

that the notice should be repeated during the space of a year both in the General Government and Provincial Gazettes.

#### LEGAL PRIORITIES.

At present, if the Sheriff, under an execution only one minute before the signing of the order protecting the estate *ad interim*, seizes goods belonging to the debtor, those goods are charged with a legal prior claim in favor of the execution creditor to the amount of his debt and costs; this, in the opinion of the Chamber, is not equitable; and it therefore recommends that the law in this respect should be placed on a similar footing to that of England and the neighbouring colonies. All legal proceedings intended to affect the property of the insolvent, and all Sheriff's sales within twenty days before sequestration, should not confer a preference except in costs.

#### RENT.

Rent (when there are any goods of the insolvent in the building for the use of which rent is payable) must of course be still treated as a preferential claim. And the Chamber also thinks that servants and clerks (agreeable to the rule which prevails elsewhere) should be treated also as preferential creditors for (say) one month's wages or salary, but not in any case to exceed pounds.

#### PREFERENTIAL TRANSFERS.

While the Chamber fully recognises the value of the provision in the Debtors and Creditors Act rendering void any fraudulent or voluntary transfer of property, if made within three months prior to the order of sequestration, it thinks that such provision is not calculated to suit the exigency of many cases which may arise. It is quite possible that a debtor might voluntarily make away with his property in contemplation of insolvency, yet, because he manages to keep without the limit provided by the Act, the property so transferred is lost to his creditors. The Chamber therefore recommends that the Legislature should direct that any transfer not in the ordinary course of business, if made within sixty days prior to the order for sequestration, shall be void, if the effect of such transfer is to prefer one or more creditors to the detriment of the general body.

It is also suggested that fraudulent or voluntary transfers should not be rendered void merely because they are made within three months prior to the order of sequestration, but that they shall be deemed void if made at any time upon the assumption that it can be satisfactorily proved that at the time of the making of such transfers the debtors were in insolvent circumstances.

#### MERCANTILE ASSESSORS.

The power vested in the Judges to call in the aid of mercantile assessors has hitherto proved utterly useless. It has never yet been acted upon by the Judges of this province, and there is not the slightest prospect that their Honors will ever have occasion to exercise the power vested in them.

#### DEBTS PAYABLE IN FUTURE AND UPON CONTINGENCIES.

The Chamber has been informed that a good deal of doubt exists among some of the members of the legal profession regarding the rights of persons whose claims are payable at a future day or which rests upon contingencies to prove upon an estate where the order of sequestration has been made prior to the arrival of such future day, or the happening of those contingencies. It appears to be also doubtful whether an insolvent debtor who holds property under a lease is discharged from his liabilities upon that lease by his insolvency. The Chamber does not venture to pronounce any opinion upon the soundness of the views just adverted to, but it thinks that it would be far better to set those doubts at rest by clear and specific legislation than to leave them, as at present, purely a matter of speculation. Provision might also be made for deducting a rebate of interest in regard to debts payable in future, and for assessing the value of claims depending upon contingencies or the realisation of securities. Express provision should also be made (as in England) for reserving to a Creditor the right of claiming against persons jointly indebted with the insolvent, or who are liable for his engagements for the difference between the amount of the dividend received and the debt due.

#### DEEDS OF ARRANGEMENT.

In the opinion of the Chamber the rights and liabilities of all persons affected by a deed of arrangement should be the same as in Bankruptcy. The Chamber has been informed that until the year 1861 deeds of arrangement were not valid unless the debtor ceded for the benefit of his creditors all his assets; and that in the year already referred to, provisions were made for legalising Composition Deeds and Letters of License if assented to by the requisite majority of Creditors. The Chamber is also informed that, since the year 1861, the latter class of deeds has been frequently and successfully impugned at home, and more on account of the fact that a greater degree of strictness is requisite in the preparation of that class of deeds than in the class transferring the estate for the benefit of the creditors generally.

As the invalidity of any deed of the kind renders the debtor personally responsible to dissentient creditors, the Chamber suggests that if an assignment of the property of the insolvent for the benefit of all the Creditors (coupled with a release to the debtor) is not open to the same objections which may be successfully raised to a Deed of Composition or Letter of License, it would be better, in justice to the debtor, that the Legislature should only sanction Deeds of Assignment. The creditors have also the satisfaction of knowing that they have obtained, or possess the means of obtaining, all the property of the debtor; while in the case of Composition Deeds or Letters of License there are many who think that the insolvent is dealing unfairly by them, although they have not the power to resist (assuming the deeds to be valid in point of form) because the necessary majority has assented to such deeds.

In drawing these observations to a conclusion, the Chamber cannot but feel that there are many other topics which might be justly enlarged upon; it does, however, entertain the hope that with the legislation of Great Britain and the neighbouring colonies before it, the Legislature of this colony will, at an early period, render the rights and liabilities of both Debtors and Creditors more definite and intelligible than the Act of 1862 succeeded in so doing.

R. B. MARTIN,  
Chairman.

30th June, 1865.