COMMENTARIES

ON THE PRESENT

BANKRUPT ACT,

SERIES OF LETTERS,

ADDRESSED TO

THE EDITOR OF THE MORNING COURIER.

Montreal:

PRINTED BY LOVELL AND GIBSON, ST. NICHOLAS STREET.

1848.

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ON

THE PRESENT BANKRUPT ACT.

No. I.

TO THE EDITOR OF THE MORNING COURIER.

Sir,—It is generally anticipated that considerable amendments will be proposed, if not made law, before the close of another Session of the Provincial Parliament. It may be advantageous to the public generally to become a little better acquainted with the details of an Act of such vital importance to them; and it may be that a few commentaries on the system, put forth by one who has watched the practical working of it, may be of use to the future framers of any amendment which may be brought forward. I, however think, that a second series of amendments will only add to the present incomprehensible reading of the Act of 9th December, 1843. A new Act is what is required in this country, and so framed that Judge, Lawyer and Assignee will have no difficulty in at once comprehending what part is to be performed by each in the ceremony.

One very great error connected with the present system is the taking up of a case in Bankruptcy by one Judge—the first meeting and appointment of Assignee by another—the second meeting for examination of Bankrupt by a third, &c. I am of opinion that it is a matter of vital importance to all concerned in a case of Bankruptcy that the Commission should be issued and the whole proceedings *conducted to completion by one Judge.* I have been witness to a contestation commenced and pretty far entered into, by the Attorneys for Bankrupt and Creditors before one Judge, carried to an adjourned meeting before another, who had to be informed by the Attorneys of the details of proceedings had before his colleague. Common sense dictates the folly and expense of such a course. An *able* Lawyer, having fifty cases to attend to, and having progressed therein to a certain point, becomes thoroughly conversant with the subject, which, being impressed on his memory, he can at any time, (with the assistance of his notes) take up, and proceed with his pleading or whatever it might be. So with our worthy Judges in adhering to the system of *going through* with a case in Bankruptcy. A Lawyer transfers a suit to another Lawyer; he is obliged to explain his memoranda and proceedings; the same requires to be done in the Bankrupt Court by the Attorneys to the Judge.

Before proceeding to sundry details in regard to the Sheriff's department—Bailiff's fees—the nullity of rules taken out in the Bankrupt Court against Bailiffs employed by the Sheriff—Bailiff's bills taxed by the Sheriff—the irregularity of fees allowed to Guardians—general character of Guardians of Bankrupt Effects—

length of time of Effects being under charge of Guardians—liability of Sheriff in case of fire where no Insurance exists—duty of petitioning Creditor to see that Insurance is effected on Personal and Heritable Property previous to being taken possession of by the Sheriff—Sheriff's Bailiffs disposing of Bankrupt Effects by Auction—consequences of, to the Creditors, &c., &c.—I shall bring under notice—

SECTION V.—"And be it enacted, That if any such Trader, so summoned as aforsaid, shall not come before the Judge or Commissioner, at the time appointed, (having no lawful impediment made known to, and allowed at the said time by the Judge or Commissioner,) or if any such Trader, upon his appearance to such summons, shall refuse to admit the demand, and shall not make a deposition in the form herein before mentioned, that he believes he has a good answer to such demand, then, and in either of the said cases, if such Trader shall not, within twenty-one days after personal service of such summons, pay, secure, or compound for the demand, to the satisfaction of his Creditor, or enter into a bond with securities to the satisfaction of the Judge or Commissioner, to pay such sum as shall be recovered in any action which shall have been or shall thereafter be brought for the recovery of the same, together with such costs as shall be given in that action, every such Trader shall be deemed to have committed an act of Bankruptcy on the twenty-second day after service of such summons: provided a Commission of Bankruptcy shall issue against such Trader within two months from the fyling of the said affidavit of the Creditor."

During the twenty-one days allowed for the person receiving the notice, to make arrangements for the liquidation of the claim, and also during the period which has then to elapse, until the issuing of the Commission, the Bankrupt has complete control over all the funds of the Estate, and in that period *can help himself*, or, if he thinks proper, "*make himself scarce*" *with a full pocket.* I am acquainted with a case in point bearing upon each, which occurred in this city. And no matter what balance of cash may appear as in the hands of the Bankrupt, it will not prevent his procuring his discharge. Several instances of defalcation in cash have come under my notice; in one instance, upwards of £500, which the Bankrupts could not account for. These Bankrupts (a copartnery) have all procured their discharge.—Under this view, I am of opinion that twenty-one days is too protracted a period of notice *in this country*, and that the issuing of the Commission should in no case exceed thirty days, subsequent to the fyling of the affidavit of the creditor. Summary measures are absolutely requisite in this country, in order to allow the honest man to prosper; where the law is tardy in its operations, rogues have a chance. A new Section *in the new Act* will be absolutely necessary, in order to protect Creditors, to the effect, that, "Be it enacted that at the second meeting for the examination of the Bankrupt, the Assignee shall place before the Commissioner the cash-book pertaining to the Estate, and which (the Assignee) having thoroughly examined, shall report thereon, in writing, if need be, and should a balance appear as in the hands of the Bankrupt, exceeding the sum of fifty pounds currency,

and for which he cannot account satisfactorily, it will remain for the Judge to decide whether or not he should be allowed his discharge."

I am, Sir,

Your most obedient servant,

OBSERVER.

January 24, 1848.

No. II.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—In the previous letter which I had the pleasure of addressing to you, of date 24th January, I endeavoured to show several alterations, in connection with Section 5th, which I considered would tend to the public good. On a careful review of the 6th, 7th, 8th, and 9th Sections of the Act, I think it will at once appear evident to any one conversant with, and interested in, the subject, that much simplification, also curtailment, might be arrived at in the framing of a new Act. I think an able Legislator would find very little difficulty in exhibiting in three the sense of the above-noted four Sections.

Every Trader ought to have a copy of the Bankrupt Act in his possession; few have, I believe, and, as I am not aware that there are any copies of the Act of 9th December, 1843, to be had, it may be advantageous to the community to lay before them copies of the Sections which call for remark:—

TRADER REFUSING TO SIGN THE ADMISSION REQUIRED OF HIM.

SECTION VI.—"And be it enacted, That if any such Trader, so summoned as aforesaid, shall, upon his appearance thereto, refuse to state, whether or not he admits such demand, or any part thereof, or, whatever may be the nature of his statement, shall, notwithstanding, refuse to sign the admission in that behalf required as aforesaid, it shall be deemed, for the purposes of this Act, that every such Trader thereby refuses to admit such demand: Provided always, that it shall be lawful for such Judge or Commissioner to enlarge the time for calling upon such Trader to state whether or not he admits such demand, or any part thereof, for such reasonable time as the said Judge or Commissioner shall think fit."

TRADER SIGNING ADMISSION BUT NOT DISCHARGING THE DEBT.

SECTION VII.—"And be it enacted, That if any such Trader, so summoned, as aforesaid, upon his said appearance, shall sign an admission of the demand, in the form aforesaid, and shall not, within twenty-one days next after the fyling of such admission pay, or tender and offer to pay, to his Creditor the amount of the said demand, or secure or compound for the same, to the satisfaction of his Creditor, every such Trader shall be deemed to have committed an act of Bankruptcy on the twenty-second day after the fyling of such admission: Provided a Commission of Bankruptcy shall

issue against such Trader within two months from the fyling of the said affidavit of the Creditor."

TRADER SIGNING ADMISSION FOR THE DEMAND, BUT NOT COMPLYING WITH THE OTHER REQUIREMENTS.

SECTION VIII.—" And be it enacted, That if any such Trader, so summoned as aforesaid, shall, upon his said appearance, sign an admission only for part of the demand, in the form aforesaid, and shall not make a deposition, in the form hereinbefore required, that he believes he has a good defence to the residue of the said demand, then, if such Trader, as to the sum so admitted, shall not, within twenty-one days next after the fyling of such admission, pay, or tender or offer to pay, to his Creditor the sum so admitted, or secure and compound for the same, to the satisfaction of his Creditor, and as to the residue of such demand, shall not, within twenty-one days after personal service of such summons, pay, secure, or compound, for the same, to the satisfaction of his Creditor, or enter into a bond, in such sum, and with two sufficient securities as the Judge or Commissioner shall approve of, to pay whatever sum shall be recovered in any action which shall have been, or shall thereafter be, brought for the recovery thereof, together with such costs as shall be given in that action, every such Trader shall be deemed to have committed an act of Bankruptcy on the twenty-second day after the service of the summons: Provided a Commission of Bankruptcy shall issue against such Trader within two months from the fyling of the said affidavit."

TRADER SIGNING ADMISSION TO A PART OF DEMAND, ARBITRATORS MAY BE APPOINTED TO DETERMINE THE AMOUNT DUE.

