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EDWD. TROUT, MANAGER.

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ASSIGNMENTS FOR CREDITORS' BENEFIT.

The Dominion Parliament having, as we anticipated, adjourned without passing an Insolvent Act or other measure regulating the distribution of the assets of insolvent debtors, the Lieut.-Governor of this Province has issued his proclamation bringing into force, on the first day of September next, the Act passed at the last session of the Local Legislature, entitled, "An Act Respecting Assignments for the Benefit of Creditors. Just what effect this measure will have upon the administration of the law for the collection of debts, it is very difficult to forecast. To appreciate the change in the law which will then come into effect it is of the first importance that its present state should be borne in mind. We believe it is no less eminent a legal writer than Blackstone who says that the first thing to be considered in attempting the interpretation of a statutory enactment is the state of the law prior to the passing of the statute.

In this Province, then, there has since the repeal, some years ago, of the "Insolvent Act of 1875" existed no means whereby creditors could directly effect, by process of law, a compulsory liquidation of the estate of an insolvent debtor. Their only remedy has been and still is by suit, each creditor for himself, for the recovery of the amount due them respectively, If claims are current, nothing can be done under them, no matter how notorious the insolvency may be. Debtors may, if they choose, assign in trust for the general benefit of all creditors, but cannot in such assignment stipulate for a discharge. As to a discharge each creditor must act for himself. No proportion of creditors can by concurring in a discharge, whether an assignment has been made or not, bind a dissenting creditor.

In the matter of preferences, the only enactment, until the passage recently of the Creditors' Relief Act for the the protection of creditors, is a statute passed in 1859, composed of two sections. The first of these provides that judgments recovered against persons in insolvent circumstances upon confession of judgment, warrant of attorney, or *cognovit actionem* given by the debtor to such judgment creditor with intent to give such creditor a preference over other creditors, shall be deemed to be absolutely void as against such other creditor. The second section declared void transfers of personal property as security made by persons in insolvent circumstances with intent to give a preference. From this latter clause are excepted sales in the ordinary course of business and assignments made for the benefit of all creditors without preference or priority. Probably neither of these exceptions was necessary as it can scarcely be seen how the act would have applied to them in any case. Their introduction appears to have been due to an excessive caution, which as the result shows might have been more beneficially exercised in other directions.

Legal ingenuity soon converted both these sections into a dead letter. As to the first section, it was held that the Act applied only to judgments recovered in the technical modes pointed out in the Act, and not to judgments recovered by other modes with the same intent, *i. e*, of giving a preference. For a long time the contest on this point was kept alive upon the contention that the words "confession of judgment" ought to be construed to include all cases in which a defendant in insolvent circumstances had actively intervened in the suit in order to facilitate the recovery by the plaintiff of his judgment in priority to other creditors. The fight was vain; the decision of one of our own Provincial Courts to the effect that the words in question applied only to the technical process known to the law by that name when the Act was passed, being ultimately upheld by the Supreme Court. Under this state of things of course creditors anxious to secure a preference, and being sufficiently in their debtor's good graces had only to avoid the prohibited modes and resort to others which legal sharpness had devised and which was equally expeditious and effectual.

A measure of relief, though necessarily of a clumsy sort, was afforded on this point by the Creditors' Relief Act, passed by the Local Legislature some years since, but not brought into force until about a year ago. By this measure the law as to judgments is left as it was, but the priority of execution is abolished. Under the terms of this measure, when a sheriff makes money under execution instead of paying it over to the execution he is bound to hold it for thirty days, and then divide it ratably among all creditors who have then recovered executions or proved claims as directed by the Act. Thus indirectly is ratable distribution sometimes secured, even without the debtor's consent as between overdue claims.

As to the second section the result of judicial decision has not been any more satisfactory. When a security was given, not voluntarily by the debtor, but at the solicitation of the creditor, it was said to have been not given by the debtor *with intent* to afford a preference. In ninety-nine cases out of one hundred it was creditors who were anxious to get security, and when they pressed for it, that fact was held to take the case out of the operation of the statute. Thus was the seeming protection afforded by this clause turned by the courts into a mockery.

The evil of this state of things may be summarized as follows:

The statute did not apply to preferences by payment of money, so that there was no redress whatever in such cases, no matter how glaringly unjust.

The statute did not apply to transfer of real estate, which might be assigned at any time in security without being impeachable under any provisions of the law.

Where security upon personal property had been procured at the instance of, or as a result of, pressure by the creditor, the statute was held not to apply.

Even where preferential security had been given voluntarily, if the creditor disposed of it and converted it into money before proceedings were instituted against him to impeach the transaction, it was held that he could not be made answerable for the proceeds.

In a case where a debtor saw fit to make an assignment, he was able to choose his own assignee if only he could get the concurrence of any one creditor.

In the exercise of this power men were frequently chosen who were unfit for the duties thus imposed upon them—irresponsible, partisan, and who felt more anxious to manipulate matters in the interest of the debtors to whom they owed their appointment, than to serve the creditors whom they were supposed to represent.

Lawyers of easy conscience who conceived it not inconsistent with their professional duty to represent the debtor who was seeking a settlement from his creditors one day, and the trustee, who was supposed to represent these same creditors, the next lent their little influence to enhance the baneful effects of pernicious laws.

The undue power over their creditors afforded by this state of things to unscrupulous debtors constantly resulted in the making of settlements and granting of discharges to those not entitled to them, the real sufferers from which were the honest retail dealers who were the competitors in trade of these scamps.

Having thus outlined the state of the law on this important subject in the Province of Ontario up to this time, and some of the evils incident to it, we defer until another issue our comments upon the changes likely to be brought about by the measure which is to come into force on the 1st September next.

THE OUTLOOK FOR STOREKEEPERS.

"What do you think of the outlook?" queried one wholesale merchant of another in our hearing, yesterday. "Oh, it is not bad," was the reply; "prices of everything have been low so long, and everybody has for the last two years been working so close to 'hard-pan,' that matters must mend. The crops promise well and I guess we shall pull through all right."

This is the favorable view of the position. It will be a blessing if the promise of our grain crops shall be realized, and in the south-west of Ontario much is already safely harvested. But the storm of Sunday and Monday last, disastrous in a num-