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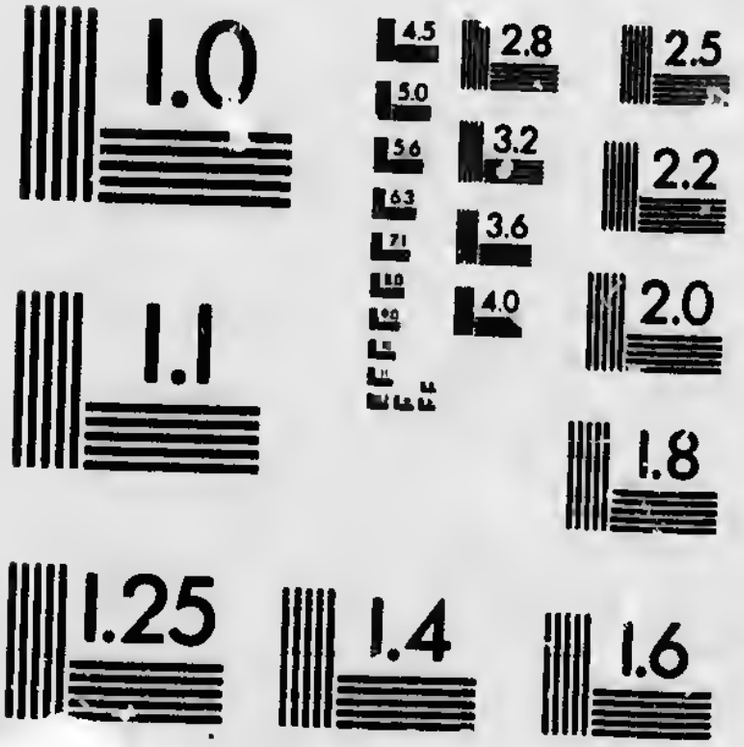

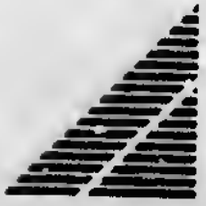

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INSOLVENCY

THE OTHER SIDE

(*From the "Montreal Herald."*)

Montreal, Feb. 11, 1879.

SIR,

The clamour which a few noisy gentlemen have raised regarding the Insolvent Law is more remarkable for its din than for its depth, and is as inconsequential in point of reasoning, as it is misleading in principle. Passing over the "Capital," which one speaker asserts is furnished to fledgeling traders by the Insolvent Act, and the flights into Darwinism and "bosh," in which a correspondent of the *Witness* indulges, these loud-sounding "Repealers" may fairly be asked to submit the measure they propose to substitute for the existing law, so that their superior wisdom may not be in doubt. There is a marked indefiniteness about their expressed opinions, which, however, may be the natural outcome of the obscurity within. If it be so, they are ill calculated to lead in legislation against the undoubted talent and ability which framed the Insolvent Law at present in force in Canada. The weakness of the "Repealers," in that respect would be a charitable

—if a pitiable—explanation of their pusillanimous avoidence of discussion by a packed meeting called by nobody. So far as any can understand, their desire is repeal; pure, simple and immediate. Accepting that as correct, will these gentlemen explain to merchants, who still have something to lose, by what means they intend hereafter, to acquire control over the estate of a debtor in the Province of Quebec? How are they going to circumvent that beautiful institution, a bailiff's sale at nine o'clock in the morning, whereby assets are suddenly transferred to a wife, while liabilities stick to the husband? Who is to notify creditors of the intention to perform this piece of legerdemain? How are the Repealers going to secure the debts due to the debtor? (there will be no insolvents in the good time coming, of course not.) Is that cheap, speedy and effective instrument, a *saisie arrêt*, to be the weapon with which small debts are to be bagged? And, if so, what is the mode by which the existence of debts is to be ascertained? It may be news to some of those misled that, after having obtained judgment against a debtor at a "stunning" cost, there is not, in Quebec, anything in the nature of a judgment summons, under which a debtor can be examined as to his means of payment, and the creditor has the satisfaction of knowing that the debtor enjoys the debts, while a rather hollow judgment forms the creditor's portion. In effect, apart from the Insolvent Law, there is no remedy for a creditor in Quebec, unless the debtor is abundantly able to pay his debts, because during the time occupied in getting judgment, the assests vanish, and, should any "little effect" be left when execution is obtained, they are rapidly discussed by the lawyers, who fyle "oppositions" at a rate of something like—twenty dollars a piece.