SECTION IX.—"And be it enacted, That in any case when any such Trader, so summoned as aforesaid, shall, upon his said appearance, make a deposition, in the form hereinbefore required, that he believes he has a good answer to the said demand, or to some, and what part thereof, it shall and may be lawful for the Judge or Commissioner, on the application of the said Trader, or of his Creditor, acting as aforesaid, to name one Arbitrator—for the said Trader to name a second—and for the Creditor, whose claim is disputed, to name a third, to arbitrate and adjudge between the parties respectively, as to such demand; and in case either the said Trader or the Creditor shall refuse or neglect to name an Arbitrator as aforesaid on his behalf, then the said Judge or Commissioner shall nominate and appoint such Arbitrator; and the award and determination of any two of them, the said Arbitrators, shall be final and conclusive, unless the same shall be set aside by the Court of Review, as hereinafter provided; and every such Trader who shall not, within twenty-one days next after the fyling with said Judge or Commissioner by such Arbitrators, of such award and determination, pay, or tender and offer to pay, to his Creditor, the amount of the said award and determination, if against him, in whole or in part, or secure or compound for the same, to the satisfaction of his Creditor, every such Trader shall be deemed to have committed an act of Bankruptcy on the twenty-second day after the fyling

of such award and determination: Provided a Commission of Bankruptcy shall issue against such Trader within two months from the fyling of the said affidavit of the Creditor."

In all cases of Arbitration I think it would be advantageous to issue printed Orders of Court, to be served by a Bailiff on each of the parties appointed to act, appointing a day to meet and determine, under a penalty of two pounds ten shillings, neglecting so to do, unless said Arbitrators can show good cause for non-performance.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, 7th February, 1848.

No. III.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—The following Section has reference to—

CONVEYANCES MADE FOR THE PURPOSE OF GIVING UNDUE PREFERENCE TO ANY CREDITOR TO BE VOID.

SECTION XIX.—"And be it enacted, That all payments, securities, conveyances, or transfers of property, or agreements made or given by any Trader in contemplation of Bankruptcy, and for the purpose of giving any Creditor, Indorser, Surety, or other person, any

preference or priority over the general Creditors of such Bankrupt, and all other payments, securities, conveyances, or transfers of property, or agreements, made or given by such Trader in contemplation of Bankruptcy, to any person or persons whatever, not being a *bonâ fide* Creditor or Purchaser, for a valuable consideration, without notice, shall be deemed utterly void, and a fraud under this Act; and the Assignees under the Bankruptcy shall be entitled to claim, sue for, recover, and receive the same as a part of the assets of the Bankrupt, and the person making such unlawful preference, or payment, shall receive no discharge under the provisions of this Act: Provided always, that all dealings and transactions, by and with any Bankrupt, *bonâ fide* made and entered into, more than thirty days before the issuing of the Commission against him, shall not be invalidated or affected by this Act: Provided, that the other party to such dealings or transactions had no notice of a prior act of Bankruptcy; and provided also, that nothing in this Act contained shall be construed to annul, destroy, or impair, any lawful rights of married women, or minors, or any aliens, mortgagees, hypothecs, or other securities on property, real or personal, which may be valid by the laws of any part of this Province, and which are not inconsistent with the provisions of this Act."

Supposing such a thing as a properly written up Cash Book could be found, *in three cases out of twelve* which are brought into Court, it might prove a source of great amusement to a disinterested person to witness the operation of this Section of the Act: "*And be it enacted, That all payments made or given by any*

Trader in contemplation of Bankruptcy;" "*Provided always, that all dealings and transactions, by and with any Bankrupt* bonâ fide *made and entered into more than thirty days before the issuing of the Commission against him, shall not be invalidated or affected by this Act.*" Generally speaking, all men know at least six months previous what conclusions they must come to—why then allow a person in contemplation of Bankruptcy to go on giving preference, should he think proper, for five months, out of the six. Where teachers of Latin are so scarce the words "*bonâ fide*" should have been accompanied by a translation; and *even then* parties would be found rather dull of comprehension. I am humbly of opinion that this Section of the Act should be very carefully revised. Supposing that a Trader, on balancing his books, say on the 31st December, finds that he has a considerable balance at the credit of Profit and Loss Account, being gain on the year's transactions, that he is free of debt—his Real Estate of course unencumbered—and besides a stock, say of the value of £5,000, on hand; *on the day in question* he settles all his Real Estate on his wife and children; during the ensuing month he enters into speculations in flour and grain, embarks say £20,000 by giving Promissory Notes, meets with reverses to the extent of £5,000; he resorts to Auction to endeavor to realize his stock, valued at £5,000; it leaves him £4,000, perhaps; he becomes embarrassed, and in the month of April "*takes the benefit of the Act,*" so called; the settlement made by him on the 31st December was *bonâ fide* (in good faith); he was perfectly solvent, his subsequent speculations proved unfortunate; what he

did was done for the best, and as all his transactions can bear thorough investigation the settlement remains valid; he did not give away the property of any other man. Not so with the Trader whose books have not, *or cannot be*, balanced on the 31st December, and who consequently, is "*at sea*," but *notwithstanding* makes a settlement of his Real Estate, goes on speculating without ascertaining his real position, and *within six months* calls a meeting of his Creditors; into Court *he will be driven*, as there only, under the charge of an impartial Assignee, and an Attorney well versed in *cross*-questioning, will the Creditors probably benefit by a reversion of the settlement so made by the Bankrupt.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, Feb. 15, 1848.

No. IV.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—In letter No. 3 the Trader, by a mistake in printing, is made "to embark £20,000 by giving Promissory Notes;" it ought to have been £10,000.

AMOUNT WHICH MUST BE DUE TO THE CREDITOR OR CREDITORS PETITIONING FOR A COMMISSION OF BANKRUPTCY.

SECTION XXI.—"And be it enacted, That the amount of the debt or debts of any Creditor or Creditors,

petitioning for a Commission of Bankruptcy under this Act, shall be as follows, that is to say: the single debt of such Creditor, or of two or more persons *being partners*, petitioning for the same, shall amount to £50 or upwards; and the debts of two Creditors, so petitioning, shall amount to £70 or upwards; and the debts of three or more Creditors, so petitioning, shall amount to £100 or upwards; and that every person who has given credit to any Trader, upon valuable consideration, for any sum payable at a certain time which time shall not have arrived when such Trader committed an act of Bankruptcy, may so petition, or join in petitioning, as aforesaid, whether he shall have had any security in writing for such sum or not."

In adopting legal proceedings in the Court of Queen's Bench, the facility with which the Defendant can have a case referred to the subsequent Term, I consider highly detrimental to the interests of the fair Trader. And as the Bankrupt Act is specially meant to protect him, it occurs to me that the substitution of £25 or upwards, "*the single debt of such Creditor, or of two or more persons, being partners, petitioning for the same,*" in place of £50, would have a very beneficial effect, in, first, compelling the gentlemen of the Bar to be active in pushing through the business of their clients in one Term, where practicable, and, secondly, giving the unfair Trader no time to "*do*" his Creditors to any extent.

The concluding part of the preceding Section requires, I think, a little explanation, to make it plain to common capacity,—"*And that every person who has given credit to any Trader, upon valuable consideration, for any*

sum payable at a certain time, which time shall not have arrived when such Trader committed an act of Bankruptcy, may so petition or join in petitioning, as aforesaid, whether he shall have had any security in writing for such sum or not."

Supposing a Grocer makes a purchass of a wholesale Merchant of a quantity of goods, for which he grants his Promissory Note at three months, and one month subsequent to granting said Promissory Note commits an act of Bankruptcy, he thereby causes (as it were) the Promissory Note to mature, so placing it in the power of the Merchant "*to petition or join in petitioning,*" and to attend first meeting of Creditors, and vote for an Assignee.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, Feb. 26th, 1848.

No. V.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—Since I became somewhat intimate with Bankrupt Court matters, I have been convinced of the necessity of shortening as much as possible the periods of notice of the Estate remaining in the hands of the Sheriff, and of the advertising the sale of Real-Estate; all delays are prejudicial to the interests of the Creditor.

FIRST MEETING OF CREDITORS APPOINTED.

SECTION XXIII.—"And be it enacted, That the Judge or Commissioner shall, in the Commission, fix the day and place for the first meeting of the Creditors of such Bankrupt, which shall be at some convenient place within the District wherein such Commission is issued; and the time shall not be less than fourteen days, nor more than thirty days, after the date of the Commission."

The Commission being issued, and made public through the medium of the Press, I have not been able to find out in what manner the Creditors are benefited *by their property* being subject to the control of the Sheriff's representatives "*not less than fourteen days, nor more than thirty days.*" In many cases in which I have had an interest, I have had more fear of effects being consumed by fire under the charge of guardians, than if the premises had been locked up, and the key snug in the Sheriff's pocket, so to remain until the *mis-spent* number of days had elapsed. I am of opinion that ten days would be ample time allowed from the issuing of the Commission to the first meeting for the appointment of Assignees, and during those ten days the only guardian the law should allow, should be the Bailiff who takes possession of the Estate; no other in his stead.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, March 9th, 1848.

