

## COMMON LAW CHAMBERS.

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

## HINGSTON v. CAMPBELL.

*Insolvent Acts of 1864, 1865—Official assignee—List of creditors.*

A list of creditors of the insolvent, need not be appended to an assignment made to an official assignee.

A voluntary assignment must be made to an official assignee resident in the county in which the insolvent resides, and carries on his business; and the amending Act 1865, makes no change in this respect.

[Chambers, August, 1866.]

Oslor obtained an interpleader summons calling on the plaintiff and Henry Charles Voigt, the claimant, their attorneys or agents to shew cause why they should not appear and state the nature and particulars of the respective claims to the goods and chattels seized by the sheriff of the County of Lennox and Addington under the writ of *fiat facias*, issued by the plaintiff in this cause; and maintain or relinquish the same and abide by such order as might be made therein.

The summons was obtained upon the usual affidavit of the deputy sheriff, setting forth the seizure by him of the goods in question on the 19th July, 1866.

Kerr, for the claimant, filed affidavits, shewing that on the 26th July, 1866, the defendant executed a voluntary assignment of all his estate and effects to the claimant as official assignee under the provisions of the Insolvent Act of 1864 and the amendment thereto.

C. W. Patterson for the execution creditor, objected that the assignment was irregular.

1. Because the requirements of the Insolvent Act of 1864 had not been complied with, in that a copy of the list of creditors or schedule of creditors of the assignor was not appended to the assignment as required by sec. 2, sub-sec 6, of that Act.

2. Because the assignment was not made to an official assignee resident within the County within which the insolvent had his place of business. He referred to the Insolvent Act of 1864, sec. 2. sub-sec. 4; and filed affidavits shewing that an official assignee has been properly appointed resident at Bath in the County within which the insolvent had his place of business, and that the claimant is an official assignee, resident at Kingston, in another County.

Kerr, in reply as to the first objection referred to the Insolvent Act 1864, sec. 2 sub-sec. 1, 2, 3, 4, and 29 Vic., Cap. 18, (amending the same), sec. 2; and argued that as under the latter Act, an assignment might be made without the performance of the formalities required by the above sub-sections of the Insolvent Act 1864, including amongst others, the production, at the first meeting of creditors, of a list of all his creditors; it follows that a copy of the list of creditors appended to the assignment was no longer necessary; for a copy could not be made of that which did not exist.

As to the second objection, he contended that under 29 Vic. Cap. 18, sec. 2, a voluntary assignment may be made to any official assignee in any County; arguing that the use of the words "any" shews an intention on the part of the Legislature no longer to limit the debtor to the particular official assignee, resident in his own County; but that he may select any official assignee provided he has been appointed under

the Act of 1864. And that it is often more convenient to wind up the estate in a County, other than that in which the insolvent had his place of business. The majority of creditors and debtors may reside in another County. The bulk of his estate may be there, and as in the case when a creditor under the provisions of the old Act might be selected as assignee, resident in any County whatever, so the intention was to enable any official assignee wherever resident, to accept assignments. There are no words of limitation; the words "appointed under the said Act" are merely words of description, as is also the word "official." They were so used in the Insolvent Act 1864, sec. 12, sub-sec. 6.

DRAPER, C. J., overruled the first objection, holding that as the performance of the formalities, or the publication of any of the notices required by the Insolvent Act 1864, sub-sections 1, 2, 3, and 4 of sec. 2, are no longer necessary under the amendment act, if the assignment be made to an official assignee, a copy of the list of creditors produced at the first meeting of creditors, need not be appended to the assignment, for in fact no such meeting may be held. After considering the second objection, his Lordship delivered the following judgment:—

I grant the interpleader with some doubt. The claimant must be plaintiff, and will have to prove title, and the question of his right as assignee can be raised and decided in the full court. If the matter is left to me, I shall decide against the claimant, for I cannot satisfy myself that the execution debtor could make an assignment to the official assignee of another County than that in which he resided and carried on business.

As the question had been, by consent, left to be summarily disposed of by the Chief Justice, he granted an order barring the claimant.

Order accordingly.

## INSOLVENCY CASE.

(IN THE COUNTY COURT OF THE COUNTY OF HASTINGS.)

IN RE FRANK STARLING &amp; CO. AND RE STARLING AND ARKLE.

*Insolvent Act—Application for discharge—Mailing notices.*

On an application for a discharge under sec. 9, sub-sec. 10, of the Insolvent Act of 1864, held unnecessary to mail notices to creditors under sec. 11, sub-sec. 1.

[June 3, 1866.]

Application by petition on behalf of Starling and Arkle, insolvents, for a discharge in both matters, under sub-sec. 10 of sec. 9 of the above act.

Holden for assignees and opposing creditors, objected that notices of the applications had not been mailed, post-paid, as directed by sub-sec. 1 of sec. 11.

Dickson for petitioners, contra.

SHERWOOD, Co. J.—The Insolvent Act requires, by different clauses, notices of meetings of creditors and other notices to be given, without specifying what the name shall be, and there are only three cases in which the kind of notice is specially designated, viz.: in sec. 4, sub-sec. 13, in regard to the sale of real estate; and in sec. 9, sub-sec. 6, in regard to proceedings for confirmation of discharge given by creditors, and