Then how do matters stand in Ontario? What defence is there to Montreal merchants against judgments by

default and "prior executions?" Have the Repealers ever cursed the absence of means to arrest the debts due to a debtor, other wise than by the long-winded and expensive process of a garnishee order which, to wholesale merchants, is simply a denial of justice? What is the policy of the abolitionists, or have they any, which they pretend would conduce to the interest of the mercantile community more than the existing laws? If so, let them openly and fearlessly expound it, so that the ignorant may not be in doubt as to where the benefits are to come from. If they have no such policy, good taste ought to restrain them from condemning what they are incapable of improving.

Now, as contrasted with the remedy in the power of creditors prevous to 1864, the Insolvent Act is light as compared with darkness; power as against impotency. Creditors have unlimited power over the estates of debtors who fail to meet their liabilities, and one may be excused for asking what more would they have? Assignees are the scape-goats on whom complaints fall heaviest and, undoubtedly, some of them deserve all the execrations poured out on them; but the remedy is completely in the hands of creditors, and at will go hard for an unscrupulous assignee to buy a claim against an insolvent debtor, if he cannot stumble on an equally unscrupulous creditor to sell him the claim! Let creditors deal honestly and straight forwardly with each other, and sharp-shooting assignees will soon have their *quietus*. Recurring to the "Capital" so abundantly furnished by the Insolvent Act, can any case be cited in which an insolvent, who has passed through the Courts, has thriven or fattened? Except where creditors compound with the insolvent, the difficulties in the way of his again establishing himself in credit, are all but insuperable. One does not need to go a hundred miles, however, to find

instances of "fatness" in worldly goods, after failure, before the days of insolvent laws. The attempt, therefore, to revert to the days of friendly suits, bogus executions, preferential mortgages, and other contrivances to evade the equitable distribution of insolvent estates, ought to be, and must be resisted to the utmost, by every honest man, who considers that the property of a debtor is bound to go in satisfaction of his debts until they are paid. Let any merchant doing a general business previous to 1864, and since, dispassionately ascertain the percentage of loss during both periods, and, under ordinary circumstances, it will be found that the rate of loss has not been greater in the latter than in the former period, while the saving in time, and annoyance in the attempt to recover debts, has been incalculable under insolvency, as compared with the days of prior executions and bogus bailiffs' sales. In conclusion, the howling down of the discharge of debtor's who have been stripped of everything, is questionable, as well on the score of good taste as of sound policy. "The worst use that can be made of a man is to hang him," and next to that, is to condemn him to trudge along much of the road of life with a mill-stone of debt around his neck. The prosperity of the community is made up of the fruits of the labours of its members, it is, therefore, unwise to have a class of them weighted down, for vengeance. Any man who will say that the bulk of the failures, which have occured since 1872, are to be ascribed to any peculiar legislation, or to any suddenly developed dishonesty, or incapacity, takes little heed of passing events, or of the greatly enhanced value of money during these seven years. This is not the place to enter upon a disquisition on the serious effect of fluctuations in the value of money on credit business. Those who do not understand its effects will find themselves well repaid by seeking after information, and those who do under-

stand that branch of political economy will not require to be told that ignorance on the subject may bring about insolvency where there has been perfect honesty and the highest integrity.

MERCHANT.

Quebec, February 28, 1878.