No. VI.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—The following Section compels the Bankrupt to make out a Schedule "containing a full and true account of all his Creditors." Much time and expense would be saved if, at the same time, the law compelled the Bankrupt to prepare an Inventory of his household furniture—a list containing particulars of his Real Estate, if any, with all deeds pertaining thereto, numbered 1, 2, and 3, and so on—an Inventory of all his Stock in Trade, horses, carriages, &c. &c.; these prepared, a few hours would suffice to point out each item to the Bailiff taking possession, he checking off, and the Bankrupt having, at same time, a duplicate prepared; the documents could be compared at once, signed by the Bankrupt and Bailiff, and when the latter made his return to Court, the duplicate would be at once ready for the Assignee to proceed to take possession. The present system is, to say the least of it, a very unsafe one for the Assignee, generally giving a receipt to the Sheriff for, he knows not what.

SHERIFF TO TAKE POSSESSION OF THE BANKRUPT'S ESTATE.

SECTION XXV.—"And be it enacted, That the Sheriff shall, as soon as may be after the issue of the Commission, demand and receive from the Bankrupt, and from all other persons, all the Estate in his or their possession which belongs to such Bankrupt, with all the deeds, books of account and papers relating

thereto; and the Bankrupt shall accordingly deliver to the Sheriff such part of the said Estate, and other things above specified, as may then be within his possession or power, and shall disclose the situation of such parts thereof as may then be in the possession of any other person, or so to enable the Sheriff to demand and receive the same; and the Bankrupt shall also make a Schedule containing a full and true account of all his Creditors, with the place of residence of each Creditor, if known to him, and the sum due to each; and the said Schedule shall also set forth the nature of each debt, whether founded on written security, on account or otherwise, and also the true cause or consideration thereof, and a statement of any existing mortgage, hypothec, pledge, or other collateral security, given for the payment of the same, which Schedule he shall produce at the first meeting of his Creditors, to be delivered to the Assignees, who shall then be chosen."

The preceding Section brings us to the first meeting, at which the law should compel the Bankrupt to fyle a *regular balance-sheet taken from his ledger*, not concocted, as in too many instances they have been, by some apt Accountant, Lawyer, or perhaps, Assignee. I say, taken from his ledger, and let the Attorney, or the Assignee, when examining the Bankrupt, make interrogatories bearing pointedly upon this most important of all items, in connection with the interest of the Creditors. Besides a balance-sheet taken off, and agreeing with the brought down balances of the Bankrupt's ledger, the law should also compel the Bankrupt to fyle, *at the said* first meeting, his profit and loss

account, for, at least, one year previous to the Commission, made out in such detail that even the most uneducated of his Creditors will learn, by a little study, what his losses, what his house-expenses, what his pocket-money, &c. &c., have amounted to, and what business he has been doing to enable him to cover these; the profit and loss account, in (what the law now insists on, however lamely attended to) "a regular set of books," should, at a glance, exhibit the above particulars.—The reason for insisting on the fyling of a balance-sheet, also a profit and loss account, at the first meeting, is to give time to the Assignee and the Attorney for the Creditors, or any of the Creditors who may wish to go over the statements, and take notes preparatory to the examination of the Bankrupt at the second meeting.

To make the Bankrupt Act efficient, it *must* be made much more stringent in regard to statements fyled in Court and sworn to. I venture to affirm that, notwithstanding the amended Act, by which the Bankrupt is debarred his discharge unless he shall have kept a regular set of books, not ten in twenty cases will produce balance-sheets taken from their ledgers; not four months past, ledgers have been carried into Court, which I defy any Accountant to balance; in fact, it would matter little at which end an Accountant commenced.

I shall shortly trouble you with commentaries on Section 26th.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, March 13, 1848.

No. VII.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—I was highly gratified on ascertaining that the Act, as now in force, continues until the assembling of Parliament; the gentleman who took care of the Bill deserves well at the hands of the British importers, who, should the Bankrupt Act be abolished, *should cease to give credit* to a certain class of the community, whom I shall take good care to bring into notice. I am firmly of opinion that the present law, imperfect and unfair as it is, requires only to be strictly and impartially administered, in order to prevent swindling; let the Commissioners act on the suggestions contained in my No. VI, and Assignees will have a pleasing, instead of a torturing, task to perform, in so far as regards the adjustment and settling of accounts. The Bankrupt will hardly be able to exhibit statements founded on his memory, and the Commissioners themselves will be saved a world of trouble and loss of valuable time, by the insisting on the production of a "*regular set of books*," balances properly brought down in the ledger, the balance-sheet taken therefrom; also a profit and loss account for twelve months preceding the issuing of the Commission. In repeating this opinion, I may as well express another, which is, that if these suggestions are not acted on, the sooner the Bankrupt Act is abolished the better, for if fictitious statements are entertained by any Commissioners, I would undertake, with the assistance of a certain Attorney, to carry our (late) *much lamented* townsman, Mr. Seeley, safely through to his discharge.

I shall now proceed to the examination of

SECTION XXVI.—"And be it enacted, That the Judge or Commissioner shall attend the meeting, and shall receive proof of the debts due to the Creditors of such Bankrupt, who shall be present, and shall allow all the debts which shall be duly proved, and cause a list thereof to be made, which shall be certified by himself, and be recorded and fyled with the other papers in the case; and the Creditors so present as aforesaid, who shall have proved their debts, shall then proceed, in presence of the Judge or Commissioner, to choose one or more Assignee or Assignees for the Estate of the Bankrupt, such choice to be made by the greater part in value of the Creditors according to the debts then proved."

In many instances I have observed Creditors bring forward claims against Bankrupts, not in detail; although not laid down in the Act, the Judges very properly decline admitting claims so drawn out,—and where Promissory Notes form the items of the claim, the Judges very properly insist upon their production. Very great inconvenience arises from the neglect of Creditors in not preparing their accounts, and having the affidavits filled up *the day previous* to the first meeting of Creditors;—for a trifling compensation this object can be attained by application to the Clerk of the Court. Creditors prepared, the Judge can at once proceed to receive proof, and in half an hour the appointment of Assignees will have taken place, instead of sometimes occupying two hours in the preparation and swearing to claims, to the great detriment of those Creditors who have come punctually at ten o'clock and

proved their claims. I think a little management on the part of the Commissioners would put a stop to the practice.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, March 28, 1848.

No. VIII.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—The next Section which appears to me to require some little alteration, is that which provides,

IN CASE OF FAILURE TO ELECT ASSIGNEES, THE COMMISSIONERS MAY APPOINT THEM.

SECTION XXIX.—"And be it enacted, That in case no choice of an Assignee or Assignees shall be made by the Creditors at the said first meening, the Judge or Commissioner shall appoint one or more Assignees, and if any Assignee so chosen or appointed shall not, within six days after notice thereof, signify his acceptance in writing, and deliver it to such Judge or Commissioner, then his election or appointment shall be considered void, and the Judge or Commissioner shall, from time to time, proceed to appoint until the acceptance is duly signified."

Supposing that half a dozen Creditors came forward and proved their claims, and when asked by the Judge

whom they thought proper to inflict with the office of Assignee, and that they could not agree, the Judge could then (supposing he found two competent amongst the six) name Assignees; why should they be allowed six days to signify their acceptance of the office? Why not be required to say yes, or no, on the spot? Suppose they declined, and the Judge did not consider any one of the remaining Creditors capable of fulfilling the duties of an Assignee, he nominates a person not then present who could, why should such a person be allowed six days to say yes or no? A message sent by the Judge, through the Bailiff in charge of the Estate, might bring answers from ten different persons, if necessary to apply to so many, in a couple of hours, and the routine of the Court would thus proceed unimpeded. Supposing ten different parties in succession nominated by the Judge, and each took advantage of the letter of the law, 60 days would be consumed; this is not probable, but it might happen; then the Estate would remain subject to the control of Sheriff, Guardians, loss by fire, &c., &c. The most effectual method of amending, or rather of abolishing, the 29th Section of the Act, also many other Sections, would be the appointing of Official Assignees, under a Bench of Control, and instead of Sheriffs, Bailiffs and Guardians, let there be Bailiffs and Guardians attached to, and *directly* responsible to, said Bench of Control.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, April, 3, 1848.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—Allow me to inquire of your correspondent, "Observer," who appears to be studying the Bankrupt Law, if a person takes a house on a lease of two or four years, and, at the expiration of the first year, he fails in business, can the landlord fyle his claim for the full term of the lease? And, if allowed by the present law to swear to a claim for rent of three unexpired years of the lease, can his (the landlord's) claim affect the granting of the Bankrupt's Certificate of Discharge?—or, in other words, are he and his claim reckoned among the "four fifths of number and amount?"

