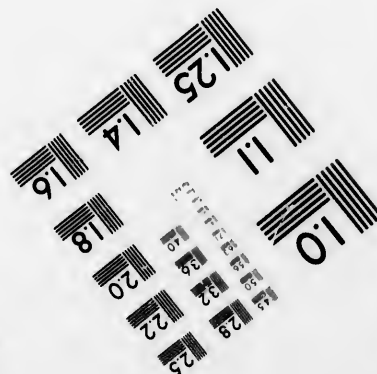
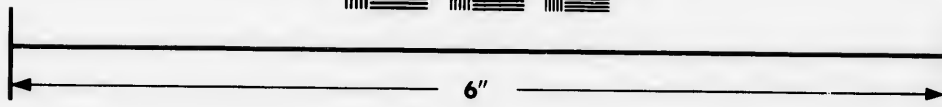
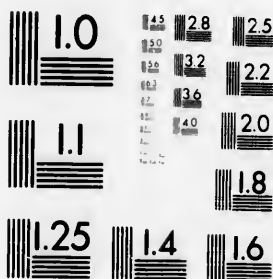


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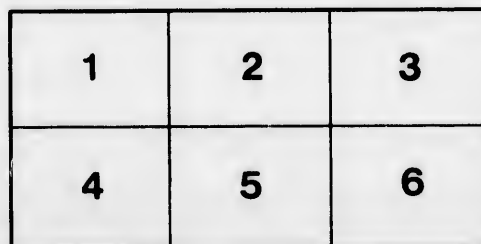
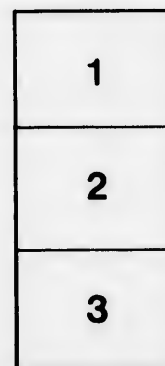
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—AND THEIR—

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LETTER I.

INSOLVENCY LAWS.

Shown to be wrong on account of their necessary relation to the dispensing of credit, leading to overtrading and all its attendant evils

In replying to a deputation which, a few weeks ago, waited upon the Government at Ottawa to advocate the enactment of the proposed Insolvency Bill before the House, the Premier spoke of the apathy of traders and the public generally regarding the subject. It is certainly very surprising that apparent indifference should be maintained in so important a matter, and seems only to be accounted for on the ground that people do not reflect upon it, or fail to recognize its bearing and the principles involved.

The main points in this Bill being the usual provisions, that when a person is unable to pay his debts in full it secures that what he possesses shall be distributed, *pro rata*, among his creditors, thus preventing one or more creditors taking what will satisfy their claims while the other creditors get little or perhaps nothing, and the debtor, having gone through the prescribed form and ostensibly given up all he had, be declared in the eyes of the law to be free of liability:——it seems to be a very innocent thing indeed, in fact a most commendable provision to make on our statute books. It appears on the face of it so just and fair and equal it is deemed supercilious and unkind to question its right to be there, though after all it

does not quite appear why such beneficence and even-handed dealing should not be extended to all alike, why farmers, or doctors, or clergymen, or lawyers for that matter should be excluded from such kindly consideration. But were one to suggest that this very righteous law extend to all classes he would probably be ridiculed, though in full view of the fact that the farmer or mechanic, who may have kindly and gratuitously aided the trader by lending his name on paper, has no recourse or "city of refuge," but is remorselessly sold out of house and home, and even after that dare not call anything his own but what may be seized to satisfy still pendent claims of those benevolent gentlemen who are now calling loudly at Ottawa for "The Insolvent Debtors Act." It is perhaps supposed to be sufficient solace to the unlucky farmer or non-privileged one to see his quondam friend, the discharged trader, a free man driving a few months later securely in possession of a carriage and pair. But let such minor considerations pass, there are other aspects of the subject of a more fundamental character.

Let it be admitted that a law providing for the pro rata distribution of the Assets of Insolvent Debtors is a correct thing in itself, and standing alone it is hard to deny it, for even though the creditor be as often, or oftener, the erring one as the debtor, still he ought to be protected in his just rights. Let the law provide for it, if this can be done without doing still greater wrong than loss resulting to the creditor. But this is what is conceived to be impossible, at all events until men cease to be selfish and rapacious, and then of course it will not be needed. Let us suppose then for the present that the principle involved here is admissible, yet it must be remembered that a thing may be right in itself and yet become totally wrong owing to its necessary relation to something else. For example, it is a very proper thing for a young man to get married to a lady of his choice, indeed it is a very commendable thing in itself, but if he happens to stand in the re-

lation of a husband to another woman it would become wholly and abominably wrong.

