Editor's Department.

MIRAMICHI:
WEDNESDAY MORNING, MAY 1, 1844.

ARRIVAL OF THE SOUTHERN MAIL.—The Southern mail reached the Post Office, on Monday evening, at 7 o'clock. We went to press to-day at three o'clock.

BANKRUPT COURT.—The Bankrupt Act having occupied so much attention of late, and there being such a diversity of opinion relative to its working and construction, that we have at the request of a number of our subscribers, obtained a copy of the decision of His Honor the Commissioner, in the case of T. G. Gallagher, against the allowance of which certificate cause was shewn on the 11th ult. on the ground stated in the decision.

This cause excited no little interest and speculation as to His Honor's decision—some contending that, as the Bankrupt had made payment within four months, he could not obtain a certificate; others again concluded, that in this case the law would not apply, as the payment was made in fulfillment of a previous promise.

This decision was delivered on the 22nd ult., before a number of merchants and other individuals, and we believe gave very general satisfaction.

As this is the first case that has been contested before me, I shall endeavor to be explicit, in order that my decision may be clearly understood, and both parties afforded a fair opportunity of appealing.

The facts of the case, as have been shewn by the Bankrupt, in his examination, are as follows:—

About four years since the Bankrupt's property was all consumed by fire, since which time he has been in difficulty, and striving to pay his debts then contracted, some of which are still due. In the winter of 1842, he entered into an agreement with Messrs. Adam and Davidson, of St. John, to get logs for them on their Mill reserve on Salmon river; they were to supply him, and allow him 15s. per M. for the logs in the pond. The amount supplied by them up to the 16th November following was £311 11 8. About this time the Bankrupt owed William Steadman a small amount, and Steadman owed Adam and Davidson £30 13 6; Steadman proposed that the bankrupt should pay this amount to Adam and Davidson, that he would pay some amounts that were then pressing upon the bankrupt, and pay him the balance. This the bankrupt agreed to, and directed Steadman to draw in their favour for the amount, as they were owing him. Steadman accordingly on the 29th December drew the order, and subsequently *settled* with the bankrupt and paid him the balance; this order was never presented. The bankrupt was also indebted to Robert Russell by promissory note, which was placed in the hands of an Attorney for collection; but upon the bankrupt paying the costs and agreeing to pay the amount in goods the following fall out of Adam and Davidson's store, the suit was withdrawn, and nothing further was done till the winter, when Russell asked for the order; the bankrupt told him he was going to St. John in the spring, and would arrange it on the first of May. He gave an order for the amount then due, and in the same month he went to St. John for the purpose of settling with Adam and Davidson, and getting from them a sum of money to pay an execution then against him, failing in which he would either have to go to jail or avail himself of the benefit of the bankrupt law. Shortly after his arrival, Adam and Davidson offered him first £50 and then £100 in full of his account; this he refused to receive, and finding he could not satisfy the execution, he determined to become bankrupt. After he had so determined, he cancelled the order to Russell, added a few more shillings to the original amount, and then gave him another order on Adam and Davidson for £22; this order was ante-dated by Russell with the concurrence of the Bankrupt, and also bore date 1st May, 1843. On the 2nd June the bankrupt settled his account with Adam and Davidson, in which the two orders were charged, and the logs credited, and a balance was struck in favor of the bankrupt, payable in six months.

The fiat bears date 1st September, 1843, consequently the settlement and the order to Russell were made within 4 months from the date.

The counsel, in shewing cause against the allowance of the certificate, has taken three grounds—1st, that there being no evidence to show that the bankrupt is owing £200, he has not brought himself within the provisions of the act, and therefore cannot obtain his certificate. 2nd, that he having paid the following sums, viz. to Adam and Davidson £311 11 8, to Steadman £30 13 6, and to Russell £22, after he had determined upon Bankruptcy, has thereby given undue preferences, and if the certificate can be granted at all, it must be on payment of these sums into the hands of the assignee. 3rd, that having given those preferences not only with a view to bankruptcy, and in contemplation thereof, but within 4 months of the date of the fiat, the certificate must be refused under the 13th section of the act 5 Vic. c. 43.

