations).

The result is not satisfactory in practice, either to the debtor or to the creditors, as nothing is accomplished except only equal and rateable distribution of assets which at any particular time may be in the possession of the insolvent and the consequent diminution of legal process against the insolvent, not because there is denied any legal right to proceed, but because such procedure under such circumstances will bring no useful result.

All these various features of present conditions are changed by the new Bankruptcy Act. Any debtor who commits what is described as an act of bankruptcy leaves himself open to attack by any creditor or creditors in a sum of \$500 or over, the attack being by way of petition which such creditors may take to a bankruptcy court for a receiving order under the bankruptcy act, and for a declaration that such an individual is a bankrupt.

If, on the hearing of such petition, the judge or court is satisfied that the debtor is insolvent and has committed an act of bankruptcy, he will declare such debtor a bankrupt and will appoint an official trustee to whom forthwith all the assets of the bankrupt pass.

Act of Bankruptcy.

What, then, is an act of bankruptcy, which, when committed or done, leaves a man open to such a serious proceeding? The answer is contained explicitly in the bankruptcy act. Any one of the following eight things is an act of bankruptcy:

- 1.—If he makes an assignment for the benefit of creditors.
- 2.—If he creates a fraudulent conveyance of his property.
- 3.—If he creates a charge on property which would be void as a fraudulent preference.
- 4.—If he absconds with intent to defeat his creditors.
- 5.—If he permits an execution in the sheriff's hands to remain unsatisfied subject to certain limitations.
- 6.—If he exhibits to any meeting of his creditors a statement of his assets and liabilities which shows that he is insolvent.
- 7.—If he assigns, removes, secretes or disposes of any of his goods with intent to defraud, defeat or delay any of his creditors.
- 8.—If he makes a sale in bulk of his assets without complying with the Bulk Sales Act.

The results of the making of the bankruptcy orders are serious, and the debtor's status as a citizen is materially changed. No longer is he entitled to get his mail or telegrams from the post office or telegraph offices. For three months the postmaster and telegraph companies deliver the bankrupt's mail and telegrams to the official trustee. No longer can he borrow any sum in excess of \$50 without giving notification that he is a bankrupt, upon a penalty, if he does so, of paying a fine and suffering a term of imprisonment, and upon a further penalty that if he does any such act, when the time comes for him to obtain his discharge from bankruptcy, he will find that said act forms a bar, which can only be removed by a further term or period of time to be suffered as a bankrupt. No longer can he engage in any trade or business under a name other than that under which he was adjudicated bankrupt, without disclosing to all persons the name under which he was so adjudicated bankrupt. There are many other minor handicaps upon a man's activities. He must hold himself available to the official trustee and must attend his first meeting of creditors and submit to examination and furnish his trustee fully and frankly with all particulars concerning his property and assets.

Discharge From Bankruptcy.

If he has been an honest man, and if his insolvency has been occasioned by causes beyond his control, and if he deals frankly and fairly with his official trustee in bankruptcy, he may, at any time after his estate has passed into the possession of his trustee in bankruptcy, make application for discharge. The application is made first by obtaining a certificate from his trustee specifying the names and addresses of his creditors, and, upon giving the necessary notices, the matter will be heard in court and the trustee will appear before the judge and present a statement of the conduct and affairs of the bankrupt and, with this and such other material as he may wish to submit, the judge will decide if he requires, the bankrupt may be discharged and thereupon he is released and relieved from all his former debts and liabilities; and all recent judicial decisions coming from the old country, where bankruptcy has been so thoroughly well tried out, indicate that where the proceedings have been commenced, and no good purpose can be obtained, or benefit derived to the creditors by keeping a man in bankruptcy, that he should be discharged, on the ground that it is not in the interest of the state to discourage a bankrupt by holding him down or by granting an order of discharge subject to conditions which impose upon him such a burden that he can have no hope of bettering his position.

Suspended Discharge.

On these applications of bankrupts for discharge, the court has a very wide and almost absolute discretionary power, subject, however, to specific limitations contained in the act. This limitation is that if it be proved by anybody that in the course of the business history of the bankrupt, or during his bankruptcy, he has committed any one or more of the eleven different things specifically set out in the act, the judge has no longer unlimited discretion, but can only refuse the discharge altogether, or suspend it for a period of not less than two years, or suspend it until a dividend of not less than fifty cents on the dollar has been paid to the creditors, or attach to the discharge a condition that the bankrupt agree to allow a judgment to go against him for the amount of the unpaid balance of his debts in favor of the trustee, who will, at some future time, collect the same from future earnings of the bankrupt and distribute the same amongst his creditors.