Now it will be recognized, in the subject before us, that a fatal difficulty lies in the *relation* of such an act as that proposed to the *dispensing of credit*, a difficulty which is insurmountable. The manifest plausibility and reasonableness on the very surface of the demand for a Distribution Act is what hinders the general public enquiring deeper into the subject. Many an oppressive law in the past, fraught with deep wrong and injustice, has found a place in the Statute Books and remained there unquestioned for centuries for a like reason. The only way to account for such a law as this in any free and enlightened country is that people are apathetic and do not think upon its relations and consequences. Trade and commerce play a most important part in the civilization of this nineteenth century, and people ought to arouse themselves to think, as it is the bounden duty of all, farmers and professional men as well as traders, to endeavor to raise the moral tone of trade by letting their voice be heard for the right.

The writer submits that there is nothing more demoralizing in trade at the present day than the manner in which credit is dispensed. The root of the evil is here, for this is really the occasion probably of nine-tenths of the failures in Canada. Do let the lash then be applied to the right shoulders, do not punish the comparatively innocent for the truly guilty. While the dispensers of credit are chiefly responsible for the loss they bring upon themselves, for Parliament, by special class enactment, to aid these in inflicting injustice and wrong on thousands of others by their reckless haste to increase riches and wilful perversion of the use of capital, is most pernicious and thoroughly vicious in principle.

When the law provides for the distribution *pro rata* of the assets of insolvent debtors, the dispensers of credit rely to a great extent upon this *partial security*, and neglect the *true*

commercial basis, honesty, integrity and ability. Thus an indefinitely greater number of industrious and legitimate traders, directly and indirectly, are made to suffer loss and injustice *under* a law than of those who would suffer loss *without* a law. And further, there is this *essential difference* between the two. Under a law for the distribution of assets those who chiefly suffer cannot possibly avoid it, not being immediately connected either with the debtor or creditor before the court they are not in any way responsible for or connected with the cause of their trouble. Whereas those who suffer loss by the absence of a law have matters almost entirely in their own hands, in withholding or curtailing credit. And yet these are the very ones who are calling for the Bill, and have, moreover, the effrontery to try to persuade Parliament, as they tried to persuade Sir John Macdonald the other day, that they are the chief if not the only ones interested in the passage of this Bill, whereas every citizen in this wide Dominion is deeply interested in and will be profoundly affected by it.

One reason advanced by the advocates of this Bill and strenuously maintained by the deputation which waited upon the Government at Ottawa is that, without a law in Canada providing for the pro rata distribution of assets, it is more difficult to do business in Great Britain and Foreign Markets,—that is to say, that under present circumstances without a law of this kind credit is not dispensed there until those seeking it establish themselves as entitled to it. Now any one can readily see that this is a valid argument why such a law should *not* be enacted.

The writer when in England last January met several gentlemen, having large business transactions in the Dominion, who were asking him why there was not an insolvency law in Canada, and strongly urged that there ought to be one for *the credit of the country and its fair fame* ! But it came out in conversation that while firms in good standing in Canada had not the slightest difficulty whatever in procuring all the credit they

asked for when not out of proportion to their position and means, yet that there were quite a number of instances, where the means and ability of certain importers seeking credit did not seem adequate to the credit asked for, it was refused, to some wholly, to others partly. But note, it was admitted, and indeed put forward as a reason for a bankruptcy law, that in most of these cases all the credit sought for would have been obtained *had there been a law here to secure an equal distribution of assets in case of insolvency*. Now, it is not far to see the evil effects and widespread injustice caused by credit thus being shifted from its true basis. And what is true of London and Manchester applies equally to the distributing centres here, Montreal and Toronto.

Let there be *no* special law securing a distribution of assets and the worthy trader is so far protected that his good name and honest earnings stand to him for what they are worth, but let such a law be enacted and these count to him for but little or nothing, but are swamped and obliterated by unscrupulous and scheming traders, assisted by the rapacity of inconsiderate but wealthy dispensers of credit.

LETTER II.

INSOLVENCY LAWS.

Special Insolvency Legislation cannot possibly do good but only evil on account of being in direct conflict with the natural order of things under which we live.