With regard to the first ground, I am clearly of opinion that it does not come within my *jurisdiction* to determine. The act of Assembly 5 Victoria cap. 43, sec. 3, says—"That all persons whosoever residing within this province owing debts to the amount of not less than £500 (now reduced to £200) shall be liable to become bankrupt within the meaning of the act, and may upon petition to the Chancellor or Master of the Rolls of this province of one or more of the creditors, be declared accordingly, by fiat of the said Chancellor or Master of the Rolls;" it then goes on to state what shall be an act of bankruptcy. The subsequent statute, 6 Victoria, chap. 4, says—"that in all cases of a person filing a Declaration of Bankruptcy, a fiat may be granted thereupon upon the application of the Bankrupt himself, as well as upon the application of creditors." The fiat when granted is to be transmitted to the proper Commissioner, and this is his authority for proceeding according to the directions of the acts relating to bankruptcy—which points out his duty. He is to appoint a provisional assignee, and "cause notice to be personally served on the said bankrupt, requiring him within thirty days after service thereof, to surrender and conform to or dispute the alleged Bankruptcy." "And in case he shall not within the said period file with the Commissioner a declaration in writing of such dissent and desire to contest the alleged bankruptcy, the Commissioner shall forthwith transmit the said declaration to the Chancellor or Master of the Rolls, who shall *proceed to the determination of the question so in contest.*" "And if the Chancellor or Master of the Rolls shall find the petitioning creditors' debt or the general debt or debts due by the alleged bankrupt not sufficiently proved to satisfy the provisions of the act, that then the said fiat so by him first granted shall thereby be annulled."

Thus we see that the original jurisdiction in matters of bankruptcy in this Province as in England, resides in the Court of Chancery—and if I should decline proceeding further on the fiat because the bankrupt has failed to shew debts to the amount of £200, I should be assuming a jurisdiction superior to that court, as it would in effect be saying "this fiat has been granted improperly, therefore I will annul it"

On the first ground therefore, if there *were* no other objection, I should not hesitate to grant an unconditional certificate.

As to the other two grounds, I must confess I have some doubts, and as they are points of importance not only to the bankrupt in this case, but to the community generally, if either party shall be dissatisfied with my decision, I hope they will take the earliest opportunity of appealing to the Court of Chancery, and have it either reversed or confirmed.

In support of these two grounds, the counsel for the opposing creditor relied on the 13th section of the act 5 Vic. c. 43, which says—"that all bargains, sales, *payments*, &c. made by any bankrupt within four calendar months of the day of the date of the fiat granted against him, notwithstanding the same may have been made and done for valuable consideration *shall be deemed and taken to be fraudulent as regards the said bankrupt*, if it shall appear to the proper Commissioner that the same had been done by the bankrupt or on his behalf in contemplation of bankruptcy, or 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 he called my attention to the marginal reference, which says—"transfers and preferences by bankrupt made in contemplation of bankruptcy to disqualify bankrupt from obtaining a certificate." Although this reference carries no more weight with it than the Index to the statute book, still I have turned my attention to it, and endeavoured to ascertain whether this is really the spirit and meaning of the act, and whether the case now under consideration comes within it, so as to prevent the bankrupt obtaining his certificate.

There can be no doubt that the bankrupt has made a payment "within four calendar months of the day of the date of the fiat granted against him," and "in contemplation of bankruptcy," and if the marginal reference be the correct construction to be put upon the act, then he cannot obtain his certificate; but is this I must differ with the counsel for the opposing creditor. In exercising my equitable jurisdiction, and looking at the bankrupt acts "as making but one system, to be taken together, to be construed favorably for the benefit of the creditors, and to suppress fraud, and with humanity towards the bankrupt," and looking at the 25th section of the act 6 Victoria c. 4, which says, the "Commissioner having regard to the conformity of the bankrupt to the laws relating to bankrupts, and to the conduct of the bankrupt, as a trader, before as well as after his bankruptcy, shall judge of 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 conditions thereto as the justice of the case may require*." I cannot *refuse* the certificate, as I do not think "the justice of the case requires it." The bankrupt has made a full disclosure of his affairs, he appears to have acted with prudence and honest intentions, for he tells us that he did not make the payment to Russell with a view of giving an undue preference, but solely to carry out an agreement long previously entered into. We know that generally speaking a debtor may give a preference to a creditor, and the payment so made would be perfectly legal, and that it is extremely difficult in many cases to determine what acts are fraudulent and what not, but the section of the act now under consideration makes a payment under certain circumstances illegal, and relieves us from the difficulty of determining what acts done within a certain period are fraudulent—and the question is in what way they will affect the bankrupt.