I am, Sir,

Your obedient servant,

A. B. C.

Montreal, April, 3, 1848.

TO "A. B. C."

SIR,—In reply to the enquiry in your letter, addressed to the Editor of the *Morning Courier*—"If a person takes a house on a lease of two or four years, and at the expiration of the first year, he fails in business, can the landlord fyle his claim for the full terms of the lease," &c.

Provided a Commission of Bankruptcy issue three months previous to the expiration of the first year's lease, the landlord's claim goes no farther; but sup-

posing the Commission to issue at, or near to, the expiration of the first year, the Estate becomes liable for the second year of the lease, the Assignee having power to dispose of the same for the benefit of the Creditors, not only of the second year, but up to the termination, whatever the time may be. Should the Assignee assume the lease for the unexpired term of say three years, he is supposed to sell the lease, together with the personal estate, satisfy the landlord, and so put it out of his power to interfere with the Certificate of Discharge.

But supposing that the nett proceeds of the Estate (*i. e.*, Bankrupt Court Fees, Attorneys, Sheriff, Bailiffs, and Guardians being paid) were not sufficient to liquidate the second year's lease, the Assignee would, of course, abandon it, and the landlord's claim would rest for the first year, deducting any payments made on account; and, exceeding £20, "the claim would be reckoned among the four-fifths in number and amount."

Whilst on this subject it may be of interest to the very numerous body in this city, denominated shopkeepers, to state that it is a very general opinion, and very frequently expressed, that half, if not more, of the Bankruptcies which take place amongst them are caused by the enormous rents which they undertake to pay, and which, unfortunately for the wholesale merchant, frequently form part of his liabilities."

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, April, 8, 1848.

No. IX.

TO THE EIDTOR OF THE MORNING COURIER.

SIR,—The office of Assignee being one of the most disagreeable posts that a person can fill, partially caused by the framing of the present Act, added to the class of people with whom he at times comes in contact, I think it is incumbent on our lawgivers to protect Assignees; who are held to be officers of the Court. The following extract from the 32nd Section of the Act has been put in practice in our Bankrupt Court:—

HOW CTEDITORS MAY REMOVE ASSIGNEES AND APPOINT OTHERS.

"And it shall be in the power of the Creditors, by such a vote as is provided in the 26th Section of this Act for the choice of Assignees, at any regular meeting called by order of the Judge or Commissioner for that purpose, and called in his discretion, on the application of a majority of the Creditors who have proved their debts, either in number or value, to remove all or any of the Assignees, &c."

Creditors should not have it in their power to remove an Assignee *by a mere vote*—the discretion of a Judge may be abused; the proper method to be adopted in removing an Assignee or Assignees, is to fyle a charge or charges in Court, supported by affidavit, against the Assignee or Assignees, said affidavit to be accompanied by a petition to the Court, requesting that a meeting of the Creditors should be called for the pur-

pose of hearing the defence of such Assignees to the charges alleged against them, and then and there, having them removed, should the explanations offered by them be deemed unsatisfactory, said explanations to be stated in writing, and regularly fyled on the record, accompanied by affidavit, should the Judge deem it requisite. Such a course would effectually prevent malicious and meddling Creditors from giving annoyance to Assignees, who, by the mere vote of a majority of such a class, might be deprived of the means of earning a livelihood. I think the Court should place its officers on as respectable a footing as possible, and when so placed, be very tenacious of their standing. Whilst adverting to Assignees, I think it would prove of infinite advantage to the interests of the community to have an enactment passed, that no person should be eligible for the office of Assignee until he has, or is prepared, to fyle a document in Court showing that he is possessed of unincumbered property, either real or personal, to the value of £500—say five hundred pounds; also, fyling in Court a Policy of Insurance over said real or personal estate. And besides, providing three seurties, in £50 each, for his intromissions.

I am, Sir,

Your most obedient servant,

OBSERVER.

Montreal, April 29th, 1848.

No. X.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—The next Section, requiring the most serious attention in the framing of a new Act, is in regard to.

WAGES OR SALARY DUE TO CLERKS OR SERVANTS.

SECTION XLVI.—"And be it enacted, That when any Bankrupt shall have been indebted, at the date of the Commission against him, to any Servant or Clerk of such Bankrupt, in respect of his wages or salary, it shall be lawful for the Judge or Commissioner, upon proof thereof, to order so much as shall be due as aforesaid, not exceeding twelve months wages or salary, to be paid to such Servant or Clerk out of the Estate of such Bankrupt, and such Servant or Clerk shall be at liberty to prove under the Commission, for any sum exceeding such twelve months wages or salary."

Several cases have come under my notice in which Clerks have allowed their (generally hard-earned) wages to accumulate in the hands of their employers beyond the period above mentioned. In such instances claims fyled by Clerks are generally viewed with great jealousy by the Creditors—difficulties thrown in the way of a settlement, and frequently proof of services rendered, required, before giving sanction to the Assignees' making payment of the privileged claim. Some cases have also come under my notice where relations and connections of the Bankrupt have fyled claim

against the Estate where no entry was made in the Ledger, showing that the claimants were engaged, and where no documents could be produced vouching for the existence of any agreement. On the Assignees intimating to the Creditors that such claims had been put forth, a general opinion was expressed that had there not been a Bankruptcy there would not have been a claim, and that consequently the Estate was virtually robbed of so much. In a Colony, vicissitudes in mercantile affairs are of so frequent occurrence, caused by over-speculation, long credits given to parties not worth one penny, *purchasing Bills of Exchange bearing only the name of the Drawer, &c., &c.*, that young men, allowing their salaries to remain in the hands of their employers, are every day liable to become serious losers, and it is to be hoped, now that Savings' Banks are progressing so flourishingly, that instead of being tortured in the Bankrupt Court, they will show their good sense by pocketing five per cent. interest on their little savings.

To put a stop to all *relative* claims, having the appearance of fraud, I beg to suggest the following in the framing of a new Act:—

That in all cases of agreement, whether as Apprentices or Clerks, a regular deed be passed before a Notary, that an account be opened in the Ledger in the names of said Clerks or Apprentices, all payments made to them being duly entered to their debit, and the salary due to them appearing at their credit at the annual balance; that instead of twelve months being allowed, as privileged, three months be substituted. I look upon the present Section, allowing twelve

months to be privileged, as a *very* strong inducement to the commission of perjury. Reduced to three months, Clerks would be careful not to allow over three months salary to be due to them at any one time, and scarcely any Creditor would be disposed to dispute any claim put forth for so short a period.

At the Second Meeting of Creditors it would only be an act of justice to have all claims on Estates made by Clerks, Apprentices, or any other class of Servants, adjusted by the Assignee, admitted by the Bankrupt, and then, and there, an order for immediate payment placed upon the Record; generally speaking, dependdants are in want of all that is due to them, and, supposing the Assignee to have funds, why should payment be withheld? The three months' system adopted, amounts due to Clerks would form a small item of the disbursements, and the Assignee would have little or no difficulty in providing the means of payment.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, June 8th, 1848.

No. XI.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—In No. 10 I endeavored to place before the public the pernicious effects which the framing of the 46th Section of the Act had a tendency to produce. I shall now turn my attention to the 47th Section, viz:—

WAGES DUE TO WORKMEN AND LABORERS.

"And be it enacted, That when any Bankrupt shall have been indebted, at the date of the Commission against him, to any Laborer or Workman of such Bankrupt in respect of his wages, it shall be lawful for the Judge or Commissioner, upon proof thereof, to order so much as shall be due as aforesaid, not exceeding one month's wages or labor, to be paid to such Workman or Laborer out of the Estate of such Bankrupt, and such Workman or Laborer shall be at liberty to prove, under the Commission, for any sum, exceeding such one month's wages."

A "Clerk or Servant" is allowed to fyle *a privileged claim* for twelve months' wages, the Mechanic or Laborer is only allowed by the 47th Section of the Act to fyle his claim for one month's wages, as privileged. Of late two cases of Bankruptcy came under my notice, one a Carpenter, the other a Founder, where heavy arrears of wages were due to the men; it was heart-rending to listen to the distressful tales of woe, and witness the tears of some of the wives and daughters of the men thus deprived of what they had earned with the sweat of their brows for six, eight, and in some instances, twelve months' preceding. Had the framers of the Act reversed the 46th and 47th Sections, giving the Workman twelve months privilege, the Clerk one month, I think they would have been, to say the least, more merciful legislators; on the ground that it is to be supposed the Clerk knew his position in connection with his employer and the wages to be received, whereas the Workman did not. The walls of every

city, town and village, in Canada, should be placarded with bills containing the 47th Section of the Act; then Assignees would not be subjected to continual applications from starving families; the unfortunate tradesman, ruined by the failure of his employer, would not be subjected to, I may say, having the remainder of his heart's blood drained by some of the sharks who prowl about the Court; and the Creditor would not benefit, as he now does, from the pitiful addition to his dividend of the amount which should have been paid to the poor Mechanic as a privileged claim. Such a state of things ought not to exist.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, July 26, 1848.