The eleven specific facts which when existing in the business history of a bankrupt, or during the course of bankruptcy, so limit the power of a judge to give him his unconditional discharge, are as follows:

- 1.—That his assets do not equal fifty cents on the dollar of his unsecured creditors, unless such condition has arisen from circumstances over which he cannot justly be held responsible.
- 2.—That he has kept no books of account.
- 3.—That he has continued to trade after knowing himself to be insolvent.
- 4.—That he cannot account satisfactorily for loss of assets.
- 5.—That his bankruptcy has been brought on or contributed to by rash or hazardous speculations or by injudicious extravagance in living, or by gambling or culpable neglect in business affairs.
- 6.—That he has permitted frivolous and vexatious litigation to continue.
- 7.—That he has made an undue or improper preference to some of his creditors.
- 8.—That he has intentionally incurred liabilities with a view to making his assets equal fifty cents on the dollar of his unsecured creditors.
- 9.—That he has been a former bankrupt.
- 10.—That he has been guilty of a fraudulent breach of trust.
- 11.—That he can be seen in the essential changes in our business affairs which will be introduced as a result of the passing of the bankruptcy act, namely the fact:

- 1.—That a man in insolvent circumstances is no longer a free agent, but is forced into bankruptcy by the acts of his creditors.
- 2.—That the honest man, who has, by reason of circumstances beyond his control, become involved in a burden of debt beyond his power to pay, may, by acting fairly and squarely with his creditors, without too serious detriment to himself, become relieved of his burden and have the opportunity of commencing his business life anew, and so become once more the master of his own affairs, and take his proper part and share in carrying on business in the life of the community in which he lives.

order annulled and the debtor declared a bankrupt.

OUR UNDEVELOPED POWERS.

If the current interest in things psychological did nothing for the world but to call attention to our undeveloped powers, it would still contribute much.

Perhaps we have no greater handicap than our persistent sense of limitation. We see ourselves, not as vast and free; but as fettered, thwarted, checked, whatever way we turn.

FEAR IS A MAN-MADE EVIL.

"Fear," writes Henry Tardor, "is a man-made evil, foreign to infants or the young of animals. It is only after God's creatures have been influenced by man that they become a prey to this emotion. Man's mistaken beliefs make it appear necessary to him to instruct his offspring in the laws of fear and until these beliefs are corrected, fear will be taught."

THE WORK THAT COUNTS.

The child delights in a plaything he has fashioned with his own hands. We are all born to be producers, to add to the wealth and beauty and happiness of the world. Our gift need not be an obelisk by the Nile, or a Parthenon, or the dome of a St. Peter's. A cheering word that heartens a brother for the day's struggle—that, too, builds for eternity in the soul of him who gives and in him who receives.

Be a builder, not a destroyer! It profits me nothing to tear down a thing that I cannot replace with something better. "I am not come to destroy, but to fulfill." He who uttered these words recreated the earth upon a new foundation.

himself, become relieved of his burden and have the opportunity of commencing his business life anew, and so become once more the master of his own affairs, and take his proper part and share in carrying on business in the life of the community in which he lives.

There are many details of the act which appear to be fair and beneficial to all concerned, but, owing lack of space, I can mention only a few here. Priorities—From the money which the trustee realizes from the administration of the assets of the bankrupt, he must pay:

- Firstly—From out of the value of the goods and chattels which he has found upon the rented premises the claim of the landlord for an amount not exceeding three months' rent.
- (Under the existing law, the landlord has preferential claim for six months' rent in the event of an assignment, regardless as to whether goods to the value of the rent are found on the premises.)
- Secondly—He pays his own fees and expenses, and, in this connection, the trustee's fees are settled by the creditors, but must not in any event exceed five per cent. of the gross receipts.
- Thirdly—He pays the costs of the execution creditor where the assets have come into his hands from the hands of the sheriff.
- Fourthly—He pays three months' wages, salaries, commissions earned and all concerned, but, owing lack of space, I can mention only a few here.
- Fifthly—He divides the balance of the money equally among the creditors.

This, of course, deals with the unsecured creditors. The secured creditors are entitled to rank for the balance of their claims after valuing their securities. The process is similar to that which we have under the Creditors' Trust Deeds Act, and, for that reason, I will make no further mention of it here. Upon going into bankruptcy a man is entitled to reserve to himself all those things which he is entitled to hold out from a sheriff under writ of execution, viz.:—Tools of his trade, and like assets, personal apparel and \$500 worth of household goods under the Homestead Exemption Act.

Interest—Creditors are, under this act, entitled to interest on the amount of their claims from the time that the same became due until the date of the receiving order, at the rate of six per cent. per annum, and, after the date of the receiving order, they are to be entitled to the same rate of interest until date of payment, provided there is enough money in the estate to pay them. (Heretofore there has been no provision for any such payment of interest in any existing act.)