It has been said "that a voluntary conveyance is void only as against creditors, and then only to the extent in which it may be necessary to deal with the conveyed estate for their satisfaction; to this extent and to this only, it is treated as if it had not been made, to every other purpose it is good—satisfy the creditors and the conveyance stands." And in this case I will say—"if any payments have been made which may be deemed fraudulent as regards the bankrupt, let him satisfy the creditors and I will grant his certificate."

Having decided this point, I will now turn my attention to what has been contrued as fraudulent payment by the bankrupt, and to what extent the creditors should be satisfied. The first is the amount advanced by Adam and Davidson of £311 11 8; at the settlement of this account the logs were credited, which amounted to the sum of £461 11 8; at what time these logs went into pond does not appear, but it does appear that as far back as Decem. 1842, the bankrupt considered them the property of Adam & Davidson, for when he directed Steadman to draw the order on him, he stated that they were owing him. It appears further that they looked upon them and treated them as their property, and considered themselves in his debt, else why did they on his first arrival in St. John, and before he determined to declare himself Insolvent, make him an offer of a sum in full of his account.

As to the argument that he should not have settled his account after he had determined to become bankrupt, because his creditors may thereby be placed in a worse situation than they otherwise would have been, I cannot agree with it. Surely a man may *settle* his account within four months, and as to the creditors being placed in a worse situation, from anything that appears, they may be in a better; if the account had been left open the assignee might have had great difficulty in ascertaining the quantity of logs,—it is true he could have summoned the parties before me, to make a disclosure of their transactions with the bankrupt; but this would be attended with great difficulty and expence. It was perfectly competent for the creditors to shew that the settlement was fraudulent on the part of the bankrupt, and that they have been damnified thereby, but they have not thought proper to do so, and as no suspicion is cast upon the account or settlement, I am bound to consider it fair and just—in fact in bears evidence of that on the very face of it, for at the time of the settlement he received only £4 in cash and £12 17 5 in goods, and the balance £67 9 4 he allowed to remain for the benefit of his creditors, when he might, if he had been so disposed, have appropriated it to the benefit of his family. Under these circumstances, therefore, I cannot look upon this as anything more than a settlement between the parties, and instead of the bankrupt being indebted to Adam and Davidson at any time within the four months, they were indebted to him.

As to Steadman's order, it is a question involving so many nice points, that I must confess I feel no little difficulty in deciding upon it. It appears (as before stated) that Steadman owed Adam and Davidson £30 13 6, and that they owed the bankrupt, when it was agreed that Steadman should draw on him in their favor. In pursuance of this arrangement, Steadman drew on him on the 29th December, 1842, for the amount, and in January following informed him he had done so, and subsequently settled with and paid him the balance; this draft was never presented by Adam and Davidson, and the bankrupt never saw it until after the settlement of their account. It has been contended that this draft not having been accepted, the bankrupt was not legally liable, and therefore the payment of it was voluntary, and within the four months, and therefore fradulent.

It is true that this order not having been accepted, Adam and Davidson could not have recovered in an action *upon it* against the bankrupt, but could they not have set off the amount in an action by him against them? I think they could,—they were owing him when the order was given, it was drawn by his directions, and accounted for by the drawer to him; it seems that all parties considered the transaction closed, Adam and Davidson, by holding over the order had lost all recourse on Steadman, his debt to them was extinguished—it was closed between the bankrupt and Steadman—and it is very evident that Adam and Davidson considered it closed between themselves and the bankrupt, as they refused to allow him more than £100, for we find by the settlement that at that time they were owing him £106 independent of this amount.

Under these circumstances, therefore, I am of opinion that the £30 13 6 was not such a payment by the bankrupt as is contemplated by the 13th section, that having directed the order to be drawn, and having settled with the drawer for the amount, he had no right to say he would not pay it.

The order in favor of Russell stands upon a different footing. It is true that from promises made by the bankrupt to pay him at a particular time, and in a particular way, long before he thought of becoming bankrupt he had been induced to withdraw his suit; these promises should have been fulfilled in the fall of 1842, but were not; but in this case the maxim cited "that equity looks upon that as done which ought to be done," will not apply. The bankrupt "ought" to have paid all his creditors, and if I recognise this maxim as applying to payments, very few cases would come within the provisions of the 13th section. Russell held the bankrupt's note; here was a promise in writing, there was a subsequent verbal promise, which was not fulfilled at the time agreed upon, but in order to fulfil it at a subsequent period, the bankrupt gave an order on Adam and Davidson before he contemplated bankruptcy, and if this had been paid there would have been no question about it. But after he had determined to avail himself of the benefit of the bankrupt law, this order was cancelled, and a new one given for a larger amount. Although I acquit the bankrupt of any fraudulent intention, I am of opinion that this amount comes within the provisions of this section, being a payment made within four months of the date of the fiat, and in contemplation of bankruptcy.