No. XII.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—High rents are a source of constant complaint amongst our citizens *who are not proprietors;* on the other hand, proprietors are sometimes heard to exclaim that they do not realize $2\frac{1}{2}$ per cent. on their outlay; few instances, in reality, I should think.

It is a well known fact, that when the wholesale merchant requires to look over the statement of the affairs of his bankrupt debtor, he generally finds an enormous amount due to the landlord, probably all a

privileged claim, which, deducted *in toto* from the bankrupt's shewings, leaves a dividend hardly worth the loss of the time to any Creditor looking after.

RENT DUE BY THE BANKRUPT.

Section XLVIII.—And be it enacted, "That no distress for rent, made or levied after an act of Bankruptcy, upon the Goods or Effects of any Bankrupt, (whether before or after the issuing of the Commission,) shall be available for more than twelve month's rent accrued prior to the date of the Commission, but the landlord, or party to whom the rent shall be due, shall be allowed to come in as a Creditor, under the commission, for any overplus of the rent due, and for which the distress shall not be available."

I cannot see why landlords should be allowed to benefit (let their neglect in looking after their rents be ever so culpable) by being able to demand payment of a whole year's rent, so much to the injury of confiding Creditors; rents being generally collectable quarterly in this city, *and when moderate*, are, I suppose, collected. I think it would be of essential benefit to the wholesale merchant that, where a landlord has allowed seven months to elapse without collecting the rent of his premises, he should be compelled to rank on the estate for the *first six months as unprivileged*, and be allowed to rank for the remaining six months *as privileged*. I think such a practice would have the effect of compelling some of our citizens to reduce their aristocratic ideas to their proper level, and instead of renting

A shop at (say)	£250
A house at	70
Paying a book-keeper	150
Paying two clerks	100
Paying two porters	100
And disbursing for house expenses, keep of an errand horse, Assessed Taxes, &c...	600
Annual expenditure	1,370

Let them fall back to the system adopted in a certain "Happy Land," where people, generally, live within their incomes, and rent

A shop at (not exceeding)	£150
A house at (not exceeding)	50
Pay a book-keeper (not exceeding)	100
Pay two clerks (not exceeding)	100
Pay two Porters, (not exceeding)	100
And for house expenses, &c., not exceeding)	350
Annual expenditure	850

This system adopted, the present rotten one would be succeeded by a wholesome trade, and, in all probability, the landlord would be regularly paid, without prejudice to the interests of the other creditors, in cases of insolvency. Every merchant in the city is perfectly well aware that business here is overdone; still he will import, still he will give credit, without sufficient enquiry—hence his losses, perhaps ultimate ruin.

I am, Sir,

Your obedient servant,

OBSERVER.

July 31, 1848.

No. XIII.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—The system of giving Credits *beyond three months* in a Colony, which may be said to be still in its infancy, is generally found to be most pernicious to the interests of the fair trader, and, *sooner or later*, from affluence, reduces him to what may be termed very middling circumstances; what has been the result to the merchants of Montreal from their intercouse with their Upper Canada *brethren?* their profit and loss account can tell!! And let them now endeavour by legal measures to square up their running accounts current with their said *brethren*, and they will ascertain what additional sum they will require to pass to the debit of profit and loss account.

The trade with Upper Canada has for many years been a rotten one, and there is every chance of its continuing so, so long as the system of giving over three months' credits is continued; and these remarks are quite applicable to the business transactions of this section of the country. This brings me to the Section:—

PUNISHMENT OF BANKRUPT FRAUDULENTLY OBTAINING CREDIT, IMMEDIATELY BEFORE HIS BANKRUPTCY.

Section LV.—"And be it enacted, That if any Bankrupt shall, within three months next preceding the date of the Commission against him, under the false colour, or pretence of carrying on business, or dealing in the ordinary course of trade, have obtained

on credit *from any other person*, any goods or chattels, with intent to defraud the *owner thereof*; or if any such Bankrupt shall, within the time aforesaid, with such intent, have removed, concealed or disposed of any goods or chattels so obtained, every such person so offending shall be deemed to be guilty of a misdemeanor, and, being convicted thereof, shall be liable to imprisonment in any common gaol in this Province, for any term not exceeding one year, as the Court, before whom he shall be tried, shall think fit."

"*Have obtained on credit from any other person any goods or chattels, with intent to defraud the owner thereof.*"

From the wording above quoted, it is to be presumed that the penalty applies solely to the obtaining credit from an Agent, or party holding the goods of *another person* on consignment, or in trust, and not to the obtaining a direct credit from a proprietor. I am of opinion that in extending the working of this Section to four months *next preceding* the date of the issuing of the Commission, much good would result, seeing that the fraudulent Bankrupt would thus be placed, at all events, beyond the pale of granting a three months' Promissory Note, with intent to defraud; and thus the common remarks—"*The fellow granted me a three months' note for a purchase, and within two or three days of its becoming due, he acknowledged his insolvency, which I consider neither more nor less than a downright swindle")* would be abolished.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, August 9, 1848.

No. XIV.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—Having been requested to refer to a number of the "*Magic Lantern*," a paper which has recently made its appearance in this City, in consequence of its containing some allusions to the Bankrupt Court, I procured a copy at the Office, No. 24, St. Vincent Street.

There is a deal of truth contained in the following, which I have extracted from that paper:—

"*Some are determined that nothing will do the country good unless the Bankrupt Law is abolished, which appears to me a most ridiculous affair. How can that benefit them? Do they wish to make their debtors die in prison, or to paralyse the resources and enterprise of a Merchant, because one unlucky transaction has left him in debt?*"

"*The Bankrupt Law entails curses with it, upon our community, which are enough to destroy all confidence in Mercantile men. When men come out of that Court richer than when they went in, when you see them proving claims upon Bankrupt Estates for more than any person believes them worth.*"

"*We have no public opinion, and this explains the reason of the evils attendant upon the Bankrupt Court. It is not that the principle of such Courts is radically bad, or that the constitution of ours is altogether wrong; but so long as those who, in that Court, are guilty of acts which ought to brand them as*—* * * * * *,—* * * * * * * * *—*are welcomed again*

*to the society of the wealthy and the educated *——*, our City will never possess an elevated moral character.*"

"*I think that if no other means were left but a return to the harsh measures of arbitrary imprisonment against unfortunate debtors, which was formerly in use, the Bankrupt Court, with all its abuses, should be retained; but surely, in this age so fertile in inventions, the brains of our Legislators are not so sterile, that they can devise no other means of security against fraud towards the creditor, or unnecessary harshness towards the debtor. I have had some knowledge of the proceedings in this Court, and I must confess that I cannot imagine any thing more revolting than the scenes which are ever and anon passing there. We have heard much of the "honor and integrity" of British Merchants, and of the chicanery of Lawyers, but take the two Courts, listen to the quibbles of the Lawyers in the Queen's Bench, and to the downright lying and perjury which may be heard from parties in the Bankrupt Court; and I, as a member of the Bar, will never shrink from the comparison. But I feel certain that if we had British public opinion, and really British Merchants here, we should have less to complain of in the Bankrupt Court.*"

I have been witness to many "*exhibitions*" in the Bankrupt Court, and have frequently thought that, could it be conducted without the presence of the members of the Bar, peace and good-will would dwell there. Creditors would not have reason to grumble at bills taxed, and *not taxed*, which Assignees are called on to provide for, and weeks and months wasted in

contestations, occupying the time of an Assignee, which might be much more profitably employed. I am not at all singular in the opinion, that until the Judges of the Bankrupt Court are *solely employed in that Court, and sit together,* no good can result from any new Bankrupt Act which may be framed.

From the preceding allusions to perjury, I now beg to bring before the notice of the public the following, viz.:—

FALSE SWEARING OR AFFIRMATION TO BE DEEMED PERJURY.

SECTION LVI.—"*And be it enacted, That every person who, in any examination before a Commissioner, Judge, or any person lawfully deputed by him, or in any affidavit or deposition authorized or directed by this Act, shall wilfully and corruptly swear or affirm falsely, shall, on conviction thereof, suffer* the pains and penalties in force in this Province against wilful and corrupt perjury."

The man who fyles in Court a Balance-Sheet founded on supposition, (and a half of the Balance-Sheets which are fyled there are such,) not taken from his Ledger, requires to ease his own conscience *in connection* with the preceding section of the Act.

The man who makes oath that he has delivered up all Books, Papers, Letters, Notes &c., to the Bailiff, and afterwards, from the keen searching of the Assignee, is required to make further production, has again to ease his conscience.