SIR,

To corroborate the ably-written letter in your paper signed "Merchant," dated 11th February, will you kindly permit me the space to call attention to the opinions of one of the most reliable and highest of our legal authorities upon the necessity of an Insolvent Law, from *his point of view.* It was written in a pamphlet form, published in 1843, and, among other remarks, makes the following :

"That a general Bankrupt Law, in which all creditors "are placed on the same footing, will, if properly framed, "afford the best means of securing and enforcing the "rights of creditors generally, at the same time that it "grants a just relief to debtors. Our ordinance is, I "maintain, a general Bankrupt Law, so framed as to "secure both these important objects. The primary object "of a Bankrupt Law is to provide the means of discover-"ing and securing the estate of bankrupts for the benefit "of their creditors

"The warrant in bankruptcy 'writ of attachment,' is "the most powerful means that the law can devise for "this purpose. By this proceeding a creditor may, at a "trivial expense, and in a single hour, effect more than "he could have done by the common law at infinite ex-"pense, and after the delay of years.

" In the common tribunal, a fraudulent and wealthy " debtor might, for many months, and sometimes for " years, prevent the recovery of a judgment against him; " the sale of his goods and lands with great expense, and " still greater delay; and as to his books, and the great " mass of his outstanding debts, they were utterly beyond " the reach of his creditors.

" The warrant in bankruptcy, in a moment, places the " whole of the bankrupt's property in the hands of his " creditors, including the books of account and papers, " which could never have been obtained by any other " means; and the bankrupt ceases to have the power of " collecting his debts, which are vested by law in the " assignee.

" The vast importance of obtaining possession of a " debtor's books is manifest. If the books leave any part " of the bankrupt's conduct in obscurity, that alone is " such misconduct as will prevent a discharge: if the " books have been regularly kept, and the bankrupt has " been guilty of fraud, he can hardly escape detection. " The law, besides thus discovering and securing the " estate of bankrupts, professes to furnish the means of " administering and distributing those estates.

" As to distribution of the property, the mode adopted " by the legislature appears to be unobjectionable; and " the possibility of *one creditor obtaining any advantage over* " *others is completely excluded.*

" As to the question of expense, it is sufficient to re- " mark that the *Bar are unanimous* in regarding the " Bankrupt Law as the severest *blow to their professional* " *emoluments.*" (The Act of 1869 has not, however, been found so much so as it was first thought it would be.)

"Such, then, is the beneficial operation of our bank-
"rupt ordinance when interpreted as a general Bankrupt
"Law, not limited in its operation to one particular class
"of debts, but embracing all debts equally, whether
"contracted before or after its enactment, while it, at the
"same time, secures the more effectual way of attainment
"of the two continual objects of a Bankrupt Law—the
"equitable distribution of the effects of the debtor
"amongst his creditors, and the relief of the unfortunate,
"though deserving debtor.

"So long as a debtor has his estate in his own hands,
"his own hands, he need not despair; his friends, to
"supply a deficiency, may come to his assistance; his
"creditors may accept a compromise; or he may, by
"some fortunate speculation, increase his means, so as to
"meet the demand of his creditors; but no situation in
"this life can be more utterly hopeless, or more deserving
"of commiseration, than that of an honest debtor, who,
"after having been divested by law of every vestige of his
"property, is cast upon the world, destitute of all means,
"but still exposed to the claims of unrelenting creditors,
"or possibly with a judgment hung about his neck for
"forty years of his lifetime."

The public have now the views of two diametrically opposite minds before them; the mercantile mind, fortified by years of experience, in the letter of "Merchant," and the eminently practised and trained legal mind, above quoted. Opposed to this, what have we? Mr. Colby and Mr. Bourassa, both men representing constituencies, that can neither be regarded as centres of trade, nor likely to furnish a very extended practice to their legal luminaries; in fact, both these gentlemen show that their repeal of the law proceeds from the same point

of view, namely, the one that lawyers and professional men cannot avail themselves of it ; the other, that farmers are not regarded by it as traders !

Surely our legislators are not going to stultify their former acts from such peculiar motives.

Yours, &c.,

"LEX."