put on two stamps shortly after the note was drawn, in October, 1864, and two nine cent stamps before the note fell due.

Defendant's son swore that the note attached to the notarial instrument was presented at his father's house to him, and there were no stamps on it then.

The learned judge directed the jury to find for the plaintiff, if they found the stamps were put on before action brought; and they gave a verdict for the plaintiff.

After motion in term a rule for a new trial was discharged, on the alleged authority of *Stephens* v. *Berry*, 15 U. C. C. P. 548.

The propriety of this direction was the only point raised on this appeal.

J. B. Read, for the appellant.

Kingstone, contra.

HAGARTY, J., delivered the judgment of the court.

It would seem that no stamps were on this note when originally made.

The case seems governed by the words of 27-28 Vic. ch. 4, sec. 9, "Except that any subsequent party to such instrument or person paying the same, may at the time of his so paying or becoming a party thereto, pay such double duty by affixing," &c., &c., "and such instrument shall thereby become valid."

The act of 1865, 29 Vic. ch. 4, which became law on the 18th of September, 1865, and which it is enacted shall be construed as one act with the preceding act, in its fourth clause says: "No party to or holder of any note, draft, or bill of exchange, shall incur any penalty by reason of the duty thereon not having been paid at the proper time and by the proper party or parties, provided that at the time it came into his hands it had affixed to it stamps to the amount of the duty apparently payable upon it, that he had no knowledge that they were not affixed at the proper time and by the proper party or parties, and that he pays such duty as soon as he acquires such knowledge; and any holder of such instrument may pay the duty thereon, and give it validi y under sec. 9 of the act cited in the preamble, without becoming a party thereto."

The case of *Stephens* v. *Berry* was decided wholly on the act of 1864. Richards, C. J., says: "I think we are certainly bound to decide, that when a person becomes the holder of an unstamped bill so as to sue and does sue on it, he must, to make it valid in his hands, have put the double stamp on it before commencing the action. Indeed, I personally take a much stronger view of the necessity of a holder protecting himself by the double stamp, when the bill without it would be void. The holder, in my judgment, can only be considered safe when he put on the proper stamp at the time he would in law be considered as having taken and accepted the bill as his own, or within a reasonable time thereafter."

This note matured in January, 1865. The action seems to have been commenced in September following, and the trial was in December ast.

The new act imposed new duties from the 1st of January, 1866, with certain directions as to obliterating stamps from and after the 1st of October, 1865. The fourth section is silent as to time of operation, and the fifth directs its being construed as one act with the previous one.

If we should read sec. 4 as part of or explanatory of sec. 9 of the former act, there would be no room to question the correctness of the learned Chief Justice's "personal" view.

But when the latter statute became law the note had been six months at least in the plaintiff's hands. He was then the holder of it, and the action was pending before the statute was passed.

By sec. 9 of the earlier act the note was void if not duly stamped at its making, &c., except in the case of any subsequent party affixing the double stamp at the time of his becoming a party thereto. This note, therefore, if no subsequent party stamped it on becoming a party, was avoided. If the plaintiff has saved it by stamping, it must be because as a subsequent party he stamped it on becoming such party. He therefore became a party in some way, and no other way can be imagined than by becoming the holder or endorsee of the note. He did not become a party by merely bringing the action.

We therefore think the direction given to the jury cannot be upheld.

The statute would be completely defeated if the stamps could be affixed at any time before action commenced. Parties could hold notes and pass them from hand to hand, and only affix stamps if legal proceedings became unavoidable.

If the fact really were, as is most probable, that the plaintiff is the payee and first endorser of the note, the time of his first connection with it is quite plain.

We think the appeal must be allowed, and that the rule for a new trial in the court below should be made absolute without costs.

Appeal allowed.

COMMON LAW CHAMBERS.

(*Reported by* HENRY O'BRIEN, ESQ., *Barrister at-Law*)

IN RE ANDREW CLEGHORN AND THE JUDGE OF THE COUNTY COURT OF THE COUNTY OF ELGIN, AND DUNCAN MUNN.

Insolvent Act of 1864, *sec.* 4, *ss.* 4, 16—*Jurisdiction of county judge to order payment of claim by assignee—Costs—Dividends—Appeal from assignee—Prohibition*—28 *Vic. cap.* 18.

A demand for wages alleged to be due by the insolvent to the claimant was made, as a preferred claim, to an assignee in insolvency. The creditors, at a meeting, passed a resolution authorising the assignee to pay all claims for wages, but the assignee refused payment of this claim as made. At this time no dividend sheet had been prepared. A summons was subsequently issued by the County judge, calling on the assignee to shew cause why he should not pay the claim. The assignee not appearing on this summons, evidence was taken before the judge, and an order made for the payment forthwith, with costs, of a sum less than the original demand. The assignee afterwards paid the claim as reduced, but refused to pay any costs; upon which the judge's order for the payment of the claim and costs was made a rule of court and execution issued thereupon against the goods of the assignee. Upon an application by the assignee for a writ of prohibition to prohibit further proceedings in the county court on the writs or orders, &c., it was *held*—

1. That the County judge had no power to adjudicate upon the claim until it had been decided upon by the assignee. It might have been brought before him as on an appeal from the decision of the assignee, but not for his decision in the first instance, and in this case there was nothing to appeal from.
2. That the assignee should not have been ordered, so far as appeared, to pay costs.