part of the system of a horse. The phlegms arrest it from the stomach and bowels; and the spirits arrest it from the feet and limbs.

I once rode a hired horse ninety miles in two days, returning him at night the second day, and his owner would not have known he was foundered, if I had not told him, and his founder was one of the deepest kinds.

I once, in a travel of 700 miles, foundered my horse three times, and I did not think my journey was retarded more than one day by the misfortune, having in all cases observed and practiced the above prescription. I have known a foundered horse turned in at night on green feed, in the morning he would be well, having been purged by the green feed. All founders must be attended to immediately.

Colonial News.

New-Brunswick.

From the Saint John Observer, November 28.

IN BANKRUPTCY—SAINT JOHN.

In the matter of JOHN KINNEAR and HARRISON G. KINNEAR, Bankrupts.

Sitting for shewing cause against their Certificate, 30th October, 1843.—Judgement given 13th November, 1843.

IN this matter cause was shown against the granting of the Certificate of Conformity in all things to the Bankrupts on 30th October last, by and on behalf of several of their creditors, and as it is the only case in which there has been an opposition not having any precedents to which I could refer, I have had no ordinary difficulty, and in now delivering my judgement I shall endeavour to state it in such terms as may enable either party desirous of appealing therefrom to know the specific grounds of my decision.

The facts are these:—

In 1828 the Bankrupts entered into co-partnership as Auctioneers and Commission Merchants, and subsequently increased their business by dealings on their own account, and by engaging in the purchase and sailing of vessels. For several years they appear to have been doing a moderate and perhaps good business; but in 1837 their correspondents increased, and from that time they entered more largely into mercantile engagements and speculations and in shipping, and in order to do this they were compelled to obtain monies to a large amount on most disadvantageous and ruinous terms. In October, 1841, they were obliged to stop payment and then called upon their creditors to accept a composition of fifteen shillings in the pound, payable in three equal yearly payments. This, however, fell through in consequence of several parties suing them. A meeting of their creditors in this place was held, and the Bankrupts proposed to assign to Trustees for the benefit of their creditors, all their estate and effects, as well those belonging to each of them individually, *subject however to certain preferred claims.* An assignment was accordingly prepared, but not completed.—In March, 1842, another assignment was prepared and executed by the Bankrupts, the Trustees, and some of their creditors. The amount of preferred debts paid or secured between October, 1841, and March, 1842, was £6,184 19s. 9d. The amount of debts preferred in the assignment executed in March, 1842, not included in the above sum, was £782 10s. of which however £257 were due to the Crown for duties, and £200 to their landlord. They also paid some Carpenters and Fishermen £407 2s. 5d. and some borrowed money £125—making the whole amount of preferred debts secured, paid, or yet to be paid by the Trustees, deducting the sums payable to the Crown and their landlords, £7,042 11s. 11d.—and from this sum also the value of certain Leasehold property situate in John or Water street in this city, assigned to the said Trustees, which had been formerly held as security by parties who were sureties for one of the preferred debts and which was estimated by a committee of their creditors, at £800.

The whole of their property, real and personal, and all their debts (excepting however the wearing apparel of themselves and their respective families and their watches,) with their books of account and papers were assigned and delivered over to their Trustees in March 1842. On 24th February last they made their declaration of Insolvency, and by a Fiat dated 23d March last we declared to have committed an Act of Bankruptcy, and on the 29th of the same month they surrendered and filed a statement of their affairs under oath on 31st. The only assets in the hands of Provisional Assignee arises from a claim out of the private business of Mr. John Kinnear on a Bankrupts' Estate. The Bankrupts having been opposed were subjected to a very severe examination. The books and papers were produced by the trustees under a notice from me.—The Bankrupts subsequently filed their balance sheet, shewing the amount of debts due by them, exclusive of certain sums secured by mortgage on landed property, to be £52,964 0s 10d, and the amount of assets transferred to the Trustees in debts due £11,951 2s 9d, and in real and personal property, exclusive of debts, estimated at £12 925.

The Bankrupts have made a full discovery and disclosure of all their Estates and Effects and I have no reason to doubt the correctness thereof, and they have conformed to the provisions of the Bankrupt Act.