The man who hands over funds to a wife, sister, or other relative, to meet the 'wet day;" and when asked

by the Bailiff for money belonging to the Estate, returns "no money"—has again to ease his conscience.

The period between the First and Second Meeting for examination of Bankrupts, is too short to allow of a thorough examination into the affairs of the Estate by the Assignee; and Creditors are generally too hasty in granting discharges to Bankrupts; let them henceforth procrastinate, *should there be* some ground for doing so, and it will then be found that Traders will struggle very hard to steer clear of the Bankrupt Court; let the examination of Bankrupts be carried on *always in presence of the Judge*, and let all the Creditors be present, and if they have any questions to ask their debtor, let them inscribe them on a slip of *paper*, and hand them to the Assignee. And then let "Members of the Bar" *show their respect for it*, and the Commissioners present, by examining the Bankrupt in a becomingly solemn manner.

I have had some very important suggestions transmitted to me in relation to the Notice in Bankruptcy, which will form the subject of my next number.

I am, Sir,

Your most obed't serv't,

OBSERVER.

13th September, 1848.

No. XV.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—The following suggestions, with which I have been favored, in regard to the issuing out of the Commission in Bankruptcy, give the honest Debtor an

immediate chance of "beginning the world" anew, and providing for himself, and family—should he have any—and at the same time benefit his Creditors in relieving them of the heavy costs attendant on the passing through the Bankrupt Court:—

"One of the objections started by those who oppose the renewal of the Bankrupt Law, is the great injury done both to the Debtor and Creditors by the injudicious suing out of a Commission of Bankruptcy by any one obstinate and inconsiderate Creditor who may have a claim which the Debtor may be unable to meet at the moment, and yet have amply sufficient means to meet all demands, if not thrown into the Bankrupt Court, and time granted to him.

"To obviate this it is suggested, that, when any Creditor has made such proof as would, under the present law, entitle him to sue out his Commission, thereupon, a *rule nisi* should in the first instance be issued by the Judge calling on the debtor to show cause why the Commission should not issue, and at the same time call a meeting of the Creditors, on a given day, in the Bankrupt Chambers, to examine into the affairs of the debtor. Should four-fifths or two-thirds of these Creditors, in amount, return to the Judge that they are satisfied with the statements of the debtor, and their readiness to accept his Estate without going into Bankruptcy, and grant him his discharge, then it shall be lawful for the Judge to authorise such an assignment in favor of such of the Creditors as shall be chosen Trustees, this assignment to be binding on the remainder of the Creditors.

"If the fourth-fifths or two-thirds of the Creditors return to the Judge that they are not agreed, the Commission of Bankruptcy will forthwith issue.

"Time may be allowed to Creditors in England to assent or refuse."

The system of Trusteeship, such as is commonly resorted to in Scotland, would, I think be found to work admirably in this country, in cases where Creditors have every confidence in the integrity of the party becoming insolvent. In the hope that an efficient Bankrupt Act will emanate from the coming Session of Parliament, it is unnecessary for me, meantime, to enter upon the details of the office of Trustee. One of the great beauties of the system is the causing Trustees to find ample security for their intromissions, a custom which might be very advantageously brought into practice in any future Bankrupt Act with which we may be favored.

I am, Sir,

Your most obed't serv't,

OBSERVER.

21st September, 1848.

No. XVI.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—I now come to one of the most important features of the Act, viz.:—The discharge of the Bankrupt.

MEETING FOR ALLOWANCE OF CERTIFICATE.

SECTION LXI.—"And be it enacted, That it shall be lawful for the Judge, or Commissioner, by *whom the Commission was issued*, to appoint a public sitting for the allowance of such Certificate to the Bankrupt named in such Commission, (whereof, and of the purport whereof, twenty-one days notice shall be given, in manner to be directed by such Judge, or Commissioner, and a copy of such notice shall be served on one of the Assignees, or on their Solicitor,) and at such sitting, *any of the Creditors of such Bankrupt may be heard against the allowance of the Certificate, and the Judge, or Commissioner, shall consider any objection against allowing such Certificate, and either find the Bankrupt entitled thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such condition thereto as the justice of the case may require:* Provided always, that no Certificate shall be such discharge, *unless* such Judge or Commissioner shall, in writing, under his hand and seal, certify to the proper Court of Review that such Bankrupt has made a full discovery of his estate and effects, and in all things conformed as aforesaid, and that there does not appear any reason to doubt the truth or fulness of such discovery; nor unless the Bankrupt make oath in writing that such Certificate was obtained fairly and without fraud; nor unless the allowance of such Certificate shall, after such oath, be confirmed by the Court of Review, against which confirmation any of the Creditors of the Bankrupt may be heard before such Court."

CERTIFICATE NOT TO BE GRANTED TO A BANKRUPT UNLESS ASSENTED TO BY FOUR-FIFTHS IN NUMBER AND VALUE OF THE CREDITORS PROVING DEBTS OVER £20.

Amended Act,—9th June, 1846,—SECTION XXI.—"And be it enacted, That it shall not be lawful for any Judge, or Commissioner, to grant a Certificate for the discharge of any Bankrupt against whom a Commission of Bankruptcy shall issue after the passing of this Act, unless it be proved to the satisfaction of such Judge, or Commissioner, that four-fifths in number and in value of the Creditors of the Bankrupt, who shall respectively have proved debts under the Commission to the value of £20 or upwards, have consented to the granting of such Certificate, and the proof of such consent shall be in writing."

By the preceding amendment the Bankrupt is thrown upon the mercy of one Creditor, having a considerable claim—it is quite immaterial whether the Bankrupt may have become insolvent from unavoidable misfortune or otherwise, one relentless Creditor may put him to the expense of adjourned meetings for month after month, and apparently the Commissioner has no power to interfere. To remedy so great an evil it is simply requisite to enact that all Creditors declining to grant a certificate to a Bankrupt shall be prepared to fyle their grounds of refusal in writing, accompanied by affidavit, on the day of meeting, for granting or refusing the Certificate, and then "*the Judge or Commissioner shall consider any objection against allowing such Certificate, and either find the Bankrupt entitled*

thereto, and allow the same, or refuse or suspend the allowance thereof, or annex such condition thereto as the justice of the case may require." Thus the honest Bankrupt would be placed beyond the reach of personal animosity. A full and fair disclosure—a Balance Sheet *taken from the Ledger, a Profit and Loss Account*, then a thorough examination of all the affairs of the Bankrupt, by a competent Assignee, and his report thereon, in writing, placed in the hands of the Judge, should be the grand criterions for future action.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, September 28th, 1848.

XVII.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—For some two years past Assignees have been subject to very great annoyance from the rapacious propensity exhibited by certain parties, with whom I have yet to deal in a future communication. I am delighted to observe that the Commissioners have taken the matter up. No wonder that a hue and cry exists against the Bankrupt Court—the costs of Bankruptcy are enormous, and should a new Act be sent forth unaccompanied by a new, and reduced, scale of charges, the sore will still exist. Added to the Court fees, costs of proving, Sheriff's poundage, *Alimentary allowance*, (generally pre-provided for by the Bankrupt,)

Bailiffs' fees, Guardian's, Bankrupt's Attorney, Attorney for Creditors,—fortunately there is not any per centage for the Queen,—the following Section enables the Bankrupt to deprive (to use a mild word) his Creditor of an additional amount, to which, I think, in common justice, no law should entitle him; the majority of Creditors in this country consider the enactments of the following Section neither more nor less than downright robbery; many look upon the Alimentary Allowance given *in some cases of Bankruptcy*, in a similar light. The sooner so odious a Section is expunged the better.

ALLOWANCE TO BANKRUPTS.