Carrying on business—Although the primary intention of the bankruptcy act is to take the assets of the bankrupt, sell them and distribute the proceeds among the creditors, still, if the creditors so determine, and upon following the procedure laid down in the act, the official trustee may carry on the business of the debtor and incur obligations and make advances in respect thereto so that it may come about in some instances that the business may be able to pay off the liabilities of the debtor, and, under such circumstances, the bankruptcy would be annulled and the business handed back to its former owner without being broken up.

Corporations may go into bankruptcy as well as individuals. A debtor or an insolvent may go into bankruptcy of his own motion, but, upon doing so, incur the same responsibilities as if he had been put into bankruptcy by the act of a creditor.

One feature existing in our act which is not present in the English act, is that any man, firm or corporation finding himself in difficult circumstances, may, without going into bankruptcy, present a scheme or plan of arrangement of his affairs, providing for an extension of time and for carrying on business under certain express conditions specifically set out, and may present same to the official trustee. The official trustee then calls a meeting of the creditors and presents the scheme of plan. The creditors may accept or reject it as they see fit, whether to put the insolvent into bankruptcy or not, or they may have him examined as to his affairs. Assuming, however, that all these things are done, and the creditors decide to accept the plan or scheme of arrangement for carrying on, the trustee then presents the proposals to the court, and if the court approves, it may make an order embodying the said scheme, and thereupon such a scheme becomes binding upon all the creditors. In order for such a scheme to pass the creditors, it is necessary that it be approved by resolution of creditors in which a majority of creditors in number holding at least two-thirds in amount of the proved debts, vote in favor of the proposal. Such a scheme must be carried out in its entirety, and default on the part of the terms as contained, gives to the creditors or any of them the right to have the

order annulled and the debtor declared a bankrupt.

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EUGENIE AND FRANZ JOSEF

For half a century two historic figures sat on the sable throne of tragedy. The throne of one was material and above it waved the sceptre of the Hapsburgs, draped in the craps of many griefs. The throne of the other was the phantom date of the Second Empire, shrouded in the bloody mire of Sedan, and above it waved only the memory-sceptre of the most brilliant court of modern times.

All that history has of the terrible in romance and of the fearful in parallel and coincidence was pressed into the double tragedy of Franz Josef and Eugenie and perhaps two sovereigns never lived who were more universally pitied by a sympathizing world. Eugenie's life story is in the nature of things, more brilliant with real glories, for Franz Josef sat in the seat of power to the last, while Eugenie for half a century ate the bread of exile in a foreign but kindly land.

For fifty years Eugenie was the world's "queen of sorrows," sharing her sombre reign only with Franz Josef and Carlotta—whose throne was one. And now the long vigil beside the tomb of erstwhile splendor, if not of an early love, has ended. The bent figure with snowy hair will rest by the side of the royal spouse who preceded Eugenie by forty-

seven years, and by the royal son whom untimely death on the point of a Zulu spear brought new grief to "sorrow's queen." Thus passes the glory of the world, but its love and sympathy endure.—Kansas City Journal.

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MUTT AND JEFF—SURE! A GUY IS LIABLE TO MAKE A PUNK GUESS OCCASIONALLY

By "BUD" FISHER

ON, FINE! THE WEATHERMAN SAYS "CONFIRMED FAIR TODAY." THAT MEANS IT'S GONNA BE FINE, TOO! THEY SAY A GOOD THING'S BEEN NO CHANGE OF THAT WEATHER-BUREAU FOR A WEEK AND HE'S FORECASTED THE WEATHER CORRECTLY EVERY DAY.

IT'S LUCKY OUR LODGE IS GONNA HAVE A PERFECT DAY FOR OUR ANNUAL PICNIC! THE WEATHERMAN'S CERTAINLY GOOD TO US! THERE'S JEFF! I'LL INVITE HIM TO GO TO THE PICNIC.

JEFF, COME ON OUT TO THE LODGE PICNIC WITH ME!

SORRY OLD DEAR, BUT BUSINESS BEFORE PLEASURE! I GOTTA WORK. DID YOU KNOW I'VE BEEN IN CHARGE OF THE WEATHER BUREAU FOR A WEEK!

IT STRIKES ME YOU'RE SILLY TO CARRY AROUND THAT BIG UMBRELLA! HAVEN'T YOU PREDICTED FAIR WEATHER FOR TODAY?

SURE I DID, BUT MAYBE I GUESSED WRONG! I'M BOUND TO MISS A GUESS ONE OF THESE DAYS, SO SAFETY FIRST IS MY MOTTO!

INSECT!