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IN THE MATTER OF ROBERT R. WADDELL, AN INSOLVENT.

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COMMON LAW CHAMBERS.

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

IN MATTER OF ROBERT RUSSELL WADDELL, AN INSOLVENT.

Insolvent Act of 1864, sec. 9, sub-secs. 6, 10, and sec. 11, sub-sec. 1—Appeal from county judge—Application for discharge of insolvent—Notices to creditors.

The provisions of sec. 11, of the above act, with reference to notices, do not apply to the case of an insolvent who has procured a consent from his creditors to his discharge, or has procured the execution by the requisite number of his creditors of a deed of composition and discharge, and who is applying to the judge for a confirmation of such discharge.

Sec. 9, sub-secs. 6 and 10, point out all that is to be done on the part of the insolvent, to enable him to bring his application before the judge.

[Chambers July, 4, 16, 1866.]

On 23rd June last the insolvent presented a petition to the county judge for his discharge under the Act. Notice of his intention to apply in the form given by the statute was published in the *Canada Gazette*, the first insertion in that paper being on 21st April and the last on 16th June. Notices of the intention to apply were not sent to the creditors of the insolvent.

Burton, Q. C., appeared for an opposing creditor, and objected that the publication of the notice was not sufficient. It was not published for two months as required by sub-sec. 6 of sec. 9, and notices should have been sent to the creditors as provided by sec. 11, sub-sec. 1, and both these sub-sections must be read together.

Sadler, for the insolvent, *contra*.

Sub-sections 2, 3, and 4, of sec. 1, of Act of 1864, are repealed by Act of 1865, second session. This provides that where an assignment is made to an official assignee, no notices are required to be sent by insolvent to his creditors, by post or otherwise; form A in old Act is done away with, and form A in new Act is only where an assignment is not made to an official assignee. Where the assignment is to an official assignee, the first notice is given by assignee for the purpose of calling on creditors to prove claims. See then section 11 of old Act—To whom is insolvent to give notice of his intention to apply for discharge? The end of sub-section 1, section 11, showed "that notices thereof must be addressed to all creditors within the Province, &c., at the time of the insertion of the first advertisement," that is, the assignee's advertisement.

The following judgment was, after consideration given by the learned judge of the court below,

Logie, Co. J.—As to the first point sub-sec. 6 of sec. 9, provides that notice shall be given by advertisement in the *Canada Gazette* for two months, and the first point raised is whether the full period of two months must elapse between the first and last insertions in the *Gazette*, or whether the time of making application to the Judge being more than two months from the day of the first insertion in the *Gazette* publication in all the issues of the paper during the intervening time would be sufficient although the time between the first and last insertions should happen to be less than two months. I was under the impression that the case of *Coe v. Pickering*, 24 U. C., Q. B., 439, settled that point, but on look-

ing at the case, I find it does not; and I have not been able to find any case in which it has been determined. I have, on careful consideration, come to the conclusion that the insertion of the advertisement for two months means an insertion in each issue of the paper published during the two months between the first insertion and the day of presenting the petition; and therefore, as in this case, the day of meeting is more than two months from the date of the first insertion, and the notice has appeared in each issue during the period, the publication in the *Gazette* is sufficient.

With regard to the other point, I am of opinion that notices should have been sent to the creditors of the insolvent as provided by sec. 11. I think that sec. 11, sub-sec. 1, must be read along with sec. 9, sub-sec. 6, in order to ascertain the intention of the Legislature. Sec. 11, sub-sec. 1, contains the general provision of the Insolvent Act for the giving of notices. It provides that notices of meetings of creditors and all other notices required to be given by advertisement without special designation of the nature of such notice shall be given by publication for two weeks, &c. And in any case, the assignee or person giving such notice shall also address notices, &c., to the creditors. The words in the last part of this section, "and in any case," &c., are very comprehensive, and unless controlled or limited by the other part of the section, or by anything in sub-sec. 6, of sec. 9, would unquestionably include the case of an insolvent giving notice of intention to apply for his discharge. It is contended by Mr. Sadler for the insolvent, that it is limited by the words "without special designation of the nature of such meeting" to cases where a meeting is called without the object of the meeting being stated in the notice, but that where the object is stated in the notice the requirements of sec. 11 do not extend to all notices required to be given; and therefore where there is a special provision for advertising notice of application as in sub-sec. 6, of sec. 9, the provisions of sec. 11 do not apply to it. I think, however, that the portion of sec. 11 requiring notice to be given to creditors applies to applications for discharge under sub-sec. 6 of sec. 9, and my reasons for so thinking are as follows: Sub-sec. 6 provides that the insolvent may give "notice &c. of his intention to apply &c.;" and notice shall be given by advertisement, &c.; if the latter part of the clause had been omitted, there would be no question, I think, as to the notice required; the general provisions of sec. 11, would apply. Does the last part of the clause then limit these provisions? I think not; it provides, generally, that notice shall be given, and that notice, meaning the notice referred to, shall be advertised for a longer period than sec. 11 requires; the effect in my opinion of sub-sec. 6, is merely to extend the period of advertising from two weeks to two months, in other respects the requirements of sec. 11 as to notice to creditors must be complied with. I am also of opinion that the words in sec. 11 "without special designation of the nature of such notice," do not limit the words, "and all other notices herein required to be given," to cases where the object of the meeting or notice is not expressed in the notice. In the