

benefit of creditors than by winding it up under the direction of the Court, it ought not to be interfered with. The trustee is not a party.

Duff, in reply—The plaintiff is suing on behalf of herself and all other creditors. [THE CHANCELLOR—She can only represent creditors of the same class, she cannot represent those having executions]. If the receiver be not appointed the assets of the company may be dissipated before the plaintiff can obtain execution. Under the Judicature Act the plaintiff is entitled to pursue all her remedies in one action, and if she would be entitled, on obtaining judgment, to the relief she now seeks she ought to get it now in the present action. The objections to the plaintiff's claim are matters which do not go to the merits but can be cured. *Cur. adv. vult.*

THE CHANCELLOR—This case is, I think, governed by the case of *Mills v. The Northern Railway of Buenos Ayres Company*, 5 Chy. App. 621. In that case the plaintiffs who were creditors filed a bill to wind up a joint stock company, and an application for an interlocutory injunction and Receiver, was made. Lord Hatherley said:—"So far as the case rests on the simple fact of the plaintiffs being creditors of the company, it seems to me hardly capable of argument." * * "It is wholly unprecedented for a mere creditor to say:—'Certain transactions are taking place within the company and dividends are being paid to shareholders which they are not entitled to receive, and therefore I am entitled to come here and examine the company's deed to see whether or not they are doing what is *ultra vires*, and to interfere in order that as by a bill *quia timet* I may keep the assets in proper state of security for the payment of my bill whenever the time arrives for its payment.'—The case must have occurred, of course, many years ago, before joint stock companies were so abundant, but certainly within the last twenty or thirty years the money due to creditors must have been many millions, and the number of creditors must have been many thousands, yet I have never before heard—and I asked in vain for any such precedent—of any attempt on the part of a creditor to file a bill of this description against a company, claiming the interference of this Court on the ground that he, having no interest in the company except the mere fact of being a creditor, is about to be defrauded by reason of their making away with their assets.

It would be a fearful authority for this Court to assume, for it would be called on to interfere with the concerns of almost every company in the kingdom against which a creditor might suppose that he had demands, which he had not established in a Court of Justice, but which he was about to proceed to establish."

These observations are so entirely apposite to the present case that it is unnecessary to add anything to them. I have not lost sight of the provisions of the Judicature Act which enable the Court to order the appointment of a Receiver "in all cases in which it shall appear to the Court to be just or convenient," (J. A. s. 17, s. 8). I do not think it would be either just or convenient at the present stage of this action to grant any such order, and thereupon refuse the motion with costs.

(See *National Provincial Bank of England v. Thomas*, 24 W. R. 1013; *Robinson v. Pickering*, 50 L. J. C. A. 527, *Hepburn v. Patton*, 26 Gr. 597.—Rep.)

RECENT ENGLISH PRACTICE CASES.

(Collected and prepared by A. H. F. LEFROV, ESQ.)

IN THE GOODS OF TOMLINSON.

Jurisdiction—Judicature Act.

[May 24, 1881.—L. R. 6 P. D. 210.]

The Judicature Act has no effect whatever upon the non-contentions branch of the jurisdiction of the Court of Probate in England, and no question of the enlargement of the jurisdiction existing in the Court, can arise in the non-contentions business.

CHINA TRANS-ATLANTIC SS. CO. v. COMMERCIAL UNION ASSURANCE CO.

Imp. O. 31 r. 11—Ont. O. No. 221.

Action on policy of marine insurance—Discovery of ship's papers—Form of order.

In an action on a marine policy, underwriters are entitled to discovery of ships papers in accordance with the practice before the Judicature Acts.

[Dec. 12. C. of A. L. R., 8 Q. B. D. 142—51 L. J. N. S. 132]

In such an action the Master had ordered that, "the plaintiff and all persons interested in these proceedings, and in the insurance the subject of this action, by the oath of their proper