In the first letter it was shown, as fully as space available in your columns would admit, that legislation securing to creditors a division *pro rata* of the assets of an insolvent is

thoroughly wrong on account of the relation in which it stands to the dispensing of credit, necessarily leading, as long as there are men selfish and rapacious, to overtrading and all its attendant evils. It is now proposed to show that such special legislation cannot possibly do good but only evil, on account of being in conflict with the constitution of things, the established order under which we live.

Before proceeding, attention may be drawn here to a device of some of the advocates of an Insolvent law, which it will be noticed is resorted to even by the President of the Toronto Board of Trade in his circular to the House of Commons, namely, what is vulgarly termed drawing a red herring across the track. He dwells largely upon the need of credit, and expatiates elaborately upon the impracticability of doing business in Canada without a system of credit. The public will, of course, not allow themselves thus to be thrown off the scent. The system of credit is not being attacked at all, its necessity is not even questioned in these letters, but on the contrary its necessity is taken for granted.

It will readily be admitted that statutory law should be so framed as to lead men to observe the laws of nature, to have regard to the responsibilities of their position and observe the obligations they are naturally under to their fellow men. And conversely, the state has no right whatever to enact any law that will tempt men to break those, or even extend increased opportunity or facility to disregard the duties and responsibilities of their condition in life, and this all insolvency laws practically do, especially the provisions relating to *pro rata distribution*, which is what is being dealt with at present in these letters. The other portions respecting discharge, which are really the least objectionable, and yet are what those who are pressing for this Bill want omitted, will be attended to later.

The essential part of any Insolvency Bill that was ever framed is that portion which secures *the pro rata division of the*

assets of an insolvent, with the ostensible object of preventing a fraudulent disposal of them on the side of the debtor. Now, apart from the injustice of putting a whole section of the community, numbering many thousands of honorable men, in the eyes of the law as about to be guilty of crime and that even before they are individually accused, which such a law actually does, and is thus opposed to all our ideas of British fair play,—it multiplies failures and necessarily produces the very thing it promises to avert.

There are laws above us and above Kings and Parliaments pertaining to trade and commerce which cannot be ignored, any more than we can ignore the law of gravitation by lifting ourselves to the sky by our boot straps, or the property of inertia in matter by dashing our heads against a stone wall with impunity. Teach men to recognize those immutable laws and that they must be obeyed whatever earth or hell may say to the contrary. Let the creditors and debtors both learn, if need be by painful experience, that they must have regard to the laws of supply and demand or suffer the penalty attached not by man but by God. If men will send coals to Newcastle or cod to Newfoundland and that in face of knowledge easily attainable, or if they will trust their cargoes to worthless rotten vessels, they ought to suffer, or their folly if persisted in will bring loss and suffering to thousands of others as well as to themselves.

The creditor is in duty bound in dispensing credit to act in recognition of his obligations and responsibilities, not only to the person with whom he is immediately dealing but to the public generally, and the debtor also in asking or receiving credit ought to act on the same principles. The creditor ought to see to it that supply is needed in the direction called for, and inform himself of the standing of parties asking for it, &c., and the debtor ought to furnish whatever information is required to guide the creditor aright. (Should a debtor obtain

credit through willfully false statement he can be prosecuted for fraud, like any other criminal.) If these and other very plain and simple, but important considerations were attended to, as both debtor and creditor, from their relation to others as well as to one another, are under permanent obligations to attend to, there would be none to ask for this objectionable legislation. To make such provision on our statute books as what is being asked for at Ottawa and already granted at Toronto, is equivalent to furnishing a premium for men to neglect their duty and defy the laws of the Eternal, for what is it but to guarantee them against loss to a certain extent, which has arisen chiefly from their own culpable disregard of right principles of action.

What would one say of a merchant who left his shop door open at night, his safe unlocked and his cash box on the counter? It would serve him right to lose his property for neglecting every reasonable precaution to protect it, and is moreover blameable for putting temptation in the way of dishonest men to steal, and is also further responsible for wrong inflicted on others by the thief with the goods stolen. If, after due precaution, loss is suffered by robbers he no doubt will have the sympathy of his fellows, but the state cannot do more than help him catch and punish the thief.

The principle cannot be admitted for a moment that the state provide for losses through fire, or flood, or robbers or other misfortunes common to mankind, still less can it, under any plea of justice or right, be asked to insure rich dispensers of credit against loss arising chiefly from their own wicked disregard of what is honorable, true and just. The thing is perfectly absurd. Yet this is actually what is being asked for by the advocates of "The Insolvent Debtors' Assets Distribution Act," asking for a patent State insurance system to protect them against the consequences of their own misconduct. Away with the abominable thing, the country wants none of

it. Neither indeed do the dispensers of credit themselves, that is those of them who desire to do a fair and honest business, as the writer ascertained by a personal interview with a large number of leading wholesale dealers.