SECTION LXXVI.—"And be it enacted, That every Bankrupt who shall have obtained his Certificate and the confirmation thereof, if the nett produce of his Estate in hand (with or without prior dividend) pay the Creditors who, before or at the time of making such order, have proved debts under the Commission, ten shillings in the pound, shall be allowed and paid, *five per centum* out of the produce, provided that such allowance shall not exceed *two hundred and fifty pounds!!*

"And every such Bankrupt, if such produce shall (with or without prior dividend) pay such Creditors twelve shillings and sixpence in the pound, shall be allowed and paid, *seven pounds ten shillings* per centum, provided such allowance shall not exceed *the sum of three hundred and twenty-five pounds!!*

"And every such Bankrupt, if such produce shall (with or without prior dividend) pay such Creditors

fifteen shillings in the pound or upwards, shall be allowed and paid as aforesaid, *ten per centum*, provided such allowance shall not exceed *four hundred pounds!!* Provided that no such allowance be made without an application to the Judge or Commissioner, and due notice given to the Assignees; and that such Judge or Commissioner, after hearing both parties, may make such order, not exceeding the foregoing provision, as he shall see fit, subject to the decision of the Court of Review; and provided always, that such allowance shall not be payable to any Bankrupt until after the expiration of twelve months from the date of the Commission, and such allowance shall then be payable only, in event of the dividends paid to the Creditors, who, at any time before the expiration of such twelve months, shall have proved debts under the Commission, being of the requisite amount in that behalf aforesaid; and if, at the expiration of such term, the dividend paid as aforesaid, shall not amount to ten shillings in the pound, it shall be lawful for the Judge or Commissioner to allow the Bankrupt so much, as he and the Assignee shall agree upon, not exceeding three per centum, *or one hundred and fifty pounds!!*"

Could it be proved that the preceding allowances in the shape of a per centage were beneficial to Creditors by inducing Bankrupts to toil, and use every diligence for the interests of those who have suffered by their (generally speaking, in this country) mismanagement, a substantial argument would exist for the continuation of the Section. What is the case? The Bankrupt is full of devoted love and affection for the Assignee and the suffering Creditors, until his discharge is granted,

—his Certificate in his pocket, Assignee and Creditors "may go to——." The Assignee hunts after him, to get witnesses to prove in Court of Queen's Bench; can't be found; leaves a written request, no attention paid to it; threatens to take out a rule, which brings him up; the jail looming in the distance; and, forsooth, for all the everlasting annoyance to which Assignees are subjected, from a hundred sources, the Bankrupt is to be paid a handsome per centage, probably far exceeding any Commission that the Assignee may make. For what? For causing loss to his Creditors, and then setting his face against repairing that loss as much as possible, unless the Assignee promise, or does pay him 10s. a day—shame on the man that would demand such payment, unless with a family and in extreme want, which, with a few exceptions, I hardly ever knew a *Montreal* Bankrupt to be. Jolly blades many of them appear —Certificate granted,—carriages, horses, dogs, dining out, asking a friend, all as usual—a Bankrupt in Montreal (Heaven knows, no scarce commodity) with a sorrowful countenance, is "a rara avis."—There are exceptions. I would, as a Creditor, with all my heart, accord my acquiescence to the Assignee's consenting with the Judge, to grant say £100 per annum for three years, perhaps longer, to the poor old grey-headed Bankrupt, who, by sheer misfortune, or having been swindled, had been brought to poverty. But for such cases, no law but that of humanity, should exist, and let the Commissioner and Assignee be the Judges.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, October 2, 1848.

No. XVIII.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—In No. XVII. I made allusion to the Alimentary Allowance given to Bankrupts, also the allowance of 10s. per day, as laid down in the following Section:—

ALLOWANCE TO BANKRUPT FOR HIS SUPPORT.

SECTION LXXVIII.—"And be it enacted, That every Bankrupt, duly appearing, attending, and conforming, according to the provisions of this Act, shall receive from the Assignees ten shillings per day, for each day's attendance on the Judge, Commissioner, or Assignee, when required; and shall also be allowed, for the necessary support of himself and his family, a sum not exceeding twenty shillings per week for each member of his family, and for such time, not exceeding two months, as the Judge, or Commissioner, shall order."

An application for the ten shillings per day by a Bankrupt, never having, to the best of my recollection, come under my notice, I, of course, had no opportunity of seeing the result of such application when brought before the Commissioners. The reading of the Section leads one to suppose that the Bankrupt is allowed ten shillings per day when being "*put through*" the regular routine of the Bankrupt Court. If such is the meaning, and acted on, hence originates another spoliation of Creditors. I have known instances (where books

were in such a state that the Assignee might as well have commenced at the end of the Ledger as at the begining to make a Balance Sheet) where the *constant* attendance of the Bankrupts for *twenty or thirty* days was absolutely necessary to bring the Accounts into "ship-shape," and prepare the statements required by the Court; during all which period the Alimentary Allowance was received, the Bankrupts earning a little from their customary avocations. To remedy this, I would beg to suggest the following alteration:—And be it enacted, That every Bankrupt, duly appearing, attending, and conforming to the provisions of this Act, shall receive from the Assignees, *after the expiration of the period during which he shall have been in receipt of an Alimentary Allowance, a sum at the rate of ten shillings per day for each full day's attendance on the Judge, Commissioner, or Assignees, when required.*

In our Court the Alimentary Allowance is generally "*ordered*" and paid for two months, which in Estates yielding only some £300 or £400, becomes a matter of serious importance to the Creditors. In all the cases of Bankruptcy which have come under my notice, and they have been numerous, I do not recollect of over two persons who remained unemployed at the expiration of one month from the date of the first meeting of Creditors,—many continued gaining a living from the period of the serving of the Summons throughout up to the day of the Certificate being granted. Creditors should not be burthened in such cases with the support of the Bankrupt, and besides, perhaps, a large family; therefore, a proviso should be made, that should it be ascertained that the Bankrupt, during the period of his

being required to pass through the routine of the Court, is in receipt of wages, salary, or income, from whatever source derived, sufficient to enable him to support himself and family, he shall not be allowed to further encroach upon the funds belonging to his Creditors, but shall be paid so much per full day, as the Judge, or Commissioner, shall, in his discretion, order, for the time he may be required to absent himself from the business in which he may be engaged, not exceeding ten shillings per day.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, October 5, 1848.

No. XIX.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—I am of opinion that the following Sections of the *Amended Act* should be entirely done away with viz:—

"RIGHTS OF THE LESSOR, &c., UNDER LEASES MADE TO PERSONS AFTERWARDS BECOMING BANKRUPT.

SECTION VIII.—"And be it enacted, That the lessor of any lands or real property under a lease originally made for more than one year, to a Trader subsequently made a Bankrupt, shall be paid his rent in full to the end of the then current yearly term, pro-

vided the Commission issue three months before the expiration of the said yearly term, from and out of the net proceeds of the personal effects of the Bankrupt, in and upon the said lands and real estate at the date of the the said Commission, after payment of the expenses incident thereto, if the other estate of the Bankrupt be insufficient for the payment of the said expenses, or part thereof; and at the expiration of the said yearly term, the lease shall be cancelled by the Bankruptcy, unless the Assignee shall declare his option to continue the lease according to its tenor, for the benefit of the Creditors, in which case the lessor shall receive the present value of his rent to the end of the term, which said present value shall be calculated on the rent stipulated to be paid by the lease, and the unexpired term of the Lease may be sold, or otherwise dealt with, by the Assignee, as the other property of the Bankrupt."

"ASSIGNEE MUST ELECT WHETHER HE WILL ACCEPT OR DECLINE ANY LEASE, OR AGREEMENT FOR A LEASE. BANKRUPT DISCHARGED FROM FARTHER PAYMENT UNDER IT IF HE DELIVER IT UP AS HEREBY REQUIRED."

SECTION IX.—"And be it enacted, That any Bankrupt entitled to any lease, or agreement for a lease, shall not, if the Assignee accepts the same, be liable to pay any rent, accruing after the date of the Commission, or to be sued in respect to any subsequent non-observance, or non-performance, of the conditions, covenants, or agreements, therein contained; and if the Assignee decline the same, shall not be liable as aforesaid, in case he deliver up such lease, or agreement, to the

lessor, or the person ageeing to grant a lease, within fourteen days after he shall have had notice that the Assignee shall have declined as aforesaid; and if the Assignee shall not (upon being required) elect whether he will accept or decline such lease, or agreement for a lease, the lessor or person so agreeing as aforesaid, or any person entitled under such lessor or person so agreeing, shall be entitled to apply, by petition, to the Judge, or Commissioner, who may order him to elect, and to deliver up such lease, or agreement, in case he shall decline the same, and the possession of the premises, or may make such other order therein as he shall think fit."

Allowing rent to come in as a privileged claim for so long a period as is now permitted by the Bankrupt Act, I consider an inducement to the Trader to be reckless as to what amount of rent he becomes responsible for,—should he drive a large and successful business, he will be able to pay; should he not, his Creditors pay. The wealthy landlord refrains from pressing too hard perhaps; allows his tenant to get twelve months in arrears, knowing well that, so long as there is enough on the premises to pay his rent, he is secure—*his is a privileged claim.*

To prevent Traders from endeavoring to keep their "heads above water," by making use of funds properly belonging to the landlord, (the same may be said as to salaries due to Clerks,) I am of opinion that the following system, if adopted, would work well:—

Supposing a Commission in Bankruptcy issued on or subsequent to the 1st November, let it be enacted, that the landlord shall not be entitled to any privilege *beyond the quarter then expired*, supposing the rent to

be payable quarterly; and should arrears *have been allowed by him* to accumulate beyond the three months preceding, on these arrears he shall come in for his dividend as a common Creditor,—for the remaining six months his claim, of course, to be privileged; should a lease exist, the Assignee should be bound to give *immediate* notice that he shall relinquish on the 30th April succeeding. Supposing the Commission of Bankruptcy to issue subsequent to the customary period of giving notice of removal, so as to allow the landlord ample time to advertise notice of let, say 8th January; the Assignee to have power either to arrange with the landlord, in regard to the lease, by allowing a reasonable compensation for the ensuing twelve months, and so free the estate of the lease, or of doing his best to let the premises again for the twelve months at the same, or, if possible, a higher rent, by which means the Creditors would not suffer loss.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, October 11, 1848.

