

and in the answers received by your committee, there is evidence to show that the absence of more stringent provisions for the punishment of such acts, is regarded as a defect in the Insolvent Act of 1864.

The fourth branch of enquiry, as to the efficiency of the provisions of the Act in respect of the insolvent and of his discharge, has elicited a considerable mass of evidence as to their operation, and numerous suggestions for their improvement.

The discharge of the insolvent may be obtained in three ways:—

First, by the consent thereto of a certain proportion of the creditors.

Second, under a deed of composition and discharge assented to by a similar proportion of creditors.

Third, by an order of the Judge, which may be made at any time after the expiration of a year from the date of the insolvency.

The first and second of these modes of obtaining a discharge are not generally objected to, though some changes are suggested in matters of detail. For instance, it is suggested that it should be made clear that to be considered and computed as a creditor, a claimant should have proved his claim; that no doubt should have been allowed to remain as to the validity of a composition, the payments or some of the payments of which are to be made at a future date, or which is conditional upon such payments being regularly made; that the assignee should be capable of contesting the confirmation of a discharge when authorized to do so by the creditors, and the like. And it is probable that many of these suggestions, being the result of the experience of the writers, may be found useful in remodelling the law.

But as to the third mode of discharging insolvents, great difference of opinion exists, and many objections are made to it. It is urged that the power of discharging the debtor should rest absolutely with the creditors, or with the majority of them required by the Act. That if a debtor has acted honestly and properly, he can always obtain the consent of a sufficient number

to discharge him; and that his being unable to do so should be regarded as conclusive evidence of his misconduct. And in fact that the creditors ought in justice to have the right of deciding in the last resort whether their debtor should be discharged or not.

On the other hand, it is said that men are frequently by misfortune alone reduced so low, that their estates cannot pay such a dividend as is expected by creditors; that from feelings of disappointment and mortification alone, creditors will frequently refuse to discharge their debtors; and, moreover, that if they have really valid grounds for doing so, they can place them before the judge, who will thereupon act further in refusing them a discharge.

It would appear from the evidence, that the complaint that the power given to the judge to discharge a debtor, has operated injuriously to the creditors, is not altogether without foundation. The expense which is risked by a creditor who contests the application for discharge, the trouble and labour involved, and the paucity of successful contestations, have no doubt combined to facilitate the granting of many discharges to which the debtor was little entitled. And in proportion as he could hope for a discharge independent of the will of his creditors, the inducements to consider their rights, and to make a complete surrender of his estate would of necessity diminish. But although no doubt the power of the judge to grant a discharge is open to objection, the proposition to leave the debtor entirely in the hands of his creditors is by no means free from difficulty. The theory of every Bankrupt Law involves the discharge of the honest bankrupt in exchange for the free deposition of his entire estate; and it would be directly opposed to this idea to place it in the power of his creditors to strip him of everything, and afterwards to leave him entirely dependent upon their caprice for permission to begin the world anew.

The objection which rests upon the risk and the inconvenience involved in a contestation by a creditor, may be in a great