It would really be more consistent to enact a law to punish men for disregarding the laws of supply and demand, than to enact laws with a view of relieving them of the consequences of breaking them, but of course this is not necessary, for nature will always assert her own prerogatives, and either bring back the erring one to the right way or else destroy him.

LETTER III.

INSOLVENCY LAWS.

Oppressive and unjust, because they put more power into the hands of the rich man than his extra thousands already give him over the poor man.

It has already been proved that insolvency laws are wrong: first, on account of the necessary relation they hold to the dispensing of credit; secondly, on account of being in conflict with the natural constitution and order of things under which we live; and now it is proposed to show that they are wrong because they place more power in the hands of the wealthy than their wealth already gives them.

It will be admitted that the state is as much bound to protect the interests of the poor man as it is to protect the interests of the rich, and conversely, that the state has no right whatever to enact any law which will give the latter more power over the former than what his extra thousands already give him.

But this is precisely one of the many wrongs which an insolvency law inflicts.

It is well to enquire here who they are who want this law. The farmers or mechanics or professional men do not want it, neither do any of the thousands of traders or general public throughout the Dominion want it, indeed a greater proportion than ninety-nine in a hundred of all who reflect on the subject at all are decidedly and emphatically opposed to it. Whence comes it then that such laws have ever found their way into the statute books of this or any other country? They have been placed there simply and solely at the instigation of dispensers of credit, and, what is worse still, at the dictation of the least scrupulous of these. Strictly honorable and upright dispensers of credit in good standing feel that, besides being unjust to the great body of the people, these laws are opposed to the best interests of the legitimate wholesale trade, as among other things it gives an opportunity for persons of no financial standing whatever to enter into speculative ventures, by importing largely, and thus trading on the capital of British and Foreign Merchants and Manufacturers, which these would not permit were they not secured by a law in this country providing for a *pro rata distribution of assets in case of insolvency*. And, again, these speculating adventurers are free to credit right and left to all sorts of persons, as they are themselves secured in a like manner. Now it is deplorable that such a state of things should exist and be encouraged by law. The silent, crafty manner in which designing persons set to work to impose upon our legislators is the only way to account for it, for they seem to control the press at the centres of public opinion, and thus shut off discussion.

Were it not so serious a matter it would really be quite amusing to hear some of the commercial journals and other inspired papers of Toronto and Montreal discoursing on the details of the insolvency laws of Ontario and the Dominion, discoursing so calmly and beneficently, as if they were perfectly

unconscious of anything wrong. They would make by the new insolvency law everything beautiful, bright and heavenly, so innocent are they that they appear perfectly unconscious of anything but disinterested goodness and pure benevolence. They refer with horror to the dark days of the past when the dungeon awaited the debtor, but it seems now they would substitute for the prison the shackles of the slave and a whip of scorpions. But the people of Canada, from Halifax to the Pacific, are getting their eyes open to the truth and are beginning to see the cloven foot in this angel of light.

It is far from our intention to accuse all wholesale dealers or other dispensers of credit, or even a majority of them, of deliberately and of set purpose oppressing their poorer brethren in trade, but in the keen competition for business the tendency is to oppression, even among otherwise honorable men, when the unscrupulous have entered into the contest with them. Wealth has power, and sometimes this power is injuriously exerted beyond the conscious control of him who possesses it. What is contended for is that the state has no right whatever to bestow upon it *more* power than it naturally has, by providing an insolvency law.

Look at the facts of the case as these now stand, even without a Dominion Distribution Act. Take for example the dry goods trade, and it is a fair index to other branches. It is stated on good authority that of those who engage in the *retail* trade but a very small per centage indeed succeed in making a living, and but a solitary one here and there acquire enough to retire comfortably in old age. Of the rest, those who have put large means in their business and exercised prudence and ability in the conduct of their affairs, together with those who have put little in, and those who had nothing, honest and dishonest, capable and incapable, all fare alike and are made to minister to the selfishness and rapacity of certain dispensers of credit who are now asking Parliament to aid them further in their tyranny.