Having given this matter my attentive consideration, having "a due regard to the interest and security of the creditors as well as to the relief of the debtor," and "a regard to the conformity of the bankrupt to the laws relating to bankruptcy, and to the conduct of the bankrupt as a trader before as well as after his bankruptcy,"—I shall be prepared to grant the bankrupt a certificate on his paying into the hands of the provisional assignee the sum of £22, being the amount paid Russell in contemplation of bankruptcy.

WM. CARMAN, Junior,
Commissioner of the Estate and Effects of Bankrupts for the county of Kent.

MONTREAL.—We have been kindly furnished with a supplement of the Montreal Herald of the 17th April, detailing the riots at that place during the election.

"At an early hour this morning the mob of ruffians which yesterday took possession of the polls and maimed and wounded Mr. Molson's voters, began to parade the streets. One party broke into Ward & Co.'s Foundry, soon after the men had commenced work, and drove the workmen off. Between eight and nine o'clock the crowd of Canallers on the Haymarket, and at the corners of the streets, in the vicinity of the polls, shewed their numbers to be not less than three thousand, two thirds of whom were men perfectly unknown in the city.

"At a meeting of Mr Molson's friends, held this morning, it was determined to abandon the poll, because in was perfectly obvious that every voter for Mr Molson approached the poll at the risk of his life. Brute force, directed by Mr Drummond and his friends, had become master of the liberties of the City of Montreal, and was organized not only to prevent electors from exercising the franchise, but to maltreat and murder those who might be so foolhardy us to attempt it. Language is wanting to express the condemnation that must fall on those on whom rests the infamy of hiring ruffians, strangers in the city, for such an illegal, for such an atrocious purpose.

"Immediately after the determination was come to, notice was sent to the Returning officer, that the protests, which had been served the previous evening, were to be adhered to, and that as force and violence were again anticipated, Mr Molson would not risk the lives of his friends by continuing the contest. This resolution would have been forced upon him by subsequent events, for some of his supporters who were not aware of the resolution, on going up to the booths, were struck by the Canallers, knocked down and kicked. Those who were respectably dressed had their clothes torn to rags.—The brutality of the wretches knew no bounds. Although the troops were on the ground at the Queen's Ward, and Saint Mary's Ward, these outrages were permitted by the Returning Officer to take place, amidst howlings and shoutings perfectly demoniacal. Nor did the fiends confine themselves to perpetrating these infamous acts near the polling places, but paraded the streets in multitudes, and in one instance tore the coat off the back of one of the most respectable inhabitants of the city, whom they chanced to meet. But we have not time to multiply cases. Can such an infamous proceeding be called an ELECTION!"

REV. MR. SOUTER.—It will no doubt be gratifying to this Gentleman's friends in this quarter to learn, that he has been appointed to the Pastoral Charge of the Parish of Borthwick, in the Presbytery of Walkirth, Scotland.

ST. GEORGE.—This Steamer was to leave Charlottetown for Pictou, on her first trip for the season, yesterday. We may look for her arrival here on Saturday next.

EUROPEAN NEWS.—We have carefully perused our files of British papers obtained by the Acadia, but do not discover anything of consequence in addition to the intelligence furnished in last week's Gleaner.

EXTRA SESSION.—The Magistrates in session last Saturday afternoon, passed an unanimous Resolution, putting Sheldrake Island at the disposal of the government, for the reception of the individuals labouring under the Leprosy in Gloucester and this county. We understand that the Board of Health have not yet come to any decision respecting the disposal of these unfortunate persons.

HOAX.—A copy of the New York Sun which we received by the mail, gives an account of the arrival of Mr Mason's Balloon, or *flying machine*, at Charleston, from England, in *three days*, having on board eight persons. The paper contains an engraving of the machine.

FREDERICTO[illegible].—Doak and Hill have discontinued their Reading and News Room. Cause—"Want of support."