On the investigation of this matter, which has occupied several days, it appears that during the first few years of their Co-partnership, evidently under the idea of saving expense, they had but little assistance and did not then deem it necessary to keep their books regularly, and this irregularity in their books has unfortunately continued to the time of their stoppage.—Exertions were made without effect, to remedy this evil and their books consequently never have shewn a true statement of the affairs. About 1837, new books were opened and attempts made to balance the accounts in the former books, but were not persevered in so as to accomplish it. The persons employed to bring up the old books prepared a statement of their affairs from them shewing a large balance against the concern—this statement was undoubtedly incorrect, and when brought under the notice of the Bankrupts was treated by them as not worthy of any consideration. For several years past their transactions were to an enormous extent, and from their variety required the greatest care and attention, not only in the general management therefore, but more particularly in keeping their books and accounts in a proper state.

The care and attention of both the Bankrupt personally to their business have been unremitting, but as to their books they have wholly failed. Strange to say that during the whole time of their Co-Partnership their books were never balanced—nor any balance sheet or statement made so as to ascertain the amount of their liabilities or assets, nor was it until after the failure that any approximation to correct information on this point was obtained.—This state of their books in persons doing business and one comprising so much variety is most unaccountable, and shews that the Bankrupts were not aware of the absolute necessity of keeping up the records of their transactions, and consequently not calculated to undertake and carry them on to such an extent as they did, and *to this defect I wholly attribute their present difficulties.*—They apparently wish to have their books in good order, and made great exertions to accomplish it but evidently thought it a matter of secondary consideration.

In opposing their certificate, it was argued that the bankrupts did not wish or rather feared *to see* a statement of their affairs. This I must expressly negative.—For first, they never had until lately any idea that they were insolvent, and again I am convinced they used as much exertion to accomplish this end as its importance appeared to them to demand—and I am not astonished at their rejecting the before mentioned statement; but I am astonished that after such a statement being prepared by a person who had kept their books and who must to a certain extent have been conversant with their affairs, they did not cause their books and accounts to be thoroughly investigated and a true statement prepared for their own satisfaction even had the accomplishment of it caused them to curtail their business for a time.—Justice to their creditors, their friends, and themselves, demanded that they should from time to time knew the state of that affairs, and then govern themselves accordingly.

Under all the circumstances I fully acquit them of any fraudulent intent in not having their books and accounts properly brought up and from time to time balanced, and I am satisfied that the late purchases made by them were made in ignorance of their inability to pay for them.—Each of the bankrupts must however reflect with sorrow and regret on the consequences of their ignorance of their own business.

During this inquiry it was ascertained that the bankrupts had been in the constant habit for several years of drawing exchange upon parties abroad without having funds there to meet them, and doing this at heavy usurious interest and commissions, and it was also stated that such was the usual mode of conducting business in this place at that time—the ruinous consequences therefore may be conceived when the balance of their interest account, which had only been kept since 1835, and which did not shew all the interest and commissions paid by them, amounted to £10,-921 3s. 8d. against the concern.

This course of proceeding was highly reprehensible, and of necessity brings with it its own destruction—no trade in this country can warrant such payments for the use of money; and those persons and institutions who encouraged such transactions were more culpable than the individual whose necessities for the purpose of meeting his engagements compelled him to submit to such terms.

Thus far I have considered the conduct of the bankrupts to the time of their stopping payment, and I am decidedly of opinion that though they have acted injudiciously in their speculations and improperly as to their books, yet that there was no fraud thereby intended, and consequently that there is no ground whatever to refuse them their certificate; but I have now to remark upon the concluding transaction of their business—" *The preferred claims*"

At the time they stopped payment the Bankrupt laws had not been passed by the legislature and it was by no means certain that any such law would be enacted and therefore it may be said that there was then in existance in the Province no law which declared all preferences among creditors made in contemplation of Bankruptcy to be illegal, but the Bankrupts are now applying for their certificate under the acts of the Provincial Legislature relative to Bankruptcy, one of which sets forth in the preamble, " Whereas a due regard to the interest and security of creditors, as well as to the relief of debtors in insolvent circumstances renders it necessary to make legislative provision respecting the same," and the other act requires the commissioner in granting or withholding the certificate to have regard to the conduct of the Bankrupt as a trader, as well *before* as after his bankruptcy.—And

The 13th section of the act of 1842, declares " all bargains, sales, transfers, assignments, payments, &c. made by any Bankrupt within four months of the date of the Fiat against him to be *fraudulent* against the Bankrupt, if made for the purpose of giving any surety, creditor, indorser, acceptor, or other person any preference or priority over the general creditors of such bankrupt."—And am I of opinion that a party applying for the benefit of the provisions of these Laws must show himself entitled to the same by not having done anything contrary to the spirit thereof.