No. XX.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—Supposing one hundred Commissions of Bankruptcy were issued to-morrow against that class of our community denominated *small shop-keepers*, and who by the Act *should be* compelled to keep a regular set

of books by Single Entry, how many do you suppose would produce "proper books of account, exhibiting, from time to time, the state of his affairs and business?" I venture to assert *not ten* out of the hundred. When a new law is brought into play a certain degree of leniency, on the part of the Judge, no *reasonable* Creditor will find fault with,—but after a community becomes acquainted with the consequences of despising the rules laid down for the proper regulation of society, it behoves the Judge to be up and doing, showing those who thus exhibit a contempt of Court that they will be taught to obey, and that the very letter of the following Section will be acted up to:—

Act, 9th June, 1846.—SECTION XX.—"And be it enacted, That if any Bankrupt, after the passing of this Act, shall be found not to have kept, *and produced* proper Books of Account, exhibiting from time to time, the state of his affairs and business, in the manner and form in which such Books of Account are kept by Traders using the same calling or business as such Bankrupt, he shall not be deemed to have made a full discovery of his estate and effects; and the want, or non-production, of such Books of Account shall be a valid cause for the disallowance, or non-confirmation, of his Certificate."

The Bankrupt, instead of "exhibiting, *from time to time,* the state of his affairs," should be compelled to produce a regular Annual Profit and Loss Account, for at least two years previous to the date of the Commission, either from Books kept by Single or Double Entry, as the case may be. Such a document fyled in Court, and made oath to, would, at a glance, enable

the Creditors to decide as to the Bankrupt's being entitled to his discharge.

I think I have before remarked, that it is bad policy to grant a Bankrupt either his Alimentary Allowance or his Certificate in too great a hurry.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, October 12, 1848.

No. XXI.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—Having concluded my remarks on the Amended Act, I shall now take a peep at the "*Rules and Orders and Tariff of Fees made by the Circuit Judges of the District of Montreal, and confirmed by the Judges of the Court of Queen's Bench, on the 8th day of October*, 1846."

ORDER III.—"That the sitting of the Court in Bankruptcy shall commence at ten, A. M."

ORDER IV.—"To insure regularity of proceedings at the sittings of the Court, Summonses returned shall first be called, then Petitions and Summary Proceedings shall be heard, and lastly Commissions and the Meetings under them, appointed to be held, shall be proceeded with."

I have repeatedly heard Creditors complain of valuable time lost by detention at the Bankrupt Court,

waiting the appointment of Assignees. It would be well, I think, to introduce the hearing of Petitions and Summary Proceedings after completing the routine required to be gone through under the Commission or Commissions of the day, and also to introduce some system which will compel Creditors to have their claims prepared the day preceding the First Meeting of Creditors for the appointment of Assignees, not, as is customary, to bring them to Court at ten o'clock on the day of Meeting, and employ the Clerk of Court, or an Attorney, to make out the claim, and, perhaps, an Interest Account, thereby detaining those Creditors who have already proved claims, and who are desirous of being at their counting-houses. It is as easy for the Creditor to go to the Clerk of Court, or to his Attorney, the day before the Meeting, and have his claim prepared, as to delay to the last, prejudicing thereby his own, and his neighbor's interest.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, October 19, 1848.

No. XXII.

TO THE EDITOR OF THE MORNING COURIER.

SIR,—The next subjects requiring notice in the "Rules and Orders" are—

ORDER No. XV.—"So soon as an Assignee shall have duly signified his acceptance of the office, the

Clerk shall forthwith cause to be delivered to him, or to his Attorney, a duplicate of the instrument required to be made in that behalf, together with the requisite Order or Process of Court, to put him in possession of the Estate of the Bankrupt, and the Deeds, Books of Account, and papers relating thereto."

No. XVI.—"That the Assignee shall forthwith, after receiving the said Estate, sort and number the said Deeds, Books of Account, and papers, and enter them in a Register Estate Book, to be by him kept for the said Estate, and a list thereof shall be by him made and delivered to the Clerk of the Court, to be fyled in the Record of Proceedings in the case."

In addition, I would beg to suggest that the "requisite Order or Process of Court" should contain an order on the Sheriff to, at the same time, deliver to the Assignee a copy of the Inventory of the Stock of the Bankrupt, as taken by the Bailiff, duly completed and subscribed as by law required.

Should it be decided in the framing of a new Bankrupt Act that Sheriff's Officers are to be employed, I would suggest, seeing the long period in which the Estate of the Bankrupt remains in their keep, as it were a dead letter, that, instead of the Assignee being taxed, as laid down in Order No. XVI., to the retarding of his progressing with the Estate, the Bailiff shall, during the period of his being in possession of the Estate of the Bankrupt, "sort and number the said Deeds, Books of Accounts, and papers, and enter them in a *(Sheriff's)* Register Estate Book, to be by him kept for *all* Estates, (in Bankruptcy,) and a list thereof shall be by him" attached to the Inventory of seizure

of said Estate, to be delivered to the Clerk of Court, duplicate, of course, being handed to the Assignee, who grants a receipt therefor, thereby becoming responsible for contents of said list. The Bankrupt to be compelled to describe his Books, Deeds, and papers to the Bailiff.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, October 23, 1848.

No. XXIII

TO THE EDITOR OF THE MORNING COURIER.

SIR,—In the "Tariff of Fees in Bankruptcy" the Solicitor, or Attorney, is allowed, "for drawing and fyling each claim, 11s. 8d. The printed forms used for "drawing" (so termed) cost 1s. 3d. per dozen, and, generally speaking, the filling up of a blank form occupies about ten minutes time. The poor man's claim generally runs from £5 to £10. Supposing he pays his Attorney 11s. 8d. for filling up his claim and fyling it with the Clerk of Court—he then pays the Clerk of Court, for receiving the claim and endorsing it, say 1s. 3d., amounting, in all, to..... £0 12 11

and supposing the dividend realized 1s. per £ on his claim, of £10, the poor man receives..... 0 10 0

thereby adding to his previous loss..... £0 2 11

(two and eleven-pence) besides lost time. To remedy this, a scale of charges should be established to meet the circumstance of all who happen to be under the necessity of having recource to the Bankrupt Court to recover what may be forthcoming. I would beg to suggest the following to the Solicitor, or Attorney, for filling up each claim:—under £10, 2s. 6d.; over £10 and under £20, 5s.; £20 and under £50, 6s. 3d.; £50 and over, 7s. 6d. A sharp young Lawyer, making himself intimate with this department, and having an office in the proximity of the Court-House, and giving due notice, by advertisement and otherwise, could, I think, easily earn from £200 to £300 a-year, in preparing claims for fyling in Bankruptcy, charging 2s. 6d. to 5s. for each.

The Sheriff is allowed—1st, "For each Commission delivered to him, and return thereof, £1 5s.;" 2nd, "All actual disbursements for advertising, all disbursements for taking charge of the Estate until delivered to the Assignee, to be subject to the discretion of the Judge;" 3rd, "All services of Summons, Orders, or Rules, 2s. 6d.;" 4th, "Mileage in all cases, for EACH league's distance from the Court-House, *out and in*, 2s. 6d.;" 5th, "For EACH day's seizure under the Commission of Bankruptcy, 15s.;" 6th, "For taking Inventory of the Estate and Copy, 10s.;" 7th, "For executing every Warrant of Attachment, 5s.;" 8th, "*Poundage*—1 per cent. on the proceeds of Personal Estate received by the Sheriff, amounting to £1,000,—and on such proceeds exceeding £1,000, poundage of 1½ per cent., provided such last *poundage* do not ex-

ceed £20 currency,—the said *poundage* payable to the Sheriff as the Estate shall be realized."

I should like to see a return made by the Sheriff, and the Officers attached to the Sheriff's Court, of the amount of all moneys received by them in connection with the Bankrupt Court since the beginning of 1846. Further comment on the Tariff of Fees in Bankruptcy I consider at present unnecessary, save that they have been too long in existence; they are now under review in good hands, and no doubt will be either abolished or considerably modified, in order to meet with the nakedness of the land.

"*To the Clerk of the Bankrupt Court, his fees, as specially allowed by the Statute,*" any one conversant with the duties he has to perform, and the responsibility of his office, will admit, on looking over the rate of fees allowed to him, that they are exceedingly moderate.

I have now concluded my Commentaries on the Bankrupt Act, Rules of Practice, &c., and I sincerely hope that my humble endeavors to create a more efficient system may prove advantageous to the country at large.

I am, Sir,

Your obedient servant,

OBSERVER.

Montreal, October 24, 1848.