These are no idle words, Mr. Editor, but simply the plain unvarnished facts, stated soberly and earnestly, and vouched for by thousands throughout the length and breadth of the land. Do we not on every hand hear the sighs of these oppressed? Side by side, the other day, with an article in the columns of one of the leading commercial papers published in your city, asking for the passage of the obnoxious Bill, came one of these laments in pleading terms, crying *how long!* How long will credit be not only recklessly dispensed but actually pressed unsolicited upon the unscrupulous and dishonest, thus frustrating and defeating everywhere all earnest and sincere endeavor toward honest dealing? The worthy young man who has earned for himself behind the counter a good name by his industry and honorable conduct, and saved a few dollars out of his scanty wages, no sooner sets out in life for himself, nobly resolved to do the right, than his bright hopes for the future are speedily dashed to the ground. He finds it impossible to follow his calling and not be dishonored. His good name and little savings stand to him for nothing. The schemer is preferred before him. In bestowing credit commercial morality is thrown to the winds.

Again, look at this. There are about four thousand commercial travellers, paid agents of these worthy dispensers of credit, industriously employed throughout the length and breadth of the land, urging alike good, bad and indifferent to come under liability to their principals, all this involving an outlay of the enormous sum of upwards of five million dollars annually, and the whole of this immense sum is spent by these gentlemen in almost forcing credit on their victims. And yet these men, because they can afford to spend this vast amount of money and have millions on millions at the back of it, have forsooth the audacity to come before Parliament to aid and help them in their deeds, and ask Parliament to remove by special enactment in their favor the chief, if not the only thing that will check them in their reckless indifference and selfish dis-

regard of the well being of others, the honest, industrious and prudent who happen not to be as rich as they. This recklessness is, in all conscience, great enough and disastrous enough now, when no provision exists for the pro rata division of assets of insolvent debtors, but will be increased manifold and greatly intensified when the creditor is assured by law of an even distribution of the Bankrupt's estate, and relieved altogether of the wholesome fear of loss by prior judgments and preferential claims.

A few designing men, under the pretext that it is for the good of the people and our country's fair fame and all such wretched cant, have actually succeeded in prevailing upon the Ontario Local House to place an insolvency law upon the statute books at Toronto, and are now urging with all their might to have it enacted by the Dominion Parliament. Was ever an oppressive law of the past yet made by the veriest despot but what he tried to persuade himself and others that it was for the people's good? The most unrighteous laws that have ever cursed the statute books of past ages have been enacted under the most plausible pretexts of benevolence and goodness.

Now, it can be shown conclusively that, had unscrupulous wholesale dealers and dispensers of credit their way, under an insolvency law it would become to their interests to have the whole trade of any locality in such a condition that the traders supplied could not possibly pay one hundred cents in the dollar, as by having them thus entirely under their thumb, they could charge just what they pleased, without any limit whatever other than what they might choose to dictate among themselves. The loss resulting by periodical settlements, at fifty or twenty-five cents in the dollar, would be made up ten times over by the extra price they could then charge for the goods. Honest men who are able and willing to meet all their liabilities would be the only hindrance, and these the dispensers of credit would seek to drive to the wall or otherwise get out of the way. Thus these men could bleed the whole country. Farmers

and the general public little dream how they might be affected by an insolvency law and made tributary to a few rich merchants in Montreal and Toronto.

Now it is admitted to be almost incredible that any class of men could be found so utterly oblivious to all moral principle as to be guilty of trying to bring about such a result, and it is not asserted that any large number would deliberately or of set purpose countenance such a thing. But practically as the case stands and as facts show, under a law for the distribution pro rata of the assets of an insolvent debtor, it becomes in their power and is rendered possible. Many such things actually are done, in most cases perhaps unconsciously, which if put in plain language the perpetrators would each and all exclaim, am I a dog that I should do such things?

LETTER IV.

INSOLVENCY LAWS.

In the interest only of the unscrupulous and dishonest,—experience confirms the whole argument.

It has been the practice of late in all crooked attempts at questionable legislation to try and cajole the farmer into acquiescence, and this Bill before the House at Ottawa is not an exception. The Toronto Board of Trade and journals inspired by the advocates of the Bill particularly emphasize a clause relating to produce sold by a farmer to a trader who becomes insolvent, though, by the way, this clause does not meet

the numerous cases of oppression instanced in the first letter. But why should the farmer be particularized at all? Is not the farmer as much a man as the starched gent who sells pins and needles by the gross? It is very condescending to be sure in these big dealers in calico or coffee to ask the Government to legislate for the farmers in the way it is found needful to do for infants and the red Indian, but it is very doubtful if the farmer will thank them for their kind consideration and forethought on his behalf. But let this pass.