A party now making preferences in favour of any creditors more than four months before the date of his fiat, certainly could not be excused because it was not done within the time prohibited by the law—for though he may have evaded the letter of the law, still the spirit of the law has been violated, and thus I consider it in this case.

The Bankrupts, knowing that their assets were not sufficient to meet their liabilities, determined to stop their business and assign their property to trustees, and that a certain class of their creditors should be paid in full and accordingly between the time of their suspension, viz—October, 1841, and 15th March, paid or secured a number of their creditors in full, and by their assignment dated 15th March, 1842, duly executed, assigned their estate and effects to the trustees, subject to certain other preferences therein named. In the said assignment it is stated, " in order to render to their creditors the utmost satisfaction in their power and to preserve their property and means for the general and equal benefit of all their creditors, with the exception hereinafter mentioned, they (J. & H. K) have proposed to convey and assign as well all their joint property as also their separate estate and effects, real and personal, to such persons as their creditors may desire, in trust, that the proceeds thereof may be paid to the said creditors rateably in proportion to the amount of their several debts, and whereas it is just and reasonable that any individuals who may have given the said J. & H. Kinnear promissory notes or indorsements, or whose money may have been taken by way of loan for a short period not being upon interest, for the business of the said J. & H. Kinnear, should be protected, all which said sums of money, notes and securities, so far as they have been ascertained, are enumerated at the foot of this assignment "

The parties chiefly protected are indorsers or sureties without consideration. Now under what principles are these persons to be especially protected? I know of none—An indorser of responsibility upon a man's paper gives it a character which it would not otherwise bear—He proclaims abroad, I *knowing* the standing of the maker of this paper, have every confidence in him, and thus if the maker of the paper be not substantial, the indorser leads many into trusting him to their injury. If an accommodation surety does not take security to save him harmless when he lends himself in this way, he is not entitled to any preference, nay rather he should come after those whom he has been the means of misleading.

No person has a right to take that which belongs to me to discharge his liability to another, without he feels certain of his ability to replace that taken without detriment to any one, and therefore I declare that so soon as a man becomes insolvent the property in his possession is held by him in trust for *all* his creditors, and every disposition of it, or of any part of it, other than for their general benefit, without the consent of all of them, is contrary to the spirit and intention of the laws under which the bankrupts have applied for relief, and if permitted will in my opinion render nugatory all Legislative enactments made for the protection of the rights of creditors.

In the case now under consideration the Bankrupts have taken upon themselves, after their failure, and after they knew of their insolvency and that their assets were not equal to the payment of one half of their liabilities, and after they had determined to stop their business, to pay or secure certain claims in full—and for this purpose they have taken the property of all their creditors to satisfy the claims of a few, and I do not think I should be doing " what the justice of the case requires," were I to grant them their certificate to take effect before they have restored to their general creditors what they have improperly taken from them.

I, therefore, considering the Bankrupts guilty of misapplying their assets by paying or securing out of them certain preferred claims after they were aware of their insolvency and inability to pay all their creditors, and after they had stopped their business, am prepared to give them their certificate of conformity in all things, to take effect so soon as they pay into the hands of the assignee of their Estate, for the benefit of all their creditors, the sum of £6,742, 11s. 11d., being the amount they have thus misapplied.

The persons of the Bankrupts are free from arrest under the provisions of the 24th section of the act of 1842, but any property they may obtain will be subject to the claim of the assignee until the said sum of money is paid.

If I am considered wrong in the construction I put on the Law, there lies an appeal to the court of Chancery, and nothing would give me more satisfaction than to have my judgment in this matter reviewed, and directions thereupon given as a guide for the future.

ROBERT F. HAZEN,
Commissioners of the Estates and Effects of Bankrupts in the city and county of Saint John.

