

## INSOLVENCY LEGISLATION.

CONTINUED FROM OUR LAST.

In the last issue of the *MONETARY TIMES* we had begun to give a synopsis of the provisions of "An Act respecting Assignments for the benefit of Creditors," intended by the government of Ontario to be proclaimed and go into force if the Dominion Parliament does not pass an Insolvent Act this session. Not then having had space to complete our reference to it, we resume our examination of the measure.

The proposed Act provides for a short form of assignment, and dispenses with the necessity for its compliance with the provisions of the Bill of Sale Act as to description of property and filing, and substitutes instead other provisions for the registration, filing and publication of notice of the assignment. After an assignment has been made to a sheriff, the Act empowers the creditors to substitute for him as trustee any other person residing in the county in which the debtor resided or carried on business at the time of making the assignment. Why the choice of the creditors should be restricted to persons resident in the county where the debtors resides, is difficult to conceive, unless as a sop to local prejudice. In the centres of trade there are men of experience who give their attention to the work of liquidating estates; they are accustomed to the nature of the duties involved, and creditors have confidence in them. Not only so, but for meetings and the transaction of business it is usually much more convenient for creditors to have estates in the hands of trustees in the city. If the estate belongs to creditors, why should not they, in the exercise of their judgment, appoint whom they choose to represent them? Should the Act ever come into force it is to be hoped the first opportunity will be taken for removing this ill-advised limitation.

It is proposed that the assignee shall have the exclusive right of suing for the rescission of agreements, deeds and instruments, or other transactions made or entered into in fraud of creditors, or in violation of the Act. Like the old Insolvent Act, this is followed by a provision that, upon the refusal of a trustee to take such proceedings, a creditor may then have them instituted for his own benefit.

It is proposed that assignments under the Act shall take precedence of all judgments not completely executed by payment. This ought to have been followed by a provision making the costs of recovering a judgment a preferential claim. It is not unreasonable that creditors who have recovered judgment should be compelled, like others, to take a ratable share of their debts; but it is scarcely fair, after they have gone to that stage to deprive them of their lien and compel them to pay their own costs. The omission of this provision is no doubt an oversight. The Act further provides for the calling of meetings of creditors and adopts the scale of voting suggested by the committee of the Board of Trade in the proposed Insolvent measure prepared last year.

Another salutary provision is that which compels secured creditors to value their securities. This provision is borrowed from

the Insolvent Act of 1875 and contains two material blemishes that experience showed to exist under the old insolvent law. One is the provision that the assignee on taking over security at a valuation must advance ten per cent. on that valuation. No good reason appears why the trustee should not be entitled to require a transfer of the security at the value put upon it, or if anything ought to be added, it would seem to be reasonable interest for the delay, if any, in payment. The other is a provision made for the benefit of banks, allowing them to re-value after securities consisting of negotiable instruments which have matured. There is no good reason why a creditor holding security which has been drawn from the debtor's estate, and which consequently renders that estate less valuable to other creditors, should not value his security irrespective of whether it is mature or not.

The suggestion made that the measure should allow assignments for the benefit only of creditors who would consent to grant a discharge, has been dropped. This is fortunate, for any doubt which may exist as to the constitutionality of the measure would have been very much enhanced by such a stipulation. Altogether the measure is an honest attempt to atone for the default of the federal authorities by a body not possessing the necessary power to apply a complete remedy.

Should the measure now before the Dominion House become law, the local Act will probably never be proclaimed. In view of the importance of the laws of the different Provinces being uniform on this subject, and of the inability of the local legislatures to deal broadly with the matter, it is to be hoped that the Dominion Act will pass. If the Dominion Parliament again shirks its duty in the premises, the mercantile community of this Province will have reason to thank the local legislature for an attempt to secure them some redress.

## CANADA'S NEXT LOAN.

The London *Economist* does not find the Budget speech of Sir Leonard Tilley pleasant reading but quite the reverse. That journal, let us note at the outset, has fallen into error, in this connection. The protectionist policy has been carried unreasonably far; but we doubt if it be correct to say that it "has led to a considerable falling off in the receipts." In the first place, that policy caused an enormous augmentation of revenue, followed, after a while, by a decline which, however, still left the revenue greatly in excess of what it had been before the duties were raised, and a great deal larger than it would have been if they had remained at their former level. The decline in the revenue is due to the prevailing depression of trade, not to the high duties. The general effect of increase in the duties was not to lower but to increase revenue. Still it is true that the decline in the revenue has come since the National Policy as used a decidedly protectionist form, and the change may in some measure be responsible for the decline.

It is quite true that our present Finance Minister is getting into deep water, all the same. The London journal quoted is severe

on his "efforts to show that the high duties he has imposed upon imports, while they have benefited Canadian manufacturers have not injured consumers." The *Economist* replies with effect. "If we had not put a tax upon imports of manufactured goods," Sir Leonard Tilley virtually says, "we should have had to tax tea and coffee, and whether you—the consumers—pay upon tea, or, say upon cotton goods, does not matter to you; while by putting the tax upon cotton instead of tea, we benefit the Canadian manufacturers." "Sir Leonard thus either does not, or will not, see that the proceeds of the tax upon tea, which is an article which Canada does not produce, all go into the treasury, whilst only a portion of the tax upon cotton goods is secured by the State, the rest going into the pockets of the protected manufacturers." That is, that the general effect of duties on domestic manufactures is to raise the price of all that are consumed whether imported or manufactured at home; and that the additional amount paid on the domestic article is in the nature of a tax on the consumers for the benefit of the native manufacturer. If Sir Leonard cannot see the distinction, if he "has not mastered this elementary fiscal proposition," the *Economist* is obliged to conclude, "he is hardly the man to whom the finances of a country like Canada can safely be entrusted."

The *Economist* agrees with the *MONETARY TIMES*, which was the first journal to take the ground that the proceeds of land sales "properly belong to capital and not to revenue." This distinction we have in vain been pointing out for years to the several governments interested in the sale of public lands; and yet the produce of the sales continues everywhere to be treated as revenue.

"The really discouraging features of the financial position," the *Economist* thinks, are the vicious fiscal system which is yearly being more vigorously enforced, and the rapidity with which the debt is being heaped up." By the first Canada is losing her principal advantage as compared with the United States, by being made a dearer country to live in; and the investments by which the debt is chiefly represented cannot, thus far, be said to have been profitable. On the latter point the opinion of this English financial authority deserves attention. "In 1867, the public works and investments yielded a revenue of £206,000, and in 1883-4 the receipts from public works and investments were £808,000. In other words, the debt increased during this period by £30,000,000, and the returns obtained from the public works and investments increased only by about £600,000. Evidently, therefore, the investments of the Government have not proved directly remunerative, and although they have doubtless been attended with indirect gains, still it is impossible not to feel that Canada has been somewhat too lavish with its grants and subsidies, and will have to keep a much stricter control over these if financial difficulties are to be avoided. Sir Leonard Tilley lays great stress upon the fact that the debt charge was not increased so rapidly as the debt, because the rate of interest which Canada has to pay for her loans has been diminishing—in 1867 the average rate was 5½