In conclusion it remains to be shown that insolvency laws are opposed to the material interests of the dispensers of credit themselves, that is such of them who really desire to do a *fair, honest* and *legitimate* business, and conversely, that such special legislation is only to the advantage of the *unscrupulous* and *dishonest*. The creditor is usually also a debtor, there are the two aspects of his position in almost every instance, and in as far as this is the case it becomes unnecessary to dwell upon this phase of the subject, for the same principles and truths unfolded in the foregoing letters apply with equal force to the creditor here as they do to the debtor there. But take for example the Montreal and Toronto importers, who are the prime movers to get this Bill through. It was distinctly shown in a former letter from facts and experience that when the law in Canada provides for the *pro rata distribution of assets in case of insolvency*, credit is dispensed in Great Britain and Foreign Markets to persons to whom otherwise it would not be granted. In this way importers with very limited capital, and often with none at all, are enabled and permitted to speculate illegitimately on the capital of others to the great embarrassment and injury of those other importers who are striving to do an honest and fair business in proportion to their means. But it is unnecessary to enlarge here. As has been repeatedly shown, the only things which the advocates of insolvency laws bring forward with any show of reason for their cause, such as prior

judgments, &c., may justly be regarded as wholesome warnings, and if left alone act as safety valves in the machinery of trade.

It will have been observed that the discharge clauses of the Bill have not yet been referred to, this is because the portion dealing with the *distribution pro rata of assets* is the essential and fundamental part of any insolvency law, the other portions are incidental and hinge on this, consequently, that having been shown to be radically wrong, it does not appear how this can reasonably be dealt with, though it is really the least objectionable feature. It would be well if a capable, honest man who has become unfortunate could be assured of a discharge. But practically not much difficulty will arise in connection with this. In the first place there will be much fewer failures in the absence of an insolvency law, because, as is now quite apparent, it is itself the occasion of the great majority of these, and secondly, without a law voluntary settlements will be more easily obtained by upright men. It will be a matter of rare occurrence where a trader, who has become insolvent through no fault of his own and who can show a clear record for honesty and business ability, cannot obtain a discharge from his creditors. There are cases of course constantly arising where creditors are hard and grasping, ready to take the debtor by the throat, but usually, where a man is thus naturally harsh and exacting, self interest will stay his hand, for such a creditor, though mean and inhuman, will at least be touched by a fear of future loss or hope of gain, as he well knows that if he persists in his baseness in refusing a discharge he will be avoided as a hard man and dangerous to deal with by other traders whose custom he depends on for a living.

To sum up, it has been shown, first, that all insolvency laws are wrong because of the relation in which they necessarily stand, as long as there are men selfish and rapacious, to the dispensing of credit, leading to overtrading and all its attendant evils. Secondly, they were shown to be wrong on account of being in direct conflict with the constitution of things, the

established order under which we live, furnishing occasion and opportunity for men to overlook their responsibilities and neglect their obligations to God and to their fellow men. Thirdly, they have been proved to be positively unjust and oppressive by putting more power into the hands of the rich man than his extra thousands already give him over the poor man. And fourthly, they were shown to be wrong by being opposed to the interests of the very men who are calling for them, that is, if they desire to deal honestly, honorably and fairly. And lastly, if our legislators will not be convinced by reason let them look to the experience of every country and every age, and see how utterly these laws have failed. Then, if from nothing else, let them learn wisdom from the past, and at least,

"Rise on stepping-stones
Of their dead selves to higher things."

CONCLUSION,

Have stringent laws enacted for the punishment of the fraudulent person and the wrong doer, but banish forever all laws which give occasion to, or encourage fraud and oppression.

By all that is right and just between man and man, and as we are responsible to our Maker, see to it earnestly that these laws are repealed which have found their way on the Statutes of Ontario, vide the "Creditors' Relief Act," Cap. 10, 43 Vic., 1880, and an Act "Respecting Assignments," Cap. 26, 47 Vic., 1885. And watch carefully that designing men do not succeed in getting them placed on the Dominion Statutes. Let County Councils, and Town and Village Corporations, together with merchants and the general public throughout the Dominion take prompt action in the matter by resolution and petition to the Ontario and Dominion Parliaments.