" You're rather touchy," said the priming to the match. " Go off with yourself," said the match in reply.

European News.

From British Papers to the 19th November, received by the Acadia, Steamer.

The following " Conciliatory Address" was moved by Mr O Connell, and agreed to:—

" TO THE PEOPLE OF IRELAND.

" Conciliation Hall, Oct. 31.

" Fellow Countrymen—The members of the Loyal National Repeal Association of Ireland respectfully solicit your attention to some considerations which we deem of the utmost importance to our common country.

" We do most earnestly entreat of you to banish from your minds all passion and prejudice. All we ask of you is that you will cooly deliberate upon the matters we submit to your judgments.

" We do not beleive that there is any one in Ireland who does not see the mischiefs arising from the centralisation of all power in London. It is obvious to common sense that the business of Ireland cannot be as well done in London as in Dublin; and it is equally certain that it could not be anywhere so well done by Englishmen as by Irishmen. If the business of Ireland were transacted in Ireland it would be necessarily transacted by Irishmen. All the offices in the law in Ireland, from the Lord Chancellor to the tipstaff, would be filled by Irishmen—all the offices in the Excise would be filled by Irishmen—all the offices in the Irish customs would be filled by Irishmen—in short, if the Parliament were Irish, all the Government patronage would belong to the Irish. You fatally know how differently matters are conducted at present, and how few, comparatively, of the Irish are appointed to do the business of Ireland. If we Irish had our own Parliament, would the offices we have already alluded to be filled, or would ever the very police and the water guards be commanded by English and Scotch instead of Irish officers.

" In plain truth, there is not a single individual in Ireland who does not admit that if an Irish Parliament were now in existence, it would be impossible to carry the Union; nor is there one human being in Ireland with intellect beyond that of a sea calf, who does not admit the intense value to Ireland of the Repeal of the Union, if it could be achieved without creating at least one of two evils.

" These evils are, either—

" Firstly—A separation from England and a dismemberment of the empire; or,

" Secondly—A Catholic ascendancy in religion.

" As to the first—the danger of separation—we admit that a separation from Great Britain would be a great calamity; one which we would be certainly most desirous to prevent, which we would be certainly most desirous to prevent, and which, if it took place, both countries would have reason to deplore. But it is a calamity of the occurrence of which there does not appear to us to be the least danger that it should arise from the Repeal of the Union. There would be no motive on the part of the Irish to separate from England if they had their own local Parliament. Why, under such circumstances, should the Irish desire separation any more than Canada does at the present moment? Or than they—the Irish nation—did themselves when they had their own Parliament? On the contrary, the Irish Parliament protected and preserved Ireland for the British Crown, at the great crisis of the American war, and the successful revolt of the American colonies.

" The other topic of apprehension—a Catholic religious ascendancy—is, if possible more easily demonstrated to be futile. In the first place, the very principle of the Repeal of the Union would allocate to purposes of charity and education the Ecclesiastical State revenues as each of the vested interests should terminate.

" The value of a state Church ascendancy is to get at the State revenues, as to those revenues would, as they fell in, go to the State for ascertained purposes of education and charity, there would be nothing to make the Catholic Hierarchy desire an ascendancy for their religion over any other. The money being disposed, the ingredient of ascendancy would be blotted out for ever.

" In the second place, Catholic ascendancy would be utterly impossible for this reason—the Irish Legislature would be, two parts out of three, essentially Protestant. It is true that a majority of the House of Commons might be Catholic; but there necessarily would be a very great number of Protestants in that House. The corporations of Ireland having Catholic majorities, have returned almost all the liberal Protestants who sought to be elected. Besides the Protestant portions of Ireland would return Protestants. On the whole, therefore, no measures injurious to Protestants could possibly pass the House of Commons, unless the Catholics in that House were false—basely and shamelessly false to the principles they have ever avowed.

" Rally, then, people of Ireland, for the peaceful Repeal of the Union.

" Signed by order,
" DANIEL O'CONNELL,
" Chairman of the Committee."

Notice,

The Co-partnership which has hitherto existed between the Subscribers, under the firm of *Phineas Williston & Brothers*, is this day dissolved by mutual consent.

P. WILLISTON,
WM. WILLISTON,
ALEX. WILLISTON.

Chatham, 10th